

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

LAND CASE NO.126 of 2017

ALLY AHMED ALLY.....PLAINTIFF

Versus

WASTARA KIPATI.....DEFENDANT

Date of Last Order: 17.07.2018

Date of Ruling: 17.08.2018

RULING

S.A.N WAMBURA, J:

This ruling is in respect of a preliminary objection raised by the defendant **Wastara Kipati** to the effect that:-

- 1. The suit is incompetent for being preferred before a non-existing Court registry.*
- 2. The suit has been preferred against the wrong defendant, instead of the Administrator of the estate of Juma Selemani Kipati.*

With leave of the Court the preliminary objection was argued by way of written submissions. I thank both parties for adhering to the schedule.

However at the hearing of the matter, the first ground of preliminary objection was abandoned.

Arguing the 2nd limb of the preliminary objection the defendants submitted that the plaintiff **Ally Ahmed Ally** has sued a wrong party as in paragraph 4 of the plaint he concedes that the disputed house once belonged to the late Juma Selemani Kipati. Therefore he ought to sue the defendant as an administrator of the deceased estate of one Juma Kipati and not sue him in his personal capacity. This is per Order XXX Rule 1 of the Civil Procedure Code Cap.33 R.E. 2002 which states thus:-

“Order XXX Rule 1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties”.

Since the plaintiff sued him in his personal capacity he prayed that the suit be struck out with costs.

In reply Mr. Shirima Advocate and Counsel for the plaintiff has submitted that since in paragraph 2 of the written statement of defence the defendant admits that he is the administrator of the deceased estate then they have sued a proper person and prayed for the preliminary objection to be dismissed with costs.

I believe there is no dispute that the defendant is the administrator of the deceased estate whom the plaintiff wants to sue. However the applicant has sued him in his personal capacity and not as the administrator of the deceased estate which is indeed wrong in law.

I thus uphold the preliminary objection raised and strike out the matter with costs. The plaintiff is at liberty to refile the same subject to the Law of Limitation.

S.A.N. WAMBURA
JUDGE
17.08.2018