

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

**MISC. LAND APPLICATION NO. 574 OF 2021.**  
*(Originating from Misc. Land Application No.49 of 2018 of this Court)*

**SAMWELI AMOSI GEKURA** (As legal representative of  
**Amosi Gekura, deceased)** ..... **APPLICANT**

**VERSUS**

**SOFIA SAID** ..... **1<sup>ST</sup> RESPONDENT**

**GERALD B.R MUGUMIRA** ..... **2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 03/06/2022*

*Date of Ruling: 17/06/2022*

**RULING.**

**I. ARUFANI, J.**

The applicant in the present application filed in this court the instant application under Orders XXII Rule 3 (1) and XLIII Rule 2 of the Civil Procedure Code, Cap 33 R.E 2019. He is seeking for an order of the court to be impleaded in the proceedings of Misc. Land Application No. 49 of 2018 of this court as a legal representative of the late Amos Gekura. The application is supported by an affidavit sworn by the applicant and it was opposed by the counter affidavit affirmed by the first respondent. The second respondent told the court he is not opposing the application. The parties were unrepresented in the matter and they prayed and allowed to argue the application by way of written submission.

The applicant stated that, the late Amos Gekura was a respondent in Application No. 226 of 2009 instituted at the District Land and Housing Tribunal of Ilala (hereinabove referred as the tribunal) by Sofia Said who is the first respondent in the present application. It is stated the mentioned application was instituted in the tribunal against the applicant and the second respondent in the present application, Gerald B. R. Mugumira. He stated that, the dispute was about boundary of their landed properties located at Pugu Kajiungeni within Ilala Municipality in Dar es Salaam Region and the application was decided on 19<sup>th</sup> October, 2015 in favour of the first respondent and against the late Amos Gekura and the second respondent.

The applicant stated that, after the late Amos Gekura being aggrieved by the judgment and decree of the tribunal, on 31<sup>st</sup> January, 2018 he filed in this court Misc. Land Application No. 49 of 2018 seeking for extension of time to file appeal in the court out of time to challenge the decision of the tribunal. When the application was pending in the court, Amos Gekura passed away on 17<sup>th</sup> December, 2018. Thereafter the applicant was appointed by the members of the family of Gekura to apply for letters of administration of the estate of the late Amosi Gekura.

The applicant stated to have petitioned for letters of administration of the estate of the late Amos Gekura and on 13<sup>th</sup> March, 2019 he was

dully granted the same by Ukonga Primary Court Vide probate and Administration Cause No. 46 of 2019. He stated that, as he delayed to apply to be impleaded in Misc. Land Application No. 49 of 2018 of this court on time, he filed in this court Misc. Land Application No. 441 of 2020 seeking for extension of time to be impleaded in the application and the application was granted. Thereafter he filed the application at hand in this court. The applicant prayed to adopt the contents of his affidavit and reproduced in his submission what is provided under Order XXII Rule 3 (1) of the Civil Procedure Code.

He submitted that, the court will be doing justice if it will order him be impleaded in the proceedings of Misc. Land Application No. 49 of 2018 as it will have an opportunity of considering and determining the merit of contentious issues of law in the appeal intended to be filed in the court. He argued that, after being impleaded in the mentioned application he will be in a position to state and argue before the court in the intended appeal that, the tribunal made serious errors by overlooking issues of limitation of time. He will also state how long the land in dispute between the parties had been used as well as how the boundary of dispute was converted into a dispute of ownership of a large track of land and finally granted ownership of the land to the respondent in the present application against the law.

He referred the court to the case of **Cropper V. Smith**, (1884) 26 CL. D. 700 cited by the Court of Appeal in the case of **National Housing Corporation V. Etienes Hotel**, Civil Application No. 10 of 2005, CAT at DSM (unreported) where it was stated it is an established principle that, object of courts is to decide the rights of the parties and not to punish them for the mistakes they have made in the conduct of their case by deciding otherwise than in accordance with their rights.

He submitted further that the above stated principle of law has been cited to respond to the argument raised by the first respondent that, the Primary Court had no jurisdiction to grant letters of administration of estate of the deceased to him and the argument that, the honourable Judge who tried Misc. Land Application No. 441 of 2020 was not right in granting him extension of time to lodge the instant application in the court. He based on the above stated submission to pray the court to grant the application with costs.

In his reply the first respondent stated that, although the applicant was granted extension of time by Hon. Mango, J to lodge the instant application in the court but the present application is totally misconceived and devoid of merit. He stated this is not the proper avenue for the applicant to urge to be impleaded in the proceedings of Misc. Land Application No. 49 of 2018. He stated the court has no jurisdiction to grant

the prayer of the applicant because Hon. Manyanda, J dismissed Misc. Land Application No. 523 of 2019 and abated Misc. Land Application No. 49 of 2018.

He argued that, the orders of dismissal and abatement of the above-mentioned applications are still intact and they preclude the applicant to file a fresh application in the court. He stated that is accordance with Order XXII Rule 9 (1) of the Civil Procedure Code which is very clear that, where a suit abate or dismissed under the cited order, no fresh suit shall be brought on the same cause of action. She stated that, execution of the decision made in Land Application No. 226 of 2009 of the tribunal was carried out when the late Amos Gekura was still alive and the demarcation of their lands were shown and accepted in the presence of the tribunal's Chairman during visit of the locus in quo.

