

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CIVIL APPLICATION NO. 22 OF 2014**

**1. SELEMANI ALLY NYAMALEGE**  
**2. KHADIJA KARUME**  
**3. MTUMWA FARAHANI** } ..... APPLICANTS

**VERSUS**

**MWANZA ENGINEERING WORKS LIMITED ..... RESPONDENT**  
**(Application from the Decision of the High Court of Tanzania**  
**at Mwanza)**

**(Nchalla, J.)**

**dated the 16 day of November, 2001**

**in**

**Civil Appeals No. 48, 50 and 51 of 1997**

**.....**

**RULING**

4<sup>th</sup> & 8<sup>th</sup> June, 2013

**MUSSA, JA.:**

The application is for extension of time within which to lodge an application for leave to appeal and to apply for stay of execution. The same has been resisted by the respondent who has filed a notice of preliminary objection on the following grounds, namely, that;

- i. The application is bad in law as it is supported by incurably defective affidavits.*
- ii. The application is not tenable in law as the first applicant passed away before the institution of the application.*

When the matter was called for hearing, the applicants were fending for themselves, whereas the respondent had the services of Mr. Siliwan Galati Mwantembe, learned Advocate.

When asked to comment on the second limb of the preliminary objection Mr. Omari Ally Nyamalege who held himself as the legal representative of the first applicant, conceded that the first applicant passed away on 1<sup>st</sup> January, 2010. This assertion was affirmed by the second and third applicants. Thus, in effect, the first applicant passed away before the application was mounted on the 30<sup>th</sup> December, 2014.

This being the situation, Mr. Galati questioned the legality of Mr. Omari Ally Nyamalege signing the Notice of Motion, the affidavit in support, and appearing in the name of the deceased applicant.

Mr. Omary Ally Nyamalege further informed court that he was appointed legal administrator of the deceased estate as from 15<sup>th</sup> June, 2010 but, as it were, he did not institute the application in that capacity.

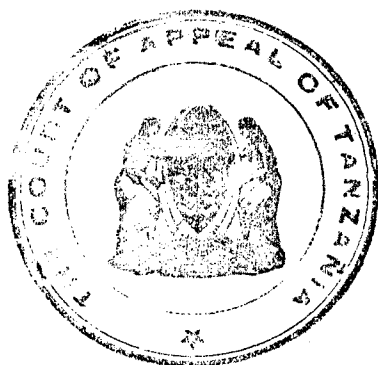
Clearly therefore, Mr. Omary Ally Nyamalege is an imposter and, accordingly, the name of the first applicant is struck out from the Notice of Motion and the application with respect to the first applicant is similarly struck out. Mr. Omary Ally Nyamalege may wish to refresh the application in accordance with the law.

In the meantime, the application with respect to the second and third applicants will be heard on the merits on a date to be fixed.

DATED at MWANZA this 5<sup>th</sup> day of June, 2015.

K.M. MUSSA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



  
Z.A. Maruma  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**