

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: NDIKA, J.A., SEHEL, J.A. And KHAMIS, J.A)

CIVIL APPEAL NO. 424 OF 2020

ADAMU WAMUNZA as administrator
of the estate of the late PAUL JAMES.....APPELLANT
VERSUS

KINONDONI MUNICIPAL COUNCIL.....1ST RESPONDENT

RAYMOND PETER MBILINYI.....2ND RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania (Land
Division) at Dar es Salaam)**

(Mohamed, J)

dated the 5th July, 2019

in
Land Appeal No. 203 of 2017

JUDGMENT OF THE COURT

10th July & 10th August, 2023.

KHAMIS, J.A.:

This case concerns circumstances in which a person may use his names in official documents. For the most part, the connection between an individual and his or her names is regarded as lifelong, both in law and as a matter of social practice.

Exceptions to the general principle is to be found where it is possible to change one's name officially by deed poll or statutory declaration, a process which requires a good cause and official registration or recognition. A good cause includes where changes occur on the creation and or dissolution of marriage.

The law stresses the need for a stable and coherent use of names to avoid any danger of confusion as to identity or lineage. The aim of preventing confusion over identity of names is no doubt, a legitimate one. It is desirable to avoid confusion both in relations among individuals and the authorities and in relations among individuals. Unregulated change of names might well offer opportunities for criminal or dishonest behavior.

Adamu Wamunza as the administrator of the estate of the late Paul James claim to have been allocated the land in dispute, Plot No. 416, Block "J", Mbezi Medium Density area, Kinondoni District, Dar es Salaam, on 16th day of April 1980 vide a letter of offer No. D/KN/A/15298/1.

He filed a dispute in the District Land and Housing Tribunal for Kinondoni (DLHT) alleging that Raymond Peter Mbilinyi, the second respondent herein, trespassed onto the disputed land in May 2006 and carried construction thereon without any claim of right and or building permit.

Apart from the second respondent, the appellant alleged that one Ally Ally Mwinyi, not a party to the case, was also illegally allocated the same property. He blamed the Kinondoni Municipal Council for double allocation in disregard of his earlier ownership.

On the other hand, Raymond Peter Mbilinyi pleaded that the disputed parcel of land was allocated to him on 10th day of July 1981 vide a letter of offer no. D/KN/A/15298/1/EMB and continuously paid land rents up to date.

The Kinondoni Municipal Council entreated that P. James was not a lawful owner of the disputed land for failure to comply with terms and conditions stipulated in paragraph v (a – c) of the letter of offer.

Further, the local authority contended that on account of breach of the conditions stated in the letter of offer, P. James had waived his right to own the disputed parcel of land.

Upon trial, the DLHT declared the appellant herein as the lawful owner. On appeal by Raymond Peter Mbilinyi, the first appellate court faulted the trial tribunal for failure to distinguish two distinct names: P. James and Paul James.

Consequently, the first appellate Judge held that the appellant had no *locus standi* to sue or claim ownership on behalf of P. James, purported owner of the disputed parcel of land.

The first appellate court also declared Raymond Peter Mbilinyi as the lawful owner thereof.

Disgruntled, the appellant launched this appeal armed with four grounds that faulted the first appellate court for failure to consider Paul James was the first person to be allocated the disputed land, relying on matters that were neither raised nor arose in the trial tribunal and holding that the appellant had no *locus standi*.

Lastly, he faulted the first appellate court for failure to consider the evidence given under oath by PW2 to the effect that P. James and Peter James referred to one and the same person.

Before us, Mr. Benjamin Mwakagamba assisted by Mr. Kelvin Kidifu, learned advocates, acted for the appellant. Mr. Henry Kishaluli, learned advocate, appeared for the second respondent while Mr. Netho Mwambalaswa, learned Senior State Attorney assisted by Ms. Hosana Mgeni and Mr. Stanley Mahenge, learned State Attorneys, were in control of the first respondent's brief.

The learned advocates adopted contents of the parties' rival submissions earlier on filed in accordance to Rule 106 of the Court of Appeal Rules, 2009 and made brief submissions to clarify their respective arguments.

Mr. Mwakagamba invited this Court to re-visit the trial tribunal's records and contended that the controversy centred on double allocation of the disputed parcel of land which was granted to three different persons at different points in time.

Expounding, he contended that evidence was led to show the disputed land was allocated to P. James in 1980, Raymond Peter Mbilinyi in 1981 and Ali Ali Mwinyi in 1982. On that account, he submitted that the appellant was entitled to rightful ownership thereof.

The learned counsel for the appellant abandoned the second ground and consolidated the third and fourth grounds of appeal. He asserted that it was wrong for the first appellate court to hold that P. James and Peter James were different persons.

Referring to the evidence of PW2 and DW1, he submitted that P. James and Peter James were used interchangeably to refer to one and the same person.

Mr. Mwakagamba contended that it was wrong for the first appellate judge to consider the first respondent's payment of land rent and Exhibit D1, a letter that revoked the appellant's ownership as justifiable grounds for the second respondent's ownership of the disputed land.

On the appellant's failure to apply for registration as the legal personal representative of the deceased in accordance to Section 67 of the Land Registration Act, the appellant's counsel contended that upon appointment as administrator of the estate, the appellant's first duty was to collect properties of the deceased for purposes of inventory, hence the present dispute.

Mr. Henry Kishaluli for the second respondent supported the first appellate Judge's stance and submitted that P. James and Peter James were different persons and that Peter James was never allocated the disputed parcel of land.

He contended that the person named in a letter of offer dated 1981 is P. James and not Peter James who is purportedly represented by Adamu Wamunza.

The learned counsel challenged the appellant for failure to lead the evidence on death of P. James whom he did not represent and insisted

that at the DLHT, the appellant associated himself with Peter James, a different person altogether.

Mr. Kishaluli referred us to Section 2(1) of the Land Registration Act which defines owner of a registered land as a person for the time being in whose name the estate or interest is registered and relied on the evidence of DW1 Jane Paulo Mwaipyana, who testified that P. James failed to comply with terms and conditions set out in paragraph V (a – c) of the letter of offer in submitting that allocation of the disputed land to Raymond Peter Mbilinyi was lawfully done.

The learned counsel for the second respondent asserted that the disputed land was never allocated to James Paul whom the appellant represented as a legal personal representative. He capped that in the circumstances, there was no double allocation.

Mr. Kishaluli backed the first appellate judge's decision in holding that the appellant had no *locus standi* to institute a suit on the ground that Adamu Wamunza was appointed as administrator of the estate of the late James Paul and not the estate of P. James, a person at the centre of this dispute.

The learned counsel invited this Court to disregard the evidence of PW2 Kajesa Minga, on a ground that it was not supported by the

documentary exhibits on record and contradicted PW1's evidence. He also submitted that the appellant failed to present any affidavit on use of the two names interchangeably as ordered by the trial tribunal.

The second respondent's counsel trumped that no evidence was led by the appellant to prove that P. James and Paul James was one and the same person and on that basis, submitted that the first respondent was a justifiable lawful owner of the disputed property.

Mr. Netho Mwambalaswa, Ms. Hosana Mgeni and Mr. Stanley Mahenge, supported the findings of the first appellate court and submitted that ownership of the disputed land revolved around the name of P. James as per the letter of offer issued in 1981 and not Paul James allegedly represented by the appellant.

The learned State Attorneys invited this Court to consider the evidence of DW1 Jane Paulo Mwaipyana, a land officer from Kinondoni Municipal Council who testified that on failure to comply with conditions stated in the letter of offer, P. James waived his/her right to own the disputed plot and further urged us to disregard the evidence of PW2 Kajesa Minga, a witness from the Ministry for Lands, Housing and Human Settlements Development who contradicted the documentary evidence on

record and refuted the testimony of PW1 Adamu Wamunza, in alleging that Paul James owned the disputed land since the year 1980.

