IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO 52 OF 2016

(ARISING FROM APPLICATION NO 194/2014 AT THE DISTRICT LAND AND HOUSING TRIBUNAL AT BUKOBA)

PURUKELIA ALOYCE ....APPELLANT

VERSUS

1. **MODEST ALPHONCE** } **..... RESPONDENTS**
2. **JOSEPHAT JOHN**

RULING

14/03/2018 18/05/2018

KAIRO, J;

This ruling is in respect of the notice of Preliminary Objections on point of law raised by Mr. Bengesi, learned advocate for the 1st and 2nd respondents. The same is couched thus:-

"That, a preliminary objection which was struck out, the appellant is mandatorily prohibited to appeal against it as per the proviso of Regulation 22 of GN No. 174 of 2003".

In the event this appeal be dismissed with costs.

Mr. Mathias Rweyemamu, the learned Advocate represented the appellant while Mr. Bengesi acted for the 1st and 2nd respondents.

Mr. Bengesi submitted in support of his preliminary objection that the ruling delivered in this matter was to the effect that the claim was struck out and not dismissed. According to Regulation 22 (2) of GN No. 174 of 2003, it prohibits an appeal against interlocutory order as the matter was not decided to its finality, thus the appeal has come prematurely. In order to fortify his argument, he had a case of *Pelina Joshua Ngaiza and others versus Padre Avitus Rukuratwa Kiiguta & another, Land Case Appeal No. 51/2015 at (HC) Bukoba,* (Unreported).

In reply, Mr. Mathias Rweyemamu argued that the P.O is of no substance. He reiterated that the cited case by Mr. Bengesi is of the High court thus not binding authority.

Regarding the proviso of Regulation 22 of GN 174/2003, He stated that it governs the Chairman of the DLHT and not High court. In his elaboration he stated that what has been explained therein is not the order to struck out the matter rather the said decision removed the case completely, thus

appealable. Besides, the DLHT would have instead ordered for amendments. He thus invited the court to overrule the PO as it was misconceived.

In rejoinder, Mr. Bengesi submitted that according to the ruling of the DLHT at page 1 and 2, the Chairman was of the view that the appellant should first obtain the letter of administration so that the matter could be determined. He pointed out that the claim was still at the DLHT.

In alternative, he said that even if the matter will be open for appeal, there will be no evidence to address the court where the appellant got the land in dispute. He however, maintained that the appeal is premature and thus, the decision of the High court is still a good law that can be adopted by this court as well. He finally urged the court to uphold the P.O.

I have read the record of this appeal and considered the submissions of counsels for the litigants. The learned counsel for the respondents raised that a preliminary objection which was struck out, is not legally allowed to be appealed against it as per the proviso of Regulation 22 of GN No. 174 of 2003".

The said proviso to 22 of GN No. 174 of 2003 provides special power of the Chairman and it reads as follows:

The Chairman shall have powers to determine:-

(a) Preliminary objection based on point of laws

(b) Applications for execution of orders and decrees

(c) *Objections for execution of orders and decrees\interlocutory applications*

Provided that a ruling on a preliminary point of law or on any interlocutory application which have no effect of finally deciding the case shall not be appealable.

The issue for determination in this court is whether the appellant has no right of appeal against the ruling of 22/08/2016 which struck out the matter and secondly, whether the matter at hand is an interlocutory.

According to the record, it appears that the Appellant Purukelia Aloyce filed at the District Land and Housing Tribunal the Land Application No. 194/2014 against Modest Alphonce and Josephat John sought for an order to declare her the legal owner of the suit land worth Tshs 8,000,000/=located at Kahumulilo area, Nyakato Ward, Bukoba, vacant possession of the 2nd respondent Josephat John, an order for the perpetual injunction of the suit land, costs of the suit and any other relief.

The respondent through their advocate Mr. Bengesi filed a notice of preliminary objection that the appellant has no *locus standi* to sue the respondents as she had neither obtained a letter of administration nor was she appointed administrator of the estate of the late John Joseph Ibonesa. The trial tribunal held that both parties did not have letters of administration to sue and being sued hence struck out the application.

It is upon this background thus the appellant was not satisfied by the ruling of the DLHL; hence filed this memorandum of appeal. The learned counsel for the respondents further raised this preliminary objection that the appellant is mandatorily prohibited to appeal against the ruling of the DLHT.

Going through the record, it appears that the Land Application No. 194/2014 was not decided to its finality to wit; who is the legal owner of the suit land, for want of legal person recognized to have *locus standi* to bring and defend proceedings on behalf of the estate.

Section 6 of the Magistrate Courts' Act [Cap 11 R.E 2002] to the 5th schedule part II requires an administrator to bring and defend proceedings on behalf of the estate. According to the ruling by the DLHT it found that both parties to the suit had no *locus standi* to bring and defend the proceedings on behalf of the estate, hence sustained the P.O so raised by the Counsel for the respondents. The litigants were not administrators in the respective suit land hence without *locus standi* to prosecute the case and defend it.

With due respect to Mr. Rweyemamu, I find that the case is still pending and not yet determined by the DLHT as to who is the owner of the suit land. As a result, the parties were ordered to obtain a letter of administration in respect of the estate before re- instituting the matter at the DLHT.

With regards to the alternative argument by Mr. Rweyemamu whereby was of the view that the Chairman of the DLHT would have ordered amendment

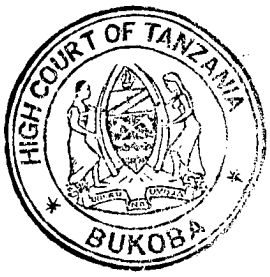
instead of ordering struck out the application. With due respect, there was nothing to be amended in that application since the same was filed by a person with no *lacus standi* to institute the same and claim on behalf of the deceased's estate.[Refer the case of **Tatu Adui vrs Mlawa Salum & Another: Misc. Civil Appeal No. 8/1990 H.C. of Tanzania, DSM (unreported).** Since the appellant was neither executor nor the administratrix of the deceased Aloyce Mugalula, cannot bring and defend proceedings on behalf of the estate in term of section 6 of Cap 11, 5th schedule in part II. Meanwhile, the 1st and 2nd respondents had no power to defend the proceedings on behalf of the estate. The amendment sought by Mr. Rweyemamu, will not in my view cure the anomaly observed by the DLHT; that is the claim was brought by a person who is not administrator of the estate hence lacks legal right to claim on behalf of the estate.

In the end result, I hold that the DLHT was right to struck out the application for want of *locus standi*. The parties still have another chance to institute the case when clothed with the power of administrator. With this stand, the ownership of the suit land was not yet determined by the trial tribunal to meet the justice of both parties in litigation. Since the matter was struck out, the door is still open for them to bring the matter again after being granted letters of administration by the court with competent jurisdiction.

For the foregoing reasons, I proceed to uphold the preliminary objection on point of law raised by the learned advocate for the respondents. In the end result, I struck out this appeal with costs for being pre-maturely filed.

It is so ordered.

R/A explained.



L.G KAIRO

JUDGE

At Bukoba

18/05/2018