

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO. 3 OF 2016

(Arising from the District Land and Housing Tribunal of Bukoba, land case application No.55 of 2016)

ADERA LWAMGIRA..... APPELLANT

(Administratrix of the estates of the late Joseph Lwamgira)

VERSUS

JANETI MWAGAMA AND 4 OTHERSRESPONDENTS

JUDGMENT

10. 11.2017 & 02.02. 2018

BONGOLE, J.

At the District Land and Housing Tribunal of Bukoba, the appellant sued the respondent and four others for selling a piece of land of the late Josephat Lwamgira to one Muta Masudi who also happened to be the second respondent at the trial tribunal.

Before the application/suit came up for hearing before the District Land and Housing Tribunal, the counsel for the respondents raised a preliminary objection in that the appellant was not a proper administratrix.

The trial Tribunal sustained the objection and aggrieved, the appellant preferred the present appeal on two grounds coached thus:-

1. ***THAT,*** the trial tribunal erred in law and fact to delivered (sic) Ruling which favoured the Respondent without put (sic) into consideration that the Appellant is real and proper administrax (sic) of the estate of the late JOSEPH LWAMGIRA hence has got legal right to sue or be sued in all matters related to the late JOSEPH LWAMGIRA.

2. ***THAT,*** the trial tribunal erred in law and fact to delivered (sic) Ruling which struck out my application against the weight of evidence adduced on my side including from no IV of appointed (sic) by the primary court to be administrax (sic) of the estate of the late JOSEPH LWAMGIRA hence unfair Ruling to which undermine (sic) the rights of the heirs of the late JOSEPH LWAMGIRA.

At the hearing before this court the appellant was present in person while the respondents were represented by Mr. Frank John from Kabunga and Associates Advocates. By leave of this court this appeal was scheduled to be argued by way of written submissions.

In support of the appeal, the appellant submitted that her application at the trial was struck out simply because the name of the deceased was typed as Josephat Lwamgira instead of Joseph Lwamgira. She further conceded that even form No. IV on which she was approved as administratrix, was subsequently erroneously typed. She threw her blame at a typist and reasoned that this is a mere typing error which is not fatal. She complained that by striking the application out due to such error the learned trial Chairman acted against the interest of justice. She invited this court to ignore those anomalies and allow the appeal.

In reply to this, Mr. Frank John, the counsel for the respondent submitted that the appellant has no locus standi to sue for the estates of the late Pontian Joseph Lwamgira. He submitted that according to the appointment made on 22/11/2016 the person so appointed as an administratrix is Alice Pontian Lwamgila as evidence in form No. IV. Without explicit, he argued that the latter has never been appointed as administratrix of the estates of

the late Pontian Joseph Lwamgira and thus she has no locus standi. In fortifying his submission he relied on the cases of **Felix Costantine Vs. Jofrey Modest, Misc.Land case appeal No.9/2010 HC at Bukoba (unreported) and Ibrahim Kusaga vs Emmanuel Mweta [1986] TLR No. 26** where it was held that no one other than the legal representative of the deceased who has locus standi to sue in claim of the estates of the deceased person. He invited this court to dismiss this appeal with costs on ground of lack of locus standi.

I have looked at the record of this appeal and noted that the evidence on which the appellant asserts to have been appointed administratrix of the estates of the late Joseph Lamgira is form No. IV. In that form it is written:

Mbele ya Mahakama ya Mwanzo Mjini

Usimamizi wa Mirathi 45/2016

Mnamo leo tarehe 22/11/2016

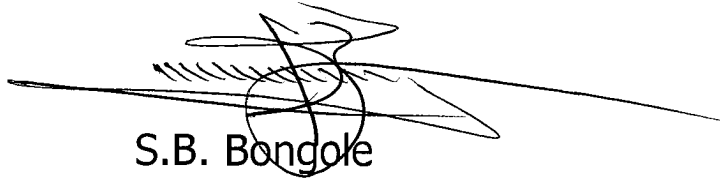
*Bwana/Bibi **Allce Pontian Rwamgila** ameteuliwa kuwa msimamizi wa mirathi wa marehemu **Pontian Joseph Rwamgila** aliyefariki 12/7/1997.*

In her submission the appellant did not dispute that there is variation regarding the names of the deceased person leave out her own names. The record shows that from the trial up to the appeal stage the appellant is referred to as Adela Lwamgira while in the form of appointment she is referred to as ***Alice Pontian Rwamgila***. Albeit the appellant tried to defend herself that this is a mere typing error I find it fatal as it involves different names. Alice and Adera are two different names thus the record results into confusion and or misleading. The effect of this is that the present appellant lacks locus standi to prosecute this appeal as she does not feature as the same person. I agree with Mr. Frank John Advocate for the respondents that the appellant is not the proper legal representative of the late Joseph Lwamgira.

After the application was struck out by the trial Tribunal Chairman on this ground, the appellant ought to have amended the errors instead of appealing against that ruling. This is essentially so because the said ruling/decision is interlocutory which did not determine the suit/application conclusively.

In the upshot, I find this appeal to have been pre-maturely filed. Consequently, it is hereby dismissed with costs.

Order accordingly.



S.B. Bongole

Judge

02/02/2018

Date: 02/02/2018

Coram: Hon S.B Bongole, J

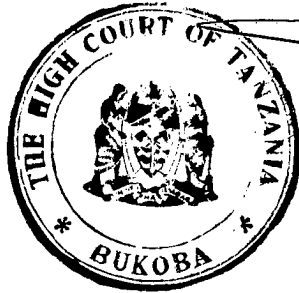
Appellant: Present

Respondent: Absent

B/C: A. Kithama

Court:

The appeal comes for judgment and the same is hereby delivered.



S.B Bongole,

Judge

02/02/2018