

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: JUMA, Ag. C.J., MJASIRI, J.A. And MWARIJA, J.A.)

CIVIL APPLICATION NO 1 OF 2009

MGENI SEIFU.....APPLICANT

VERSUS

MOHAMED YAHAYA KHALFANI.....RESPONDENT

(Application for Revision from the Judgment of the High Court of Tanzania  
at Dar es Salaam)

(Ihema, J.)

dated the 29<sup>th</sup> day of November, 2004

in

Civil Case No 175 of 2001

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**RULING OF THE COURT**

19<sup>th</sup> June & 3<sup>rd</sup> July, 2017.

**JUMA, Ag. C.J.:**

Although the deceased Ibrahim Athumani Ngude died intestate sixty five years (65) ago in 1952, the fate of his estate is not settled yet. This motion before us is a classic example of confusion which invariably results, when a person dies intestate, and the beneficiaries fail to immediately apply for letters of administration of the deceased's estate. The motion also underscores a lesson; it is only a probate and administration court which can empower an administrator to transfer the deceased person's property.

Before us is an application by way of Notice of Motion made pursuant to Section 4 (3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (hereinafter referred to as "**the AJA**"). The applicant, Mgeni Seif, seeks to move the Court to exercise its power of revision. Concretely, the applicant would like us to call for, examine and determine the correctness, legality, propriety, regularity of the record of proceedings of the High Court of Tanzania at Dar es Salaam in Civil Case No. 175 of 2001 which led to a Ruling of Ihema, J. dated 29 November 2004. To support his motion, the applicant relies on the following grounds:

- 1. The said proceedings, ruling and order of Ihema, J. were fraudulently and illegally procured in view of positions already taken by the District Court of Ilala, the High Court notably vide decisions made by Chipeta, Mackanja and Ihema, JJJ (as they then were) in JUMANNE NGUDE v. ALLY SAID- Civil Revision no. 25 of 2000 as well as by this Court.*
- 2. The High Court wrongfully exercised its original jurisdiction to stay execution of a decree of the District Court of Ilala which had already been executed by eviction of the respondent and*

