

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO.257 OF 1999

**REV. BISSO JACKSON NTEPA PLAINTIFF
VERSUS
FADHILI BAKULA AND OTHERS RESPONDENTS.**

30/04/2009.

Coram: J. I. Mlay,J

For the Plaintiff: Absent

For the Defendants: Njau for

CC: Masebo

Njau: Neither the Plaintiff no Assessors are present. I pray for a long adjournment as the Plaintiff appears to have lost site of the suit.

Order: This is the third time that the Plaintiff has not appeared for the hearing and there is nothing to indicate that he will appear if the matter is further adjoined. Accordingly, this suit is dismissal under Order 27 Rule 2 and 0.9 R (3)

of the Civil Procedure Code, Cap 333 RE 2002, with costs
30/04/2009.


J. L. May, C

JUDGE

30/4/2009

J. L. May, C

JUL

30/4/2009

J. L. May, C

JUL

30/4/2009

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

PROBATE AND ADMINISTRATION CAUSE NO. 64 OF 1999

DORAH TITO LUKUWI..... APPLICANT

VERSUS

ADMINISTRATOR GENERALRESPONDENT

RULING

A. Shangwa, J.

This matter has a long history. To cut it short, I will start with what took place from February, 2002 and then I will come to the main point. On 8/2/2002, this Court Bubeshi, J (Rtd) revoked the appointment of one John Lukuwi as administrator of the estate of the late Tito Lukuwi who died intestate on 4/2/1998 and appointed the Administrator General to take over. This Court did so after being moved by one Halima Kisita and Blandina Mataka.

On 23/2/2005, one Dorah Tito Lukuwi filed an application for revocation of the appointment of the Administrator General as administrator of the estate of the late Tito Lukuwi and for being appointed as a new administrator of the estate of his late father Tito Lukuwi. His application was supported by his own affidavit.

On 13/6/2005, the Administrator General filed a counter affidavit sworn by one Gilbert Peter Bubelwa in which he raised two points of preliminary objection which are as follows and I quote.

- (a) That the suit is wrongly filed before this Court and is contrary to r.49 subsection 2 of the Probate and Administration Ordinance cap 445.
- (b) That the suit be dismissed because it has been attested contrary to the law, therefore unmaintainable.

On 16/6/2005, the applicant filed a notice of preliminary objection stating that the Administrator General's Counter affidavit be struck out with costs for having included matters which cannot be deposed.

On 14/11/2005, I ordered that the preliminary objection raised by the applicant should be argued by way of written submissions. Dr. Michael K.B. Wambali argued it on behalf of the applicant and Mr. Gilbert Peter Bubelwa made counter arguments to it on behalf of the Administrator General.

The issue to be considered by this Court is whether or not the Administrator General's counter affidavit contains matters which cannot be deposed as alleged by the applicant and if so whether or not it should be struck out.

I have looked at the Counter affidavit filed by the Administrator General against the applicant's application and

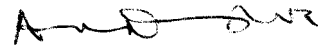
I have noted that at paragraph 1 & 2 it incorporates a notice of preliminary objection. In my view, it was not proper for the respondent Administrator General to incorporate a notice of preliminary objection in his counter affidavit. He was supposed to file a separate document for his notice of preliminary objection. By incorporating the said notice in his affidavit, he rendered it partly defective.

However, as the rest of its paragraphs contains matters which can be deponed by the Administrator General, I do not see any reason why I should strike out the whole of his counter affidavit. Therefore, I strike out paragraphs 1 and 2 of the counter affidavit and retain the rest of its paragraphs. Thus, DR. Wambali's preliminary objection is partly allowed. I make no order as to costs and I order that the application should come for hearing on 27/9/2006.


A. Shangwa, J.

29/6/2006

Delivered in Court this 29th June, 2006.

A handwritten signature in black ink, appearing to read 'A. Shangwa', written in a cursive style.

A. Shangwa,

JUDGE

29/6/2006