

IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: MUGASHA, J.A., SEHEL, J.A., And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 485 OF 2022

MALIETHA GABO APPELLANT

VERSUS

ADAM MTENGU.....RESPONDENT

[Appeal from the Judgment and Decree of the High Court of Tanzania
at Kigoma

(Mugeta J.)

dated the 24th day of February, 2021

in

Land Appeal Case No. 21 of 2020

RULING OF THE COURT

6th & 8th June, 2023

MUGASHA, J.A.:

This is an appeal originating from the Ward Tribunal of Buhigwe whereby the respondent instituted a case against the appellant claiming to be the lawful owner of parcels of land which he had inherited from his late father, Gabo Mtengu. It was alleged by the respondent that, the appellant who was the administrator of estate of their deceased father had included the said parcels of land into the estate of their deceased father. The respective land is situated within Buhigwe Ward.

As the appellant did not enter appearance before the Ward Tribunal, the matter proceeded *ex parte*. Thus, upon *ex parte* proof, being satisfied that the respondent's parcels of land were wrongly included into the estate

of the deceased, the Ward Tribunal declared the respondent as the rightful owner of the respective land. The appellant was condemned to pay costs.

Undaunted, the appellant unsuccessfully preferred an appeal before the District Land and Housing Tribunal of Kigoma (the Tribunal). She raised among others, a complaint faulting the Tribunal to have declared the respondent as the rightful owner without considering that, the respective land was part of the estate of their deceased father and being an administratrix, she had already distributed the land in question. The appeal was dismissed after the Tribunal had sustained a preliminary point of objection and the appellant was directed to revert to the Ward Tribunal to set aside the *ex parte* decision before invoking the remedy of an appeal.

Still aggrieved, the appellant sought the indulgence of the High Court to have the decision of the DLHT overturned. Before the High Court among the grounds of complaint raised in the 3rd ground is as reflected at page 60 of the record of appeal as follows:

"THAT, both the trial tribunals erred in law and in fact by entertaining the dispute as the appellant was sued under the wrong/improper capacity basing on the fact that the issue at dispute is based on the administration of estate of the late Gabo Mtengu which she is the appointed administratrix".

Yet her appeal was dismissed and hence the current appeal before the Court. In the Memorandum of Appeal, the appellant has fronted three grounds of complaint as hereunder:

- 1. That, the Appellate Court erred in law and facts by determining the dispute without considering that the trial tribunal had no jurisdiction based on the fact that the dispute was purely based on Probate and Administration of the Estate of the Late Gabo Mtengu, the Appellant being the Administratrix of the same estate.*
- 2. The Appellate Court erred in law and fact on failure to consider that the trial tribunal and Appellate Court failed to consider that the said dispute was settled in Probate and Administration Cause No. 25/2016 by Kasulu urban Primary Court and the Respondent never appealed to any competent court vested with powers to entertain Probate issues.*
- 3. That, the trial tribunal and the Appellate Court erred in law and facts on failure to consider that the Appellant sued under his own capacity instead of suing as an administratrix of the Estates of the deceased.*

At the hearing, the appellant who was present in person had the services of Mr. Michael Mwangati, learned counsel and the respondent appeared in person unrepresented.

Before the hearing commenced, upon dialogue with the Court that, what qualifies to be a ground of appeal is what has been certified by the

High Court as a point of law, Mr. Mwangati abandoned the first two grounds of appeal. In arguing the sole ground of appeal it was submitted by Mr. Mwangati that, it was not proper for the respondent to sue the appellant in her personal capacity instead of an administratrix of the late Gabo Mtengu who was their father. In this regard, it was argued that, the appellant was wrongly condemned. To support his proposition, he cited to us the cases of **IBRAHIM KUSAGA VS. EMMANUEL MWETA** [1986] TLR 26, **LUJUNA SHUBI BALONZI VS. REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI** [1996] TLR 203 and **OMARY YUSUPH (Legal Representative of the late Yusuph Haji vs. ALBERT MUNUO,** Civil Appeal No. 12 of 2018 (unreported). With the said submission, Mr. Mwangati urged us to allow the appeal and nullify the proceedings and judgments of the High Court and both tribunals. Upon being probed by the Court, he submitted that since the appellant was the administratrix, the respondent had no cause of action to warrant suing the respondent in her own capacity.

On the other hand, the respondent opposed the appeal. He was of the view that, the appellant was properly sued and as such, the decisions of both the DLHT and the High Court are justified. Finally, he implored on the Court to dismiss the appeal.

Having carefully considered the contending submissions, the ground of complaint and the record before us, the question to be answered is the propriety or otherwise of the case which was commenced by the respondent against the appellant.

It is glaring that; the appellant was the administratrix of the estate of the late Gabo Mtengu who happened to be the father of the parties herein. This was pursuant to her appointment vide Probate and Administration Cause No. 1 of 2017. Apparently, the case before the Ward Tribunal was commenced against the appellant after she had been appointed as the administratrix and distributed the estate to the beneficiaries of the deceased. In this regard, could the appellant be sued in her personal capacity? Before the High Court although the learned Judge acknowledged that the appellant was in fact the administratrix of estate of her deceased father, he resolved the matter in the following terms:

*"I agree to the fact that while the appellant interfered with the respondent's land upon being granted letters of administration, indeed, she was sued in her personal capacity. This was an irregularity. She was supposed to be sued in her assumed capacity as administratrix. **The question which follows is how far did the irregularity affect the proceedings? In normal practice, this amounts to suing a wrong party which***

vitiates the proceedings. However, this is not always the case with proceedings in the Ward Tribunals and District Land and Housing Tribunals. According to section 45 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] proceeding in those tribunals can be vitiated by an irregularity identified on appeal or revision only if that irregularity occasioned a failure of justice.