She submitted that all the applications filed in the court by the applicant are mere afterthoughts after the execution being implemented. She submitted further that, the applicant wants to rejuvenate a new dispute through a backdoor contrary to the law, truth and reality of the land in dispute. Apart from what has been stated hereinabove the respondent stated that, the applicant attempted to file Application No. 411 of 2019 in the tribunal without success. He went on arguing that, the

present application has been overtaken by events and the application has no merit and prayed the application be dismissed for want of merit.

Having carefully considered the rival submission from both sides and after going through the documents filed in the court the court has found the crucial issue to determine in this application is whether the applicant deserve to be granted the order of being impleaded in Misc. Land Application No. 49 of 2018 is seeking from the court. The court has found that, as the applicant is seeking to be impleaded in the matter filed in the court by Amos Gekura who died before determination of the said matter, it is proper to state at this juncture that, Rule 1 of Order XXII of the Civil Procedure Code states categorically that, a death of a plaintiff or defendant in a suit shall not cause the suit to abate if the right to sue survive.

Where a plaintiff or defendant dies when his right in a matter filed in a court has not been determined and his right to sue survive his or her right is governed by Order XXII Rule 3 (1) of the Civil Procedure Code upon which the application at hand is made which provides as follows:-

***"Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that***

***behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.*** “[Emphasis added].

From the wording of the above quoted provision of the law and specifically the bolded words it is crystal that, where a sole plaintiff in matter like what happened in the matter of the late Amos Gekura dies, his legal representative can apply to the court to be made a party in the suit and upon his application being granted, he can proceed with the matter on behalf of the deceased. That being the position of the law the court has considered the rival submission from both sides and find the applicant is seeking to be impleaded in Misc. Land Application No. 49 of 2018 to proceed with the matter as a legal representative of the late Amos Gekura who died before determination of the said application.

The question to determine here is whether the applicant can be impleaded in the mentioned application as a legal representative of the late Amos Gekura. The court is in agreement with the applicant that the position of the law as stated in the case of **Cropper V. Smith** cited in the case of **National Housing Corporation** (supra) is that, the object of the court is to decide the rights of the parties and not to punish them for the mistakes, they have made in the conduct of their cases by deciding otherwise than in accordance with their rights.

However, the court has found that, as stated by the counsel for the respondent Misc. Land Application No. 49 of 2018 upon which the applicant is praying to be impleaded to represent the late Amos Gekura was found is stale and abated in the ruling delivered in Misc. Land Application No. 523 of 2019 delivered by Hon. Manyanda, J dated 04<sup>th</sup> August, 2020. The court has found that, after the court seeing the applicant had delayed to seek to be impleaded in the mentioned Misc. Land Application No. 49 of 2018 to represent the late Amos Gekura as his legal representative and he has not sought for extension of time to be impleaded in the application out of time, the court dismissed his Misc. Land application No. 523 of 2019 where he was seeking to be impleaded in Misc. Land Application No. 49 of 2018 and abated Misc. Land Application No. 49 of 2018.

The decision made by Hon. Manyanda, J in Misc. Land Application No. 523 of 2019 which abated Misc. Land Application No. 49 of 2018 was confirmed by the order of this court made in the same file of Misc. Land Application No. 49 of 2018 on 18<sup>th</sup> February, 2021 by Hon. Dr. Opiyo, J who stated the mentioned application was abated by the stated order of the court. Since the applicant is seeking to be impleaded in the matter which has already abated, the court has found the present application has already been overtaken by event and as rightly argued by the respondent



the court lacks jurisdiction to grant the order the applicant is seek from this court.

The court has found that, as correctly stated by the first respondent, Order XXII Rule 9 (1) states no fresh suit shall be instituted after the suit being dismissed or abated under Order XXII of the Civil Procedure Code. However, the court has found Order XXII Rule 9 (2) of the same law states that, a person who want to represent a party in a matter who died before determination of the matter, and the matter has been dismissed or abated is required to apply for an order of setting aside the order which dismissed or abated the said matter. The cited provision of the law states as follows:

*"The plaintiff or **the person claiming to be the legal representative of a deceased plaintiff** or the assignee or the receiver in the case of an insolvent plaintiff **may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.**"*[Emphasis added].

From what is stated in the above quoted provision of the law the court has found that, as the applicant is seeking to be impleaded in the application which has already abated and not to set aside the order abated the application is seeking to be impleaded, the court has found the

application cannot be granted as it has already been overtaken by event. In the premises the application of the applicant is hereby dismissed in its entirety for being devoid of merit and the costs to follow the event. It is so order.

Dated at Dar es Salaam this 17<sup>th</sup> day of July, 2022



I. Arufani

**JUDGE**

17/06/2022

**Court:**

Ruling delivered today 17<sup>th</sup> day of June, 2022 in the presence of all parties in person and right of appeal to the Court of Appeal is fully explained to the parties.



I. Arufani

**JUDGE**

17/06/2022