

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT KIGOMA**

**LAND APPEAL NO. 2 OF 2019**

*(From the Decision of District Land and Housing Tribunal for Kigoma at Kigoma in Land Case No. 28 of 2013).*

**KAGOZI AMANI KAGOZI** *(Administrator of the estate of the late **Juma Selemani**)* .....**APPELLANT**

**VERSUS**

**1. IBRAHIM SELEMAN**

**2. ZAINA SELEMAN**

**3. RUKIA SELEMAN**

**4. REHEMA SELEMAN**

..... **RESPONDENTS**

**5. MWAJUMA SELEMAN**

**6. ZAINA SELEMAN** *(Administrato of The estate of the late Kassim Seleman)*

**7. SAUDA SELEMAN**

**JUDGMENT**

**DATED: 13<sup>th</sup> February, 2020 & 17<sup>th</sup> February, 2020**

**Before: Hon. A.K. Matuma - Judge**

The appellant Juma Seleman (Now deceased) who passed away during trial of the suit and the Respondents are blood relatives all being children of the late Seleman Ibrahim. Kagozi Amani Kagozi is standing as an administrator of the estate of the late Juma Seleman. They are in dispute over a suit plot situated at **Plot No. "A". 29 Block MD Gungu** within Kigoma Ujiji Municipality.

The brief background to the dispute traces its origin from the late **Ibrahim Luchagatila Sikuyakwenda**, their grandfather. The said grandfather died intestate survived with five children namely Seleman (the father of both parties herein), Amri, Kekenwa, Moshi and Asha.

It was claimed that at the time of his death Ibrahim Luchagatila Sikuyakwenda left behind a plot in dispute. Later on Selemani (the Respondents' and appellant's father), Kekemwa and Moshi also passed away. Therefore, only Amri and Asha survived to date. The two surviving children (Amri and Asha) decided to sell the dispute plot to their brother's son (Juma Selemani) the appellant herein. Amri further sought and granted letters of administration over the dispute plot vide probate cause No. 03/2013 in the Primary Court of Mwandiga at Kigoma.

The Respondents herein were aggrieved with the sale of the dispute property alleging the same to be not of their late grandfather but of their late father Seleman.

They thus decided to sue their own brother, the appellant herein vide land application No. 28/2013 in the District Land and Housing Tribunal for Kigoma.

At the trial tribunal the issue was whether the dispute property was the property of the late Ibrahim Luchagatila Sikuyakwenda which would perhaps legalize his surviving children Amri and Asha to sell or whether the same was the property of the late Seleman Ibrahim.

which would enable the respondents to claim interest as legal heirs.

The trial tribunal adjudged for the ~~respondents~~ that;

*"Plot No. "A" 29 Block MD Gungu Kigoma/Ujiji Municipality is the lawful property of the applicants together with their brother the Respondent since **it is the estate left behind by their late father Selemani Sikuyakwenda and not their late grandfather Ibrahim Sikuyakwenda**".*

The appellant Juma Seleman still maintaining that the property in question was not of his father but his late grandfather through Kagozi Amani Kagozi (Administrator of his estate) preferred this appeal with a total of six grounds of appeal.

Having heard both parties for and against the grounds of appeal, I noted a legal issued on the locus of the respondents at the trial tribunal and competence of the suit thereat. I therefore raised the issue ***suo motto*** and required the parties to address me on it. The issue raised was;

***"Whether the suit by the respondents at the trial tribunal was competent in the absence of letters of administration while the disputed property being alleged to be the property of a deceased person"***.

At first, I thought to deliver the ruling on the issue I have raised ***suo motto*** and in case of ruling would not dispose off the appeal then proceed to deliver the judgment.

But in the cause of drafting the ruling, I thought it move needful to determine the appeal on merit so that to end the matter once and for all which would be in the interest of the justice rather than ending the matter on a legal point alone.

I will therefore, start to address the issue I have raised and decide on it. Despite of the findings that will be reached in regards to the issue, I will proceed to determine the appeal on merit.

On the issue raised by the court *suo motto*, the parties vigorously contested. **Mr. Kagashe** learned advocate for the respondents argued that the suit was competent and the respondents were competent to bring it as they were interested persons in the estate of their late father. Most important, he argued, all together joined hands to sue together unlike when it would have been only one of them sued where his locus would be questioned. He referred me to the case of ***Amina Athumani versus Hadija Mohamed Ninga, land Appeal No. 36/2013 (HC) at Tabora*** in which it was held that the beneficiary in the estate of the deceased person can sue in his name without necessarily obtaining letters of administration.

**Mr. Musa Kassim** learned advocate for the appellant submitted that the respondent lacked the necessary locus to claim over the property of the deceased without having first obtained letters of administration. He further argued that there was no reason for the respondents to have not sought and be granted letters of administration since the demise of their later father in 2004 to 2013 when they instituted the current suit. He referred me to the case of ***Mgeni Seifu versus Mohamed Yahya Khalfani, Civil Application no. 1 of 2009***. He finally distinguished the case of **Amina Athumani** earlier on cited by Advocate Kagashe on the ground that in the said case the property which was subject to the dispute was not solely owned by the deceased. It was a matrimonial property and thus a wife was entitled to sue as an interested party in the property as she had her shares therein.

In rejoinder, Mr. Kagashe learned advocate argued that when a beneficiary to the property sees the property in question is being jeopardized he/she can bring the suit without waiting for letters of administration. He was of

the view that since the property in question was peacefully owned by the family and later on being sold by their relatives (young father Amri and young mother Asha), they were entitled to bring the suit to protect the estate.

It is my settled view that the law is now clear that the plaintiff or applicant as the case may be when brings a suit before the court of law, he or she should not only establish that the court in which the suit or application is brought has the requisite jurisdiction but also that he or she has *locus standi* to bring such a suit or application. See **Lujuna Shubi Balonzi versus Registered Trustees of CCM (1996) TLR 2003.**

When the property in dispute belongs to the deceased person the only person with locus to sue on behalf of the estate is the one who has sought and granted letters of administration of the estate in question.

It has been decided so in a good number of cases both in the High Court and in the Court of Appeal of Tanzania. One of such cases is **Dominica Pius versus Kasese @ John Lumoka, Civil Appeal No. 93/2010 (CAT).**

In the case of **Amina d/o Athumani supra**, my fellow learned Judge **Sehel, J** as she then was held that *for a person to have locus over the estate of the deceased must have been appointed as administrator of the estate is a general rule worldwide but in certain circumstances especially when it is shown that it is necessary to preserve and protect the estate of the deceased one may bring the suit without necessarily obtaining first letters of administration.*

In the circumstances, the learned judge held that despite the fact that **Hadija Mohamed Ninga** had no letters of administration, she had an interest to protect and preserve of herself as a wife of the deceased.

In the instant case the circumstances are different. **Amri Ibrahim and Asha Ibrahim** claimed the dispute property to be the property of their late father Ibrahim Luchagatila Sikuyakwenda while the Respondents claimed that the property in question is that of the late Seleman Ibrahim.

In the circumstances, none of the two sides claimed ownership of the property but claimed ownership to their respective deceased persons. They had no tittle over the dispute plot nor claimed it. That being the case, administration of the said estate was necessary through which tittle would have passed from either of the deceaseds to his legal heirs.

Even though, Amri Ibrahim in Probate cause No. 3/2013 obtained letters of administration over the dispute property. Thus the Respondents should have either petitioned for letters of administration of the estate of their late father before the appointment of Amri Ibrahim listing out the properties intended to be administered as the estate of their late father so that to give the general public including Amri, Asha and Juma Selemani (their brother) a chance to bring objection against such property in which they claims to belong to the late Ibrahim Luchagatila and dully sold to Juma Selemani, **Or** they should have appeared as objectors in the probate case No. 3/2013 supra to establish that the property in question isn't that of the deceased whom administration of his estate is being sought. That would enable the probate court to decide granting letter of administration or not of the property in question. The District land and Housing Tribunal ought to

have rejected the suit right away as they respondents had no **locus standi** whatsoever to sue over the property.

The herein above findings on the issue would have sufficed to end up the matter. But as I have herein above stated, the interest of justice requires the decision of this appeal on merit.

Back to the grounds of appeal, in his first ground, the appellant complains that the suit in the trial tribunal was wrongly heard and determined without Amri Ibrahim Sikuyakwenda having been joined as a necessary party. **Mr. Musa Kassim** learned advocate for the appellant submitted that at the trial the 3<sup>rd</sup> respondent Rukia Selemani testified that Amri Ibrahim Sikuyakwenda and Asha Ibrahim Sikuyakwenda were the one who sold the dispute property to the appellant. Yet they sued the appellant alone without joining the sellers as necessary parties. He argued that such was a violation of a settled law as it was decided in the case of **Juma B. Kadala versus Laurent Mkanda (1983) TLR 103** that in a suit for recovery of land sold to a third party the buyer should be joined with the seller as a necessary party defendant, and that none joinder will be fatal to the proceedings. He further cemented his argument by the decision of the court of appeal in the case of **Shaibu Salim Hoza versus Helena Mhacha, Civil appeal No. 7/2012** which held that a necessary party must be joined and none joinder renders the proceedings a nullity.

Mr. Kagashe learned advocate for the respondent contested such ground of appeal and submitted that it was proper to sue the buyer alone and in case the appellant thought any indemnification, it was open for him to bring the seller in the suit under a third party procedure as provided for under ***Order I Rule 1-16 of the Civil Procedure Code, Cap 33 R.E 2002***. He

again argued that none joinder is not fatal if does not occasion failure of justice, as per Order 1 Rule 9 supra.

I am of the view that in the circumstances of this case, Amri Ibrahim and Asha Ibrahim were necessary parties to be sued along with the appellant. It was undisputed fact that they were the one who sold the dispute plot to the appellant and this fact was well known to the Respondents. They themselves through PW1 (3<sup>rd</sup> Respondent) Rukia Seleman testified at the trial to that effect during cross examination at page 15 of the proceedings;

***"The house was sold on the 25/01/2013 by Amri Ibrahim and Asha Ibrahim to the late Juma Seleman our brother from one mother and one father"***

In the circumstances, there was no good reason for the respondents to have sued the buyer alone leaving out the vendors. The buyer is their brother and the vendors are their uncle and aunt (Baba mdogo na Mama Mdogo) respectively. I would as hereby do draw an adverse inference against the respondents that they avoided joining Amri and Asha as they knew the two would have probable, justifiable, and strong defence against them. Another adverse inference is that they avoided to join the two as they knew they could not stand before their parents (Amri and Asha) to deprive them their lawful property as they would face misfortunes (*waliogopa kupata laana kwa kusimama mbele ya wazazi wao Amri na Asha na kuwanyang'anya mali yao*) but they could do so to their own brother.

Not only that but also by the time the respondents commenced the suit at the trial tribunal Amri Ibrahim was already appointed as administrator of



the estate of his late father the dispute property being the only property sought to be administered.

The 1<sup>st</sup> respondent herein Ibrahim Seleman stood as objector against Amri Ibrahim but at the end Amri Ibrahim was appointed to administer the estate.

The 3<sup>rd</sup> respondent Rukia Seleman acknowledged at the trial that the respondents knew that Amri sought administration of such estate and he was duly appointed despite of their objection against him;

***"I know that we opposed the application of the Administrator but latter the Primary Court Mwandiga appointed the one Amri Ibrahim".***

In the circumstances, the respondents before commencing the suit against the appellant they were fully aware that by the decision of the probate court, the suit property was entrusted to Amri Ibrahim for the beneficiaries of the late Ibrahim Luchagatila Sikuyakwenda.

Amri Ibrahim having been appointed as administrator of the estate in question by a competent court and in the knowledge of the respondents, it was quite wrong and fatal to ignore his necessity in the suit beforehand.

The first ground of appeal is thus allowed.

In the second ground of appeal, the appellant is complaining that the trial tribunal erred to declare the respondents owners of the dispute property while the same was already been declared by a probate court as the estate of the late Ibrahim Luchagatila Sikuyakwenda in which Amri Ibrahim had obtained letters of administration vide probate ~~cause~~ No. 3/2013 at Mwandiga Primary Court.

Under this second ground, **Mr. Musa Kassim** learned advocate challenged the jurisdiction of the tribunal over the matter. He argued that so long as the property in question was already determined to be the property of the late Ibrahim Luchagatila Sikuyakwenda vide the probate court supra, the trial tribunal had no jurisdiction to determine ownership of the estate. He cited the case of **Mgeni Seifu versus Mohamed Yahaya Khalfani, Civil application No. 1/2009** to back up his argument.

**Mr. Kagashe** learned advocate for the respondents resisted the second ground of appeal arguing that the probate court only appointed the administrator of the estate and did not deal with issues of ownership. He cited to me section **3 (1) of Act No. 2/2002** and **section 167 of the Land Act** which provides for courts which are vested with jurisdiction to determine Land Disputes in which the trial court is included.

My finding on this ground is that since neither Amri Ibrahim nor the respondents claimed ownership over the dispute property, but each tried to establish that the property in question belonged to their respective deceased persons, then the suit at the trial tribunal was not purely a land dispute but a probate dispute whose jurisdiction is vested in the Probate and Administration court and not a land court. A land court is incompetent to assume roles of administrators of estates to pass title of estates to heirs neither can pass such titles in case the administrators fails to perform their duties, only the Probate and Administration Court can do.

It is only the probate court which is vested with powers to determine whether a dispute property belongs to the deceased person or not through probate cause by way of petition for letters of administration and objection

thereof if any. Again, it is only the probate and administration court which can declare who is entitled to inherit and who is not, a land court has no such powers.

This is a clear position of the law as it was decided in the case of **Mgeni Seifu** supra. The Court of appeal in the said case at page 14 held that;

*"Where there is a dispute over the estate of the deceased, only the probate and administration Court seized of the matter can decide on the ownership".*

In the probate Cause no. 3/2013 supra in which Amri Ibrahim listed the dispute property as being the estate of the late Ibrahim Luchagatila Sikuyakwenda, ownership of the property was not at issue. The first respondent herein Ibrahim Selemeni had objected him on the ground that the clan meeting has yet to convene a meeting to propose the would be administrator of the estate. The objection was thus not that the property is not belonging to the deceased Ibrahim Luchagatila Sikuyakwenda but against the Petitioner that he has not obtained consent of the clan;

***"Ibrahim Seiemani akajitokeza na kuleta pingamizi dhidi ya mwombaji wa usimamizi wa mirathi hii... kwa kuwa hawajafanya kikao cha familia... pia akajibu hoja za SU1 na kusema kuwa yeye ni mjukuu wa marehemu. Famila ya marehemu ndio inapaswa imteue".***

The first respondent thus, during his objection did not claim ownership of the property to his late father but to his grandfather only that the petitioner was not proposed by the clan meeting. His objection was overruled and Amri Ibrahim was appointed as administrator of such estate.

The 1<sup>st</sup> respondent having failed in his objection rushed in the District land and Housing tribunal along with the other respondents and instituted a suit claiming the property in question to belong to their late father without obtaining letters of administration to that effect. It is my firm finding that the trend taken by the respondents was a pure abuse of the due process of the law and court processes.

They ought to have challenged ownership of the dispute property during the probate cause by way of objection so that upon satisfaction, the Probate and administration Court excludes the same from the estate sought to be administered. The respondents did not however do so. They only attempted to object the petitioner without disputing that the property is not the estate of the late Ibrahim Luchagatila Sikuyakwenda whose estate was the subject matter to the probate and administration cause. They left the probate court to believe that ownership of the property to the deceased person was not disputed. It thus proceeded to appoint Amri Ibrahim (the son of the deceased) to administer the same.

It was thus wrong for the respondents to rush in the District Land and Housing Tribunal to establish that the dispute property belongs to their deceased father. Only a probate Court could do. By rushing to the trial Court, the respondents purported to make the District Land and Housing Tribunal an appellate Court over the Probate Court so that it could charge the decision of the Probate Court which adjudged the property in dispute as the property of the deceased Ibrahim Luchagatila Sikuyakwenda and in lieu thereof declare the same to be the property of their late father Selemani Ibrahim thereby denying Amri Ibrahim to administer