

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO. 176 OF 2017

**PETRO ZABRON SINDA 1ST PLAINTIFF
PIUS ZABRON SINDA 2ND PLAINTIFF**

VERSUS

ZABRON MWITA.....DEFENDANT

RULING

MURUKE, J.

The plaintiffs sue their father (defendants) to precluded him from disposing the Matrimonial home in any way and payment of general damages. The matter involves matrimonial home which Zabron Mwita Sinda, the Defendant and the Deceased, Veronica Elia Masiana, acquired during the subsistence of their marriage.

Plaintiffs claims that, after the death of their mother, their father started to squander the matrimonial properties with his paramour Dorica Makote Wangea. Defendant is underway to sale Matrimonial Home situated at Morogoro where the late Veronica was buried and the only legacy to their children. The plaintiffs requested their father to cause administration of the estate of

their mother so as to let her properties devolve into the successors or maintain in status quo of the estate but ended in vain. The defendant on his written statement of defence raised a Preliminary Objection on three (3) points of law to wit

1. The plaintiff's suit is bad in law as the Plaintiffs lacks locus stand,

2. The plaint is bad in law for failure to establish cause of action,

3. This Honorable Court lacks jurisdiction to entertain this suit.

When the case came for hearing of the Preliminary Points of Objection on 9th April, 2018 plaintiffs were absent while the defendant was represented by the learned counsel, Ms. Patricia Piusi. Court ordered to be preliminary objection heard *exparte*.

Patricia Piusi learned counsel for the defendant prayed to abandon point two and three and argue on the point of *locus standi* only. She submitted that, throughout the plaint there is nowhere indicated that there is letters of administration granted to plaintiff as a personal legal representative of their late mother. The plaintiffs clearly stated that the issue of administration is yet to be effected. The plaintiffs' claims rights on the properties of their late mother as beneficiaries, but they are not administrators

of the estate. Therefore, plaintiffs lack *locus standi* to file this suit. To cement her argument learned counsel for the defendant cited the case of **Lujuna Shubi Balonzi Vs. Registered Trustee of CCM** (1986) TLR. 203, where Samatta, J.A. held that;

In order to maintain proceedings successfully a plaintiff or an applicant must show not only that the court has power to determine the issue but also he is entitled to bring the matter before the court. Locus standi is governed by the common law according where a person bringing the matter to court should be able to show that his right or injury has been breached or interfered with.

Also, she referred this court to section 6 of the fifth schedule of the Magistrate Court Act, Cap 11, R.E. 2002. That it is the administrator who may bring and defend the proceedings on behalf of the estate. In the case at hand no any letters of administration of the late Veronica Elia Masiana (plaintiffs' mother) has been attached to the plaint to establish the existence of legal relationship of the suit. The plaintiff should have shown their authorized to act on behalf of the deceased person. It is only the letter of administration that can fit. She prayed for the plaint to be struck out with costs.

The term *locus standi* is defined in the **Blacks Law Dictionary, 9th (ed) 2009** at page 1028, as "***the right to bring an action or to be heard in a given forum.***"

The bolder definition was derived in the case of **Lujuna Shubi Balonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi** [1996] T.L.R 203 as cited by the counsel for respondent where the High Court of Tanzania, at page 208 that:-

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court: Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application".

Thus; as rightly submitted by the respondent's counsel, Patricia Pius, the plaintiffs lacked the requisite *locus standi* to institute the suit. Even though the plaintiffs are beneficiaries were supposed to have important requisite as provided in the laws of administration

of estate. In order to have *locus standi* before such institution, the plaintiffs were first to be appointed as administrators of their late mother's estate. The administrator of the estate has capacity to collect and disposal of the deceased's estate to the lawful heirs.

Also in the case of **Anthony Leonard Msanze and Another vs. Juliana Elias Msanze and Two Others, Civil Appeal No. 76 of 2012, (CAT) Arusha, (unreported)** inter alia it was held that;

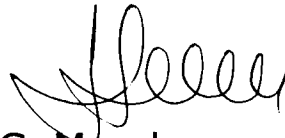
Acting under the umbrella of administrators of an estate of deceased person, appellants have prima facie manifested in their plaint, sufficient interest to sue the respondents.

I would like not to dwell on **Rule 6 of the Firth Schedule of the Magistrate Court Act, Cap. 11 R.E. 2002**, because this rule cited applies in primary court only. The proper provision for this court is **section 100 of the Probate and Administration of Estates Act, Cap 352, R.E. 2002**, which provides that;

"An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the

**recovery of debts due to him at the time of his death,
as the deceased had when living."**

As clearly evaluated above, the plaintiffs had no *locus standi* to sue in relation to the estate of their late mother because they are not administrators. I therefore the suit struck out.

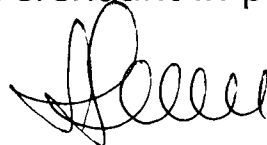


Z. G. Muruke

JUDGE

30/04/2018

Ruling delivered in the presence of both Plaintiffs, the counsel for Defendant, Patricia Pius and Defendant in person.



Z. G. Muruke

JUDGE

30/04/2018