In one of its several findings the ward tribunal had this to say:

"Ni kweli Adam Mtengu Mashamba ambayo anadai kuwa yameingizwa kwenye mgawo wa mirathi ambayo yalinunuliwa na mdai Adam Mtengu ni kweli yapo na baraza lilipoinuka liliyakuta na kuyaona".

It follows, therefore, that the Ward Tribunal was aware that it dealt with a matter involving a claim for wrongful inclusion of another person's properties in the deceased's estate. Since in the Ward Tribunal cases are not initiated by filing any document, it was upon the Ward Tribunal to record the appellant as administratrix of the deceased's estate."

However, having considered that the respondent was not to be blamed, the learned High Court Judge concluded that, the irregularity did

not occasion any injustice and as such, it was curable and saved by section 45 of Cap. 216 which provides:

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reserved or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order **on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice**".*

[Emphasis supplied].

With respect, we do not agree with the High Court Judge's interpretation or rather construction of the cited provision and we shall give our reasons. Before that, it is crucial to point out that, although there are different canons of statutory interpretation, it is elementary that the meaning of a statute must in the first instance, be sought in the language in which the act is framed. If it is plain, the sole function of the court is to enforce it according to its terms. See: **RESOLUTE TANZANIA LIMITED VS. COMMISSIONER GENERAL**, TRA, Civil Appeal No. 125 of 2017, **COMMISSIONER GENERAL. TRA VS. ECOLAB EAST AFRICA (TANZANIA) LIMITED**, Civil Appeal No. 35 of 2020 and **PAN AFRICAN**

ENERGY TANZANIA LIMITED VS. COMMISSIONER GENERAL, Civil Appeal No. 81 of 2019, **THE REPUBLIC VS. MWESIGE GEOFFREY AND ANOTHER**, Criminal Appeal No. 355 of 2014, (all unreported). In the latter case the Court held:

"Indeed, it is axiomatic that when the words of a statute are unambiguous, judicial inquiry is complete. There is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation. This is all because:

Courts must presume that a legislature says in a statute what it means and means in a statute what it says there. CONNECTICUT NAT'L BANK v GERMAIN, 112 S Ct. 1142, 1149 (1992)".

In the light of the stated principle governing the construction of a provision of a statute when the language used is plain, it is glaring that section 45 plainly sets out the curable irregularities on improper admission or rejection of any evidence which do not have the effect of occasioning a failure of justice. The legislature did not intend any stretch to cover omissions or irregularities vitiating the trial proceedings such as, instituting a claim against a wrong party like it is the case at hand. We are fortified in that regard because suing a wrong party has serious consequences which include rendering the trial vitiated or subjecting execution to untold

hurdles. Indeed, it is a matter which must be determined at the earliest. In the premises, since the learned High Court Judge was satisfied that, the claim initiated against the appellant had the effect of vitiating the trial proceedings, he ought to have acted promptly and the matter would not have reached this far.

On our part, in the event the appellant was the administratrix, it was irregular for the respondent to initiate a case against the appellant in her own capacity instead of pursuing action against her as the administratrix of the late Gabo Mtengu. We are fortified in that regard because the only person who can act as a representative of the deceased, is the grantee of the letters of administration as provided under the provisions of section 71 of the Probate and Administration of Estate Act [CAP 352 R.E.2002] which stipulates as follows:

"71. After any grant of probate or letters of administration, no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled".

[See also the case of **OMARY YUSUPH (Legal Representative of the late Yusuph Haji vs. ALBERT MUNUO** (supra) whereby, the Court had

to nullify judgments and proceedings of the courts below because the wife of the deceased who was granted the letters of administration had initiated a case in her own capacity on behalf of her deceased husband.

In view of what we have demonstrated, the appellant who was the administrator was wrongly sued by the respondent in an action involving the estate of her deceased father, the proceedings before both tribunals were vitiated and so was the appeal before the High Court. Thus, the resulting judgments cannot be spared and as such, we nullify the entire proceedings and judgments of the two tribunals and the High Court. Consequently, the appeal is merited and it is allowed.

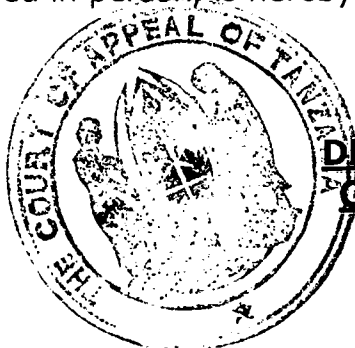
DATED at **KIGOMA** this 7th day of June, 2023.


S. E. A. MUGASHA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 8th day of June, 2023 in the presence of Mr. Michael Mwangati, learned counsel for the Appellant, and Respondent appeared in person, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL