

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. LAND CASE APPEAL NO. 9 OF 2015

(From the decision of District Land and Housing Tribunal of Mtwara (A. R. Kirumbi, Chairman) in Land Case Appeal No. 9 of 2015, Original Ward Tribunal of Namikupa in Land Application No. 15 of 2014)

ZUHURA BAKARI MNUTU.....APPELLANT

Versus

ALI ATHUMANI.....RESPONDENT

Date of last order 10/09/2015

Date of Judgment 01/12/2015

J U D G M E N T

F. Twaib, J:

The appellant Zuhura Bakari Mnutu was the complainant at the Ward Tribunal of Namikupa in Land case No. 15 of 2014 where he sued the respondent Ali Athumani, seeking to nullify a sale concluded in respect of the land located at Namdwani area, Namikupa ward in Tandahimba District. The Ward Tribunal after hearing the parties went on to hold as follows:

Kwa hiyo Baraza linatamka rasmi kuwa shamba ni mali ya watoto wote kwa sababu hawajagawana. Pia familia ya marehemu Bakari Mnutu wanashauriwa waende mahakamani kufungua mirathi ili kila mtoto kutambulika haki

*ake hivyo das kuanzia sasa maraamikaj unatakiwa
urudishe kiasi cha fedha za kitanzania shilingi laki mbili na
hamsini elfu...”*

The respondent herein was dissatisfied with the above findings and lodged his appeal at the District Land and Housing Tribunal, where his appeal was allowed. The respondent was declared the lawful owner. In holding so, the learned chairman partly reasoned as follows:

*...it is the same respondent and JELINA who sold the
disputed farm, then the respondent had no right to
challenge the sale agreement she entered, hence the trial
tribunal grossly erred in law for its decision to declare
respondent and other children of late Bakari Mnutu to be the
owner of the disputed land.*

The appellant was equally aggrieved by the learned chairman's findings and lodged this appeal. He has advanced six (6) grounds faulting the District Tribunal for setting aside the Ward Tribunal's decision.

Before going into the merits of the appeal, I thought it important, in view of the facts of the case, to consider the *locus standi* of the appellant. The alleged owner of the suit land was one Bakari Mnutu, the appellant's father. The appellant, apparently, was not the legal representative of his estate. It seemed to me, therefore, that she did not have the requisite *locus standi* to sue on behalf of the estate.

As this was a new issue and not canvassed by the parties before and even in this appeal, I decided to give the parties an opportunity to address the court thereon. Being lay persons, they did not have much useful to say.

The appellant simply said that she was acting on behalf of the appellants and that there was in fact somebody else (their uncle) who was the court-appointed administrator of the estate.

It should be noted at the outset that *locus standi* is a crucial issue and central in every proceeding, and therefore the person suing has to show that he has *locus standi* to sue. See the cases, **Hamisi Mafume Mataula vs Denis Luwanga and Another**, Civil Case No. 111 2007 (H.C) DSM (Unreported); **Gervas Masome Kulwa v The Returning Officer and Others** (1996) TLR 320 and **Lujuna Shubi Ballonzi Senior v Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203.

Therefore a proceeding of civil nature such as the one before me, may only be instituted and maintained by the party himself (a person who claim to be the owner of the property in dispute), by his agent (under the power of attorney) or by the legal representative such as administrator of estate if the owner is dead. See the case of **Julius Maganga v Robert Malando**, (PC) Civil Appeal No. 112 of 2004, (HC) at Mwanza (Unreported), Mackanja, J at page 2 where it was similarly held:

“Now a proceeding of civil nature, such the one before me, may be instituted and maintained by a party himself, by an agent or the representative-such as administrator of estate.....The applicant’s failure to apply for grant of letters of administration, has rendered him incompetent to maintain these proceedings, because he lacks the capacity to sue...”

The same position was taken by this court in the case of **Majid Daudi Mbura vs Mansoor Daudi Mbura**, Miscellaneous Land Appeal No. 33 of 2010 H.C (Land Division) at Tanga (unreported) at page. 4 where it was stated;

...he could not legally challenge that ownership claim unless he was the administrator of the estate of his deceased father....

Also, the decision of this court in **Kassim Yakub Mwinyijuma vs Iringa Municipal Council, Land Case Appeal No. 7 of 2010 H.C (Land Division) At Iringa (unreported)** at page 5 held;

In this case the appellant had made an application purportedly on behalf of his late father against the respondent. However the appellant as shown in the title of the application seem to have made the application on his own capacity. Nothing indicated that he acted as representative of his late fathers' estate, as one would have expected.

In our case the record shows that the suit land belonged to the late Bakari Mnutu. The appellant is among the heirs of the late Bakari Mnutu. It is also clear from the Ward Tribunal's decision that the suit land was yet to be divided to the natural heirs. And it appears that there was no administrator of the estate of the late Bakari Mnutu, which is why the Ward Tribunal advised the appellant and his relative to apply for letters of administration and have the suit divided among the heirs.

On those facts, the Ward Tribunal having noticed that the appellant was neither the owner, nor the administrator of the estate of the late Bakari Mnutu, ought to have struck out the appellant's suit on the ground of *locus standi*, because it is the administrator of the estate of the late Bakari Mnutu who had legal right to sue the respondent on behalf of the heirs. The appellant herein had no legal capacity to sue on behalf of other heirs

as there was no proof that he was the legal representative of the deceased Bakari Mnutu.

In view of the cited case law and the reasons given above I am of the settled view that, the appellant had no *locus standi* to commence a suit in a Ward Tribunal for an order to nullify the sale concluded in respect of the suit land. Whether the sale was valid or not the only person who had legal capacity in the circumstances of the case was the administrator of the late Bakari Mnutu and not the appellant in his personal capacity.

It is for the above reasons, the court proceeds to invoke its revisional powers and set aside the decision of the District and Housing Tribunal which allowed respondent's appeal, on merits. I substitute it with an order allowing the respondent's appeal filed at the District Tribunal on the ground that the appellant had no *locus standi* to sue the respondent at the Ward Tribunal.

In the result, the proceedings and judgment of the Ward Tribunal are quashed as they are null and void. The court-appointed administrator may present the claim on behalf of the estate in accordance with the law, if he so wishes.

To the extent explained in the foregoing, the appellant's appeal is dismissed with no orders as to costs.

DATED and DELIVERED at Mtwara this 1st day of December, 2015

F.A. Twaib

Judge

01/12/2015