

**IN THE HIGH COURT OF TANZANIA
AT TABORA.**

(PC) CIVIL APPEAL NO. 26 OF 2005

**(From Civil Case No. 18/94 Urban
Primary Court Kahama and Civil Application
No. 20/2004 – Kahama District)**

JENOVEVA s/o NTELYA.....APPELLANT

Versus

MASUMBUKO s/o JOSEPHRESPONDENT

J U D G M E N T

10th May, 07 & 31st July, 07

MUJULIZI, J.

This an appeal from an order of the District Court of Kahama at Kahama, granting the present Respondent extension of time within which to file appeal against a decision of the Kahama Urban Primary Court in Administration cause No. 18 of 1994, whereby the Appellant was appointed the administratrix of the estate of her late husband, and father of the Respondent.

Subsequent to the extension, the Respondent lodged Civil Appeal No. 20 of 2004 which is pending before the District Court.

At the hearing of the Appeal the Appellant was represented by Mr. Ng'wigulila, learned advocate who represented the Appellant in the proceedings in the District Court. The Respondent, Masumbuko Joseph appeared in person both before me, and in the proceedings in the lower court.

At the conclusion of the hearing, I asked Mr. Ng'wigulila, as to whether this order appealed from being an interlocutory order or otherwise was appealable as of right. His answer was that although he is aware of the amendments to the laws brought into place by the written Laws (Misc. Amendments) Act, No. 25 of 2002, restricting appeals against interlocutory orders, the present appeal is distinguishable. However, he did not elaborate how that is so.

With the greatest respect to Mr. Ng'wigulila, in any event the orders from which appeals lie as of a right even before the above amendment are listed under section 74. Of

the Civil Procedure Code Act. (Cap.33, R.E. 2002). The order appealed from herein is not one such.

To the contrary in relation to other orders section 75 of the same Act provides in very clear terms as follows;

"S. 75, save as otherwise expressly provided, no appeal shall lie from any other order made by a court; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal."

In otherwise what the law has done is to allow for determination of matters on merits while reserving the right of a party who is aggrieved by an interlocutory order to raise his complaint, in case of a subsequent appeal, in the Memorandum of Appeal against the whole decision on merit.

It is a rule of common sense meant to ensure that disputes are determined without undue regard to technical faults that would tend to delay the substantive justice of the case.

In the premises, this appeal was filed prematurely and it only tends to delay and increase the costs unnecessarily.

In the premises it is hereby dismissed with costs to the Respondent in any event, Costs to be determined by the District Court of Kahama.



A.K. MUJULIZI

JUDGE

31/7/2007

Judgment delivered in the presence of the parties.



A.K. MUJULIZI

JUDGE

31/7/2007