

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

KIGOMA DISTRICT REGISTRY

LAND DIVISION

AT KIGOMA

(PC) LAND APPEAL NO. 9 OF 2020

*(Arising from Land Case Appeal No. 118 of 2018 of DLHT at Kigoma,
Originating from Land Dispute No. 3 of 2018 of Kibondo Ward Tribunal).*

HOSEA EMMANUEL.....APPELLANT

VERSUS

SOPHIA E. RINTENGE.....RESPONDENT

RULING

Dated: 16/6/2020 & 13/7/2020

Before: Hon. A. Matuma,J

This ruling results from three issues raised by this Court during the hearing of this appeal.

In the Ward Tribunal of Kibondo, the appellant herein Hosea Emanuel sued the Respondent Sophia E. Rintenge for recovery of land. The Tribunal adjudged for the respondent dismissing the appellant's suit.

The appellant appealed to the "**Regional Land and Housing Tribunal**" but it was the **District land and Housing Tribunal** which entertained the appeal and nullified the trial tribunal's proceedings and quashed the judgment thereof ordering a retrial because the vendor was not sued along with the buyer.



The appellant was further aggrieved hence this appeal with six grounds of appeal.

The brief facts arising to this appeal is that;

One, **Hosea Kayanda Ntamalengelo** died on 21/3/2014 leaving behind some farms and heirs. The heirs include his widow Bi. Helena, Doris Kayanda, Grace Kayanda, Albert Hosea, Emmanuel Kayanda, Edina Kayanda, Dagrass Kayanda and Dunstan Kayanda.

On 8th May, 2017, Dagrass Kayanda and his wife Specioza Dominick Sentozi sold the dispute land to the respondent claiming to be their lawful property acquired by Dagrass way back in 1980's. When the respondent started developing the purchased land it is when the appellant came out claiming that such sold land belonged to the late Hosea Kayanda Ntamalengelo and therefore, Dagrass had no good title to pass to the respondent.

As I have earlier on said, the appellant lost the suit at the trial tribunal and unsuccessfully appealed to the so called "**Regional**" Land and Housing Tribunal hence this appeal.

From the herein above facts, this Court observed some legal issues and raised three issues for determination before it could determine the appeal on merit. The issues raised were:-

- i. In the circumstances that the dispute land is alleged to have been owned by the late Hosea Kayanda Ntamalengelo, whether the appellant had **locus standi** to sue for its recovery.*
- ii. In the circumstances that the Dispute land was sold to the respondent by one Dagrass Hosea Kayanda and Specioza Dominick Sentozi who claimed to have been the lawful-owners, whether a suit*

for recovery of possession could have been successful without those vendors being sued along with the respondent/buyer.

- iii. In the circumstances that the appellant having been aggrieved by the Ward Tribunal's judgment and appealed to the "Regional" Land and Housing Tribunal, whether the District Land and Housing Tribunal was in any way properly moved to exercise its appellate jurisdiction.*

I invited the parties to address me on the issues and they accordingly complied.

Starting with the third issue on the jurisdiction of the District Land and Housing Tribunal, the appellant conceded that his appeal was wrongly referred to the none existing court and prayed that the decision of the District Land and Housing Tribunal be nullified and he be allowed to refer the matter to the relevant prescribed court.

Mr. Silvester Damas Sogomba learned advocate who appeared for the Respondent also joined hands with the Appellant that there is no existence of the land Court named **The Regional Land and Housing Tribunal**. He cited section 3(1) and (2) of Cap. 216 to authenticate the relevant Land Courts established thereat.

On my party, I entirely agree with both parties herein. No doubt that there was no appeal by the appellant before the District Land and Housing Tribunal. The appellant had appealed to **"THE REGIONAL AND HOUSING TRIBUNAL OF KIGOMA AT KIGOMA"**.

At no time he prayed for amendment nor his petition was amended in any manner to reflect the District Land and Housing Tribunal. As such up to the time the District Land and Housing Tribunal reached to its judgment,

it had no appeal before it. It assumed jurisdiction of the so called **The Regional Land and Housing Tribunal**.

According to section 3 (2) of the Land Dispute Courts Act, Cap. 216 R.E 2002 as rightly submitted by Mr. Sogomba learned Advocate, the established land Courts are ***the village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court (Land Division) and the Court of Appeal of Tanzania.***

As Courts are creature of statutes, the **"Regional Land and Housing Tribunal"** must have been established under the law to have jurisdiction over the matter.

Unfortunately, under section 3 (2) (a) – (e) supra there is no such a Court and therefore the appellant's appeal was referred to a none existing Court.

That being the case, the District Land and Housing Tribunal wrongly admitted the appellant's appeal into its Registry and wrongly assumed jurisdiction since it was not moved to entertain the appeal.

As such all the proceedings and judgment in the District Land and Housing Tribunal for Kigoma in respect of this matter are a nullity for there was no appeal before it to entertain. That renders the proceedings and judgment of the Ward Tribunal to remain intact.

Back to the first issue herein above about the **locus standi** of the appellant over the matter, the Appellant submitted that he appeared on the matter in his individual Capacity but at that time he was already appointed as administrator of the estate in question. Therefore, it was the problem of the Ward tribunal to register the dispute in his individual name. he however stated that he has several names such as Hosea Emmanuel,

Emmanuel Kayanda and all these names have been used interchangeably. He added that even at one time, he faced the challenge about his names in his Bank Transaction but he cleared the problem by swearing an affidavit confirming names.

Mr. Sogomba on his Party argued that the appellant had no locus standi in his individual names. He added that even though by the Appellant's name he was at no time appointed as administrator of the estate in question.

It is my firm view that there is no dispute that the appellant did not claim the land as his property but that the same was a clan land owned by the late Hosea Kayanda Ntamalengelo. In the circumstances he was suing for recovery of the deceased's property. In law only the administrator of estate could sue for the estate of the deceased.

This is because, it is a settled law that for the suit to be entertained by a Court of law, the plaintiff or Applicant as the case may be must not only establish that the Court in which the suit or application is brought has the requisite jurisdiction but also that he has locus standi to bring such a suit or application. See; ***Kagozi Amani Kagozi (Administrator of the estate of the late Juma Selemani) vs Ibrahim Selemani and 6 others, Land Appeal No. 2 of 2019 (unreported) High Court at Kigoma and Lujuna Shubi Balonzi versus Registered Trustees of CCM (1996) TLR 2003.***

Locus standi to sue or defend the estates of deceased person is vested to administrators of the estate in question. No one is allowed to sue or defend the estate of the deceased unless he or she has obtained letters of administration.

In the instant matter the appellant alleged that he was appointed along with his sister to administer the estate of their late father. Even though I find that the appellant Hosea Emmanuel as rightly observed by Mr. Sogomba learned advocate was not appointed to administer the estate in question nor had obtained letters of administration thereof.

According to the records the appointed administrators of the estate in question are Doris Mursali and Emmanuel Kayanda.

Hosea Emmanuel is neither of the two although the Appellant has tried to justify that all names belongs to him and are used interchangeably. Unfortunately, that is a matter of evidence and he has averred as such without oath or affirmation. I thus reject his averments to that effect. I have even seen only Doris Mursali obtained letters of administration as per probate form No. IV which she endorsed on the 13th June, 2018 undertaking to administer the estate diligently and faithfully. I asked the Appellant whether he has also endorsed form no. IV for the administration of the estate. He categorically replied that he did not obtain such a form.

Even if, it would have been proved or taken that the appellant by the time he sued the respondent was dully appointed as administrator of the estate and had obtained letters of administration, still he did not sue under such capacity. He sued in his individual capacity which is legally wrong.

In the case of ***Yunus Seif Kaduguda vs Razak Seif Kaduguda and another, Misc. Land Application No. 7 of 2020 (unreported) High Court at Kigoma, Yunus Seif Kaduguda*** was a dully appointed administrator of the estate of his deceased father. He sued for recovery of the deceased's plot up to the High Court level but lost. He preferred an appeal to the Court of appeal and as a matter of law brought an

application for leave to appeal but unfortunately, he did not bring such application as an administrator of the estate of the deceased. He brought it in his individual name.

He faced objection that he had no locus standi, this Court ruled out that it was legally wrong for him to bring the application in his individual capacity because the subject matter is the deceased's estate and he must have thus appeared in his capacity as administrator of the estate in question.

Likewise, in the instant matter, the appellant appeared in the trial Tribunal in his individual capacity and even in this Court he is standing on such capacity. That is wrong as whatever outcome of the suit would not affect the estate in question but his own personal estate. I accordingly rule out that even in the trial tribunal, the appellant in his individual capacity was not competent to sue. That being the case, his suit thereat was as well incompetent.

I accordingly nullify the proceedings of the trial tribunal and quash the judgment thereof.

In the second issue, the appellant argued that he did not sue the vendors along with the Respondent because at first, the Respondent held it secret and it was not known who had sold the dispute land to her. As such he was right to sue the Respondent alone. Mr. Sogomba learned advocate on his party submitted that it is fatal in law to sue the buyer without the seller for recovery of land.

I will dispose this issue right away that; since the appellant and all his witnesses testified that it was his relative **Dagras Kayanda** and his wife Specioza Dominick Sentozzi who sold the dispute land to the respondent,

and since those alleged vendors appeared as witnesses of the respondent and admitted to have sold the dispute land claiming to be their lawful property free from any encumbrances, they ought to have been sued along with the respondent as their alleged title over the dispute land could have not been challenged without making them party to the suit to accord them opportunity to defend their alleged title. See **Juma Kadala vs Laurent Mkanda (1983) TLR 103.**

I therefore quash everything as herein above stated and restore the parties to their status quo which existed before the institution of the matter to the Ward Tribunal.

The appellant is at liberty to start afresh the suit in a competent Court, under the requisite title/locus and against all necessary parties i.e. buyer and vendors. This is due to the fact that the title of the Respondent over the suit land cannot be challenged without first determining the alleged title of the Vendors who categorically states to have sold it as their lawful property.

As the disposal of this appeal rested on the issues raised by the Court *suo motto*, I order no costs to the parties.

Right of appeal is fully explained. It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Matuma", is written over a horizontal line.

A. Matuma

Judge

14/7/2020