

TANZANIA / JUDGMENT

Tanzlii Itael Kweka Ruling

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI SUB - REGISTRY AT
MOSHI LAND CASE NO: 2 OF 2022

1. GLADNESS ALEXANDER ITAEL KWEKA
2. PETER ALEXANDER ITAEL KWEKA (Both suing as Administrators of the PLAINTIFFS estate of the late ALEXANDER ITAEL KWEKA) VERSUS MARY ALEXANDER ITAEL.....RESPONDENT (As an Administrator of the estate of the late JANE ALEXANDER ITAEL)

RULING

7th & 30th August, 2024 A.P. KILIMI, J.: The plaintiffs GLADNESS ALEXANDER ITAEL KWEKA and PETER ALEXANDER ITAEL KWEKA together with other relative not a party in this case one PETER ALEXANDER were appointed to be administrators of the estate of the late Alexander Itael Kweka by this court vide Probate Cause No.6 of 2012. However, later this court on 27th March, 2024 through Misc. Civil application no. 12 of 2022 revoked their appointment and consequently appointed the Administrator General to administer the deceased estate. On the same day and time concurrently, this court 1 delivered a ruling in respect to this matter wherein struck out Written Statement of defence (WSD) filed by the defendant mentioned above. When this matter was scheduled for mention in this court for necessary orders on 7th day of August, 2024, Mr. Elikunda Kipoko assisted by Ms. Lilian Mushi learned advocates appeared representing Plaintiffs mentioned hereinabove, Mr. Kipoko then prayed that since the written statement of defence (WSD) was struck out, this court should enter a default judgment against the defendant. On the same stance of appearing, Mr. John Lairumbe learned counsel appeared representing the Defendant hereinabove and submitted that upon perusal of the case file has found no directives of this court for this case to be heard ex-parte, therefore it is right for the them to file an application for extension of time to file WSD which he submitted that the application was already filed. In the circumstances, I asked both learned counsels to address me on the validity of their prayers sought in this court whereas the plaintiffs above were revoked and WSD was struck out as alluded above. Mr. Kipoko maintained that since the WSD was struck out, the issue of default judgment is automatic, further he added that by so doing the 2 Defendant have no locus to submit in this court. Mr. Lairumbe also essentially said since plaintiffs sued in her capacity as administrators of the deceased estate after revocation, they lack a legal stand to proceed on this

matter, and he was of the view that, after learned counsel discovered that a plaintiff had no locus stand to proceed with this matter, the remedy available for him is either to withdraw the said land case with the leave to re-file. Further the counsel added that since there are two notices to the Court of Appeal, this Court lacks jurisdiction to entertain the same; thus prayed this matter be struck out. In a brief rejoinder Mr. Kipoko submitted that in this land case no. 2 of 2022 there is no notice of appeal filed. Now, the issue which I am supposed to determine in this case is whether the Plaintiffs have moved this court to enter default judgment as per the requirement of the law above. According to the law the procedure for entering default judgment upon failure of defendant to file WSD is provided for under rule 14 of order VIII of Civil Procedure Code Cap. 33 R.E. 2019 and for easy reference I reproduce the relevant part hereunder; “14. Failure to present written statement of defence; 3

- (1) Where any party required to file a written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub rule 3 of rule 1, within the period of such extension, the court shall, upon proof of service and on oral application by the plaintiff to proceed ex parte, fix the date for hearing the plaintiff's evidence on the claim .
- (2) Where before ex-parte judgment has been entered pursuant to sub-rule (1) the court may, if the defendant assigns good cause, set aside the order to proceed ex parte, upon such terms as the court may direct as to costs or otherwise.” [Emphasis added] From the wordings of the provision above, it is my interpretation that the plaintiff must appear before the court to pray for his case to enter default judgment or be heard ex-parte evidence on the claim alleged. Therefore, the default judgment is not automatic as Mr. Kipoko endeavoured to depict. There must be presence of the Plaintiff to move the court in such respect. In my view I think the principle in the above provision echoes a cardinal principle that the one who alleges must prove. 4 Therefore, basing on the principle that each case must be decided based on its unique set of circumstances as to the facts surrounding the dispute in question. Having considered the circumstances of this matter alluded above, the duly appointed administrator of the deceased estate should appear as Plaintiff before this court and activate the move of this matter. The next point to be considered is whether this court has been moved properly. As thoroughly addressed by both learned counsels, I concede with Mr. Kipoko when he said the defendant has no locus to submit in this matter, for the reason as depicted above since her WSD was struck out. Moreover, in respect to the Plaintiffs, I also subscribe with the observation by Mr. Lairumbe that the plaintiffs above sued in the capacity as administrators of the deceased estate, but after revocation they lack a legal stand to proceed with this matter. In view therefrom, I am of considered view, since Mr. Kipoko is representing the two persons who previous stood before this court as Plaintiff, and since they were revoked by this court to be administrators of deceased estate, thus, I am of settled view Mr. Kipoko cannot stand bold in this court in that capacity to pray for default judgment. The one who is 5 responsible to do so, is one appointed by this court in Misc. Application no. 12 of 2022 of this court ruling dated 27th March, 2024. In the premises prayers advanced to this court by both counsels and a document filed in this court by Mr. Kipoko on 5th August

2024, both are futile since they lack legal capacity to so, thus I am settled therefore nothing said to be considered by this court in the eyes of the law under such circumstances. In concluding this matter at hand, I find apposite to refer the order I issued on 10th June, 2024, in which I stated as follows; "In respect to the fate of this matter, since the plaintiff administrators were revoked by this court in Misc. Civil Application No. 12 of 2022, let us give grace period for the appointed Adm inistrator or otherw ise to proceed w ith this m atter otherw ise this court w ill issue necessary directives if no progress." [Emphasis added] When this case was placed before me to ascertain whether the above order was complied with or not, it was almost after two months. It is apparent nothing has been done. Nonetheless, the fact that all contestants 6 have appeared in this court with their previous respective advocates to argue this case while knowing that on 27th March, 2024 this court revoked their appointments as administrators and further appointed Administrator General. The fact that it has been more than four months since I made that order . I am of the view by so doing and their presence in this court while they knew were revoked, by necessary implication draws inference that they are not ready to proceed with appointed administrator by this court. However, as it might be, court orders are not issued in vain, unless varied by the same court or higher court otherwise they remained valid, thus must be respected and enforced, otherwise this court will be rendered impotent. In the premises and for the above foregoing, I find no any justification for the said order not to be abided with. However, since the appointed administrator who is Administrator General has never showed up in this matter, let be given benefit of doubt due the circumstance stated and convenient of the right to be heard. Consequently, this matter is set for last adjournment on 25th September, 2024 waiting for his appearance, 7 otherwise none appearance will render this court to make an order which deems fit accordingly. In the circumstances no order as to costs granted. It is so ordered. DATED at MOSHI dated 30th day of August, 2024. X JUDGE Signed by: A. P. KILIMI Court: - Ruling delivered today on 30th day of August, 2024 in the presence Mr. Elikunda Kipoko, and Ms. Lilian Mushi all learned advocates for revoked plaintiffs. Mr. John Lairumbe for the previous defendant absent. Sgd; A. P. KILIMI JUDGE 30/08/2024 8

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