

IN THE COURT OF APPEAL OF TANZANIA
AT TANGA
(CORAM: JUMA, C.J., KWARIKO, J.A. And MAIGE, J.A.)

CIVIL APPLICATION NO. 173/12 OF 2021

**RAMADHANI OMARY MBUGUNI (A LEGAL
REPRESENTATIVE OF THE LATE RUKIA NDARO)APPLICANT**
VERSUS

ALLY RAMADHANI1ST RESPONDENT

ASIA RAMADHANI1ST RESPONDENT

**(Application for revision from the decision of the High Court of Tanzania,
Tanga District Registry at Tanga)**

(Msuya, J.)

Dated the 12th day of December, 2014

in

Civil Appeal No. 8 of 2012

.....

RULING

10th & 12th May, 2022

MAIGE J.A.:

We have been invited in this application to call for and examine the judgment and proceedings of the High Court of Tanzania sitting at Tanga as per Msuya, J. in Civil Appeal No. 8 of 2012 (the second appellate court) with a view to satisfying ourselves as to the correctness, legality and validity of the same. The application is preferred under section 4(3) of the Appellate Jurisdiction Act [CAP. 141 R.E. 2019] (the AJA) and rule 65(1) (2) (3)(4) (5) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

Besides deposing an affidavit, the applicant has filed written submissions under rule 106(1) of the Rules to substantiate the motion. In response, the first respondent has filed an affidavit in reply and written submissions in opposition in terms of rule 106(7) of the Rules. The second respondent though duly served, neither filed an affidavit in reply nor written submission.

As neither of the respondents appeared at the hearing despite being served with a notice of hearing, the matter proceeded *ex parte* as against the second respondent in terms of rule 63(2) of the Rules. We would have, but for the reasons which shall be apparent sooner than longer, considered the second respondent's written submissions in *lieu* of appearance under of rule 106 (12) (b) of the Rules.

Perhaps, before we go further, it is important to narrate though briefly the factual materials underpinning the background of the application. The dispute leading to this application pertains to an unspecified house at Usagara (the suit property). Historically, it was the property of the late Ramadhani Mwinjaa (the predecessor in title). The late Rukia Ndaro whom the applicant purports to represent was irrefutably the senior wife of the predecessor in title. The respondents were his children. In Probate and Administration Cause No. 9 of 2011, the latter were appointed, by the Primary Court of Mwang'ombe, (henceforth, "the trial court") to jointly administer the estate of the predecessor in title.

In the course of administration of the estate, it would appear, a dispute erupted on the distribution of the estate, including the suit property. The late Rukia was contesting the move of one of the administrators to sell the suit property and distribute the proceeds thereof to the beneficiaries of the estate. Her reason being that the same was not part of the estate but her personal property. The court of the first instance having heard the complaint, declared the late Rukia the lawful owner of the suit property.

The first respondent having been displeased with the decision, appealed against the second respondent to the District Court of Tanga (the first appellate) vide Civil Appeal No. 5 of 2012, the appeal of which was dismissed in its entirety. On further appeal to the High Court in which the widow was also not a party, the concurrent decision of the trial court and the first appellate court courts was negated. The suit property was declared part of the deceased estate of the predecessor in title.

On becoming aware of the decision and the period within which to apply for revision having expired, the applicant successfully applied for extension of time to apply for revision. In accordance with the ruling of the Court extending time, the applicant had informed the single justice that, as a result of the death of the widow, he was, on 6th June, 2020, constituted administrator of the estate of the late Rukia.

As we have said, in the instant application, the applicant though represents himself as the administrator of the estate of the late Rukia, he has not, in his affidavit, attached any letters of administration to that effect. Indeed, the affidavit is absolutely silent on when the late Rukia expired and when the applicant was constituted an administrator of her estate.

In the circumstance and so as to satisfy ourselves with the competency of the application, we asked the applicant to, on top of the substance of the application, address us on the anomaly. He told us that he is the administrator of the estate of the late Rukia having being appointed by a court located at Posta. He could not produce the relevant letters of administration when we requested him to do so. Neither could he provide us with the citation number of the proceedings under which he was so appointed.

Letters of administration being an instrument through which the applicant traces his standing to commence the proceedings, was in our view an essential ingredient of the application in whose absence the Court cannot have any factual basis to imply the asserted representative capacity. It is now a settled law that, where, like the instant case, a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing. See for instance, **Ally Ahmed Bauda**

**(Administrator of the Estate of the Late Amina Hossein Senyange) v.
Raza Hussein Ladha Damji and Others, Civil Application No. 525/17 of
2016 (unreported)**

In our opinion, therefore, the application is incompetently before the Court and it is accordingly struck out. The applicant however at liberty to refile the application provided that he is in possession of valid letters of administration of the estate of the late Rukia Ndaro. We make no order as to costs in the circumstance.

DATED at TANGA this 12th day of May, 2022

I. H. JUMA
CHIEF JUSTICE

M. A. KWARIKO
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

This Ruling delivered this 12th day of May, 2022 in the presence of Mr. Ramadhani Omary Mbuguni, the Applicant in person and Mr. Ally Ramadhani the 1st Respondent in person, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL