

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 154 OF 2013

PAUL MREMI LYIMO PLAINTIFF

VERSUS

EMMANUEL T. MALITI (Administration of the Estate of the Late Sosthenes T. Maliti)	}	DEFENDANT
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RULING

[10/02/2014 and 12/03/2014]

Nyangarika, J

The above plaintiff through MNL Law Chambers Advocates filed a suit on 3rd October 2013 against the defendant praying for the following reliefs:-

- a) A declaration that the plaintiff dully purchased plots No. 545/ and 544/3, Kawe Beach Area, Dar es Salaam and paid consideration.
- b) An order directing the defendant to register the said Plots in the name of the plaintiff.
- c) Costs of the suit be provided for by the defendant.

Upon being served, the defendant filed a defence where under paragraph 3 it is stated as follows:-

“Further, to what is stated in paragraph 2 above, the defendant states that although he is the administrator of the Estate of the Late Sosthenes T. Maliti, who is his father, the said Administration did not involve plot No 545/1 and 544/3 Kawe Beach, Dar es Salaam, as the said plots were not included in the estates of the Late Sosthenes T. Maliti. A copy of the grant of letters of administration is annexed hereto and marked “EM -1”.

On that score, the plaintiff has prayed for a Judgment on admission *under order 8 rule 5 and order 12 rule 4 of the Civil Procedure Code, Cap 33 RE 2002 (herein after referred to as “CPC”)* as the defendant does not deny the clam.

It is true that the plaintiff may be entitled to Judgment on admission as indeed the pleadings shows that the defendant does not deny the clam. But my problem is on the name of the defendant.

According to the pleadings and as rightly pointed out by the defendants counsel, the defendant’s name is *Emmanuel S. Maliti* and not *Emmanuel T. Maliti*.

Also the letter of appointment of an Administrator of the Estate, annexure EM-1, which is attached to the written statement of defence show that the administrator of the Estate is one, *Emmanuel Sosthenes Maliti*. *Emmanuel Maliti* and *Emmanuel Sosthenes* might be two different distinct names as the initial “S” may either be Sosthenes or Sospeter or Suleiman or any other name,

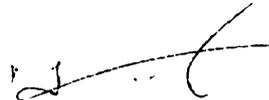
Therefore, such a name must be qualified and if used interchangeable, then, facts must be clearly disclosed on the record.

The issue here is what is the correct name of the would be defendant because human beings as in this case have to have names if the names are different and where the differences glaring on the face in so far as the suit is concerned, the parties should not take the issue regarding names lightly or as formalities, but that aspect has to be looked upon every carefully as it might change the characteric of the case.

In this regard, I am of the view that the plaintiff has an obligation to identify the correct and appropriate names of the appropriate defendant he want to sue which corresponds with that of the administrator of the Estate of the Late Emmanuel Sosthesnes Maliti on record. I am not travelling in a virgin Land as I have in mind the case of *Christina Mrimi Versus Coca cola Kwanza, Bottles Limited, Civil Appeal No 112 of 2008 at page 5 and 6 (CA) (unreported)* which gave this Legal Principle, which is adopted in this case.

Therefore, unless the plaintiff rectifies the defects as indicated within 7days from the date hereof, Judgment on admission will not be considered as the matter will have a different dimension in law.

Order accordingly.



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K. M. Nyangarika
JUDGE
13/03/2014

WORDS: 614