

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 744 OF 2022

(Arising from the Judgment and Decree of the High Court – Land Division in Land Appeal No. 261 of 2022 delivered on 9th September 2022 before Hon. Makani, J Originated from the District Land and Housing Tribunal in Application No. 63 of 2019 before Hon. Rugarabamu, Chairperson)

DENIS JUMA @ DENNIS EPHREM MAUNGA

& DENNIS EPHREM SHAYO APPLICANT

VERSUS

LINDA E. SHAYO and THOMAS RICHARD (Legal Representative

of late EPHREM JUMA SHAYO RESPONDENT

RULING

Date of Order: 13.03.2023

Date of the Ruling: 14.03.2023

A.Z. MGEYEKWA, J

In this application, the Court is called upon to leave that will enable the applicant to file a Notice of Appeal to the Court of Appeal of Tanzania against

the decision of this Court in Land Appeal No. 261 of 2022 delivered on 9th September 2022 before Hon. Makani, J. The applicant also urged this Court to recognize Linda E. Shayo and Thomas Richards Shayo as the respondent's legal representatives.

The application is brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019], Rule 10 of the Court Appeal Rules, 2009 GN 368 of 2009 as amended from time to time, section 14 (1) and (2) of the Law of Limitation Act, Cap. 89 [R.E 2019], Section 3, section 95, Order XXII Rule 1, 2, 3, 5, 6, 9, 11, and 12 of the Civil Procedure Code Cap.33 [R.E 2019]. The application is supported by an affidavit deposed by Dennis Ephrem Shayo, the applicant. The application proceeded *ex parte* against the respondents upon proof of service.

When the matter was called for hearing on 13th March 2023 the applicant appeared in person, unrepresented while the respondent enjoyed the legal service of Mr. Carlos Cathbery, learned counsel.

Before I determine the application on merit on 14th March 2023, I called upon the applicant's counsel to address the Court whether the Application is proper before this Court since the applicant has filed an application against the respondents who are termed as legal representatives but they are not legally appointed.

Mr. Cathbety submitted that the applicant has brought the application under Order XXII Rule 1 – 6 of the CPC in the sense that legal representative or close relatives of the deceased can be called by the court pending the determination of the case since the deceased died before the delivering of the Judgment. Thus in his view, the law permits him to file an application against legal representatives who are yet to be appointed.

The counsel for the applicant relied on Order XXII Rule 1 to 6 and 9, 11, and 12 of the Civil Procedure Code Cap. 33 [R.E 2019] to move this Court to recognize the respondents as legal representatives of the late Ephrem Juma Shayo. Reading Order XXII as a whole the same is applicable to the matter which is pending before the court not to a matter at hand.

In the instant application, the applicant has filed a fresh application. In my view, the applicant's counsel submission is unfounded. I say so because any proceedings which are filed before this Court must be against a proper person in the case at hand that person must be a legal representative within the law. A person with letters of administration duly granted by a court with competent jurisdiction.

This is a fresh Application, Ephrem Juma Shayo has passed away. That means the applicant was supposed to file a proper application against the

administrators of the estate of the late Ephrem Juma Shayo or the Legal Representative of the late Ephrem Juma Shayo not otherwise. Therefore the applicant's prayer for this Court to recognize the respondents as Legal Representative of the late Ephrem Juma Shayo cannot stand. It is worth noting that proceedings brought against parties who are not duly appointed to administer the estate of the deceased are a nullity. In other words, the applicant has no right to bring the claim against the representative who was not duly appointed by the Court.

For the aforesaid findings, I proceed to strike out the application without costs.

Order accordingly.

Dated at Dar es Salaam this date 14th March 2023.




A.Z.MGEYEKWA
JUDGE
14.03.2023

Ruling delivered on 14th March 2023 in the presence of Mr. Carlos Cathbety learned counsel for the applicant.




A.Z.MGEYEKWA
JUDGE
14.03.2023