The learned State Attorneys strongly submitted that there is no double allocation in this case and referred us to the testimony of PW2 as reflected in pages 56 and 62 of the record of appeal who allegedly confused facts regarding identity of P. James and Paul James, two distinct persons altogether.

By way of rejoinder, Mr. Benjamin Mwakaganda and Mr. Kelvin Kidifu, reiterated the appellant's earlier submissions and prayed that the appeal be allowed with costs.

Records show the first appellate Judge considered the grounds of appeal and parties' written submissions and proceeded to identify the question to be determined by him in these terms as reflected in page 149, thus:

"...I find the main issue for determination in this appeal hinges on whether P. James and Paul James refer to the one and the same person....."

Considering the question identified, the learned Judge proceeded to consider the evidence on record in conjunction with the relevant principles

of law enunciated in the cases of **CHRISTINA MRIMI v COCA COLA KWANZA BOTTLERS LTD [2008] 2 E.A 69** and **LUJUNA SHOBI BALONZI SNR v REGISTERED TRUSTEES OF CCM [1996] T.L.R, 203.**

Having applied the applicable law to the facts he considered material to the question he had to determine, the learned Judge made these critical findings of fact as summarized:

1. That, the first respondent, who was the applicant at the trial tribunal sued in his capacity as the administrator of the estate of the late Paul James as per Exhibit P1.
2. That, the name appearing in the letter of offer is P. James and that which appears in the letters of administration is Paul James.
3. That, in his Judgment, the learned Chairman of the trial tribunal found the two names are used interchangeably as per the testimony of PW2 Kajesa Minga, a land officer from the Ministry for Lands, Housing and Human Settlements Development.
4. That, there is no affidavit on record to show the deceased Paul James used the name P. James interchangeably.
5. That, there is no evidence to prove that P. James and Paul James refer to one and the same person.

6. That, in absence of such evidence, he was inclined to find that the trial tribunal slipped into error in declaring the second respondent as owner of the disputed land.

7. That, Adamu Wamunza has no locus standi to sue because he was appointed as administrator of the estate of the late Paul James and not of P. James who claimed interest in the disputed property.

As shown before, the grounds of appeal before us touch on the appellant's *locus standi* particularly regarding identity of P. James and Paul James. Similar grounds were advanced in the High Court.

What flows from the pleadings and the evidence on record is that parties were at loggerheads on the competency of Adamu Wamunza to claim ownership or institute a suit as administrator of the estate of the late Paul James.

This is clearly reflected in pages 28, 29, 31, 35, 49, 51, 53, 56, 57, 60, 61, 62, 63, 65, 68, 69, 70, 71, 72, 81, 83 and 84 of the record of appeal wherein witnesses who testified in the trial tribunal stated that Paul James is a different person from P. James who was issued with a letter of offer.

Upon consideration of the approach by the first appellate Judge, we found that the same was in order by dint of Rule 2 of Order XIV of the Civil

Procedure Code which provides that where issues of law and facts arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first.

Our position was also influenced by the legal stance regarding role of the first appellate court to determine factual and legal issues as pointed out by the defunct Court of Appeal for East Africa in **PETER v SUNDAY POST [1958] E.A 424**, thus:

"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusion of the trial court should stand, this jurisdiction is to be exercised with caution. Where there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or has plainly gone wrong, the appellate court will not hesitate to decide."

Having satisfied ourselves that procedurally, the first appellate court was veracious, we now appraise merits or otherwise of the appeal before us particularly on *locus standi*, a prominent issue that featured in the lower court's proceedings. To this end, we are mindful of a persuasive decision of the Kenyan Court of Appeal in **NJILUX MOTORS LTD v KENYA POWER AND LIGHTING COMPANY LTD & ANOTHER [2000] 2 EA 466** wherein it was held that:

"Where the appellant has no interest in the suit parcel of land he cannot purport to challenge illegal allocation of land as he has no locus standi."

