

TANZANIA / JUDGMENT

PC CIVIL APPEAL NUNU ABDALLAH

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31 October 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB - REGISTRY AT MUSOMA PC CIVIL APPEAL NO. 000019431 OF 2024 REFERENCE NO. 202408121000019431 BETWEEN NUNU HUSSEIN ABDALLAH (1st Administratrix of the of the late Hussein Abdallah Matambo)..... APPELLANT VERSUS MATAMBO HUSSEIN ABDALLAH (Administrator of the Estate of Hussein Abdallah Matambo)..... RESPONDENT RUUNG 30""& 31st October, 2024 M, L. KOMBA, J, Appellant above named was dissatisfied by the decision of the District Court of Musoma (the 1st appellate court) which dismissed her appeal. Previous during trial, appellant objected filing of form number V and VI on ground that she was not involved in the process. The trial court was satisfied that appellant was involved and ordered probate to be closed. Page 1 of 5 Appellant appealed and the District Court found her appeal without merit hence this appeal. When served with petition of appeal, respondent file Preliminary Objection that the appeal is bad in law for involving different parties. As it is already settled, that PO has to be determined first before moving to the merit of the case, I did the same. See Khaji Abubakar Athumani vs Daud Lyakugile Ta D.C Aluminium & Another (Civil Appeal No. 86 of

2018) [2021] TZCA 32 (24 February 2021). and Deonisia Onesmo Muyoga & Others vs Emmanuel Jumanne Luhahula (Civil Appeal No. 219 of 2020) [2023] TZCA 124 (20 March 2023). When matter was placed for hearing of the PO, the appellant was represented by Mr. Daudi Mahemba while the respondent had a legal service of Mr. Ostak Mligo. It was Mr. Mligo who was the first to submit on his PO that the appeal is bad in law as parties are different from the one in District Court. The appellant inhere is Nunu Hussein Abdallah while the judgment which is subject of this appeal concerned Nuru Hussein Abdallah. He warned this court not to decide on the matter of NUNU while she was not party in the Page 2 of 5 1st appeal. Citing the case of Salim Amour Diwani vs Vice Chancellor Nelson, Civil Application No 116 of 2021 at page 4 and 5 he said Court of Appeal directed that names in proceedings or pleadings should not vary unless there is court order and clarified that Court record should not be altered as parties wish unless there is leave of the court. He went on submitting that petition of appeal which was filed in this court read NUNU while previous proceedings read NURU and insisted that this cannot be cured by Overriding Objectives as those are two different persons. He referred this court to Kulwa Lutambi vs Irene Sayi Goreshi, Civil Appeal No 346 of 2020 at page 13 and prayed the matter be struck out. Mr. Mahemba started with the cited cases that they are all distinguishable in this case

as the matter in hand is different. He went on submitting that the issue of names was decided by 1st appellate court in its ruling on 23/5/2024 on Probate Appeal No. 4850 of 2024 and directed that the name should read NUNU. He insisted that the objection has no merit as Mr. Mligo did not mind the presence of the ruling of the first appellate court. He prays me to find the PO with no merit and order the matter to proceed. Page 3 of 5 In rejoinder Mr. Mligo insisted that the judgment attached to the petition of appeal reads NURU while the petition itself reads NUNU. He noted the ruling of the 1st appellate court but elaborated that apart from the decision of the 1st appellate court on names, still judgment reads NURU and the PO he raised is based on judgment and not ruling which was delivered on 23/5/2024 and insisted the cited cases are valid. My duty is to decide whether the PO has merit. Mr. Mligo, counsel for the respondent raised an issue that judgment is written NURU while petition is filed by NUNU. I agree with his submission. I further agree with submission by Mr. Mahemba that 1st appellate court decided on the use of names and rule that was typing error and the petitioner in the 1st appeal should be noted to be NUNU. When I read the judgment of the 1st appellate court which was delivered on 11th July 2024, the appellant was recorded as NURU which is contrary to ruling issued on 23rd May, 2024. That is to say what was allowed in the ruling is different from what is recorded in judgment. So far as the appellant in the 1st appeal was NURU, I find the petition which initiate this appeal is wrongly filed as NUNU was not party in the 1st appeal and therefore she cannot come for the second appeal. As submitted Page 4 of 5 by Mr. Mligo, this cannot be cured by overriding objectives. What was decided on 23/5/2024 in the ruling about the names is not featured in the judgment. I cannot proceed with the matter till the anomaly is cured. That being said, I hereby struck out the appeal. Uv M. L. KO MBA Judge 31st October, 2024 Page 5 of 5

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