Locus standi is an old doctrine originating from a Latin phrase "*locus standi*" which refers to a vested legal right to file a lawsuit so as to provide a party with the ability to show the court of law that the law or action that has been challenged, has a considerable relation to the party and the resultant damage justify the party's involvement in the case.

According to this doctrine, a person whose legal right has been violated, that is, the aggrieved person against whom a decision has been pronounced, is allowed to bring an action in the court. A person who is a

stranger to a disputed matter cannot be allowed to interfere in the judicial proceedings.

Section 2 of the Civil Procedure Code, Cap 33 R.E 2019 defines "*legal representative*" as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sue or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

In **CHIRANJILAL V JASJIT SINGH [1993] [2] SCC 507**, the Supreme Court of India held that legal representative is synonymous with legal personal representative and is inclusive of the executors, administrators, assignors or persons acquiring interest by devolution under a provision similar to our Order XXII Rule 5 of the Civil Procedure Code.

This issue has been examined and come up for consideration time and again before this Court. In **SWALEHE JUMA SANGAWE as administrator of the estate of the late JUMA SWALEHE SANGAWE, HUSSEIN SWALEHE SANGAWE v HALIMA SWALEHE SANGAWE**, Civil Appeal No. 82 of 2021 (unreported), the Court was confronted with competency of a suit filed by a party on behalf of the deceased's estate.

On scrutiny of the disputed matters, the Court had this to say at page 8 of the typed Judgment, thus:

"In our view, it is only an administrator of the deceased's estate, once appointed, who could sue on the cause of action as presented by the respondent against the alleged interlopers. Moreover, the respondent obviously did not sue as a creditor of the deceased. Nor was she a legatee, that is, a person inheriting property based upon a person's will, as the instant matter concerned intestacy. It is, therefore, our finding that she had no standing to institute the proceedings in the trial court. The trial court obviously slipped into error by allowing her to maintain her action in her own name and entertaining it....."

In the present matter, it was not disputed that on 16th day of April 1980, the disputed parcel of land was allocated to one P. James of P.O. Box 2318 Dar es Salaam and subsequently handed out to the second respondent.

The question to be resolved at this moment is whether Adamu Wamunza is the administrator and therefore legal personal representative of the late P. James who claims an interest in the disputed property.

PW1 Adamu Wamunza, testified that on 9th day of June 2005, he was appointed by the Kigoma Ujiji Primary Court as administrator of the estate of the late Paulo James, allegedly his blood father.

On cross examination by Mr. Netho Mwambalaswa, learned solicitor, PW 1 stated that his (PW 1) actual name was Kinoni Adamu Wamunza, and was appointed an administrator of the estate of the late K. Paulo James who died in April 1997.

On cross examination by Mr. Henry Kishaluli, PW1 said the letter of offer was issued in the name of P. James whereas he was appointed to administer the estate of Paul James.

Questioned to produce evidence regarding the disputed names, as reflected in page 48 of the records of appeal, PW1 stated that:

*"...I have no document on proof enabling me
to represent P. James..."*

DW1 Jane Paulo Mwaipyana, a land officer at Kinondoni Municipal Council, on cross examination by Mr. Benjamin Mwakaganda, as shown in

page 67 of the record, stated that official records show the disputed plot was firstly issued to P. James.

On further cross examination by Mr. Mwakagamba, the witness said the tribunal should not place any weight on Exhibit P 2, a document from the Ministry for Lands as records kept at Kinondoni Municipal Council show that ownership of P. James was revoked as per Exhibit D. 1.

On cross examination by Mr. Kishaluli as reflected in page 69 of the records, DW 1 testified that:

".....the first owner is P. James. In our records Paulo James has never been allocated the suit plot. The Council has powers to take action against any breach of terms and conditions. The President has power to revoke title deeds and letter of offer..."

The disputed letter of offer was produced in the trial tribunal as "ID" for identification purposes only but not formally admitted as an exhibit. Therefore, it has no evidential value.

At page 31 of the Additional Records of Appeal, the trial tribunal recorded that the letters of administration issued by the Kigoma Ujiji

Primary Court on 9/06/2005 was admitted as Exhibit P1. However, we did not see this exhibit on record.

Given the requirements of the law, there is nothing on record to establish the trial tribunal's stance on recognizing Adamu Wamunza as legal personal representative of the estate of P. James whose identity is still not clear.

It seems necessary also to state that from the evidence on record, the appellant, using the name of K. Adamu Wamunza, applied for letters of administration on the estate of the late K. S/o Paul James through Administration Cause No. 14 of 2005 at the Ujiji Primary Court. There is no evidence to prove that he was ever appointed by that court as administrator of the estate of Paul James as wrongly assumed by the trial tribunal and the first appellate court.

Even assuming that he was so designated, the appellant's appointment could not entitle him to represent the estate of P. James because the late K. S/o Paul James is a different person from P. James whose name was shown on the letter of offer.

We are aware that in fit cases, under Order I Rule 10 of the Civil Procedure Code, where a suit has been instituted in the name of the wrong person, and if satisfied that it is necessary for determination of the real

matter in dispute, the court is entitled to order any other person to be added in the suit or pleadings to be accordingly amended.

However, the stated discretion of the courts cannot apply where there is reasonable doubt on identity of a party. Reasonable doubt can be determined by examining any of the processes, pleadings, forms or complaint by the party that evidences doubt about the identity. This doubt can also be expressed by the courts.

The test to determine whether the name in dispute is a misnomer or raises reasonable doubts was pointed out in the Nigerian case of **ALHAJI MAILAFIA TRADING & TRANSPORT COMPANY LTD v VERITAS INSURANCE COMPANY LTD [1986] 4 NWLR [Pt. 38] 802 at 812**, thus:

"How would a reasonable person receiving the document take it? If in all the circumstances of the case and looking at the document as a whole, he would say to himself, of course it must mean me, but they have quoted my name wrongly, I cannot tell from the document (writ) itself whether they mean me or not, and I shall have to make enquiries, then it seems to me one is getting

beyond the realm of misnomer. One of the factors which must operate on the mind of the recipient of a document (writ) and which operate in this case is whether he is or not another entity to whom a description of the writ might refer."

In the instant appeal, the appellant suggested that the names P. James and Paul James were interchangeably used but referred to one and the same person. Is the contention supported by the evidence on record? We think the answer is absolutely no.

As we stated earlier, PW 1 testified that Paul James died in April 1997. Just as rightly observed by the learned first appellate Judge, no evidence whatsoever was led by the appellant revealing that the alleged Paul James was also using the name and or referred to as "P. James".

In his testimony, PW2 Kajesa Minga, referred to some letters that adverted to Paul James. None of these letters was admitted as exhibit and we are unable to call attention to them. However, we noted that during re-examination by Mr. Mwakagamba, this witness stated that a letter dated 6th November 2012 recognized Paul James as the owner.

It seems to us that, the said letter and indeed all other documents relied upon by the appellant were issued after the death of the alleged James Paul and addressed to Adamu Wamunza in person without depicting him as administrator of the estate of P. James. None of them had a reliable link with P. James.

In view of the above, we do not find any material error in the impugned Judgment of the High Court. Consequently, the appeal is dismissed with costs.

DATED at DAR ES SALAAM this 9th day of August, 2023.


G. A. M NDIKA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Judgment delivered this 10th day of August, 2023 in the presence of Mr. Kelvin Kidifu, learned counsel for the Appellant and Mr. Stanley Mahenge, State Attorney for the 2nd Respondent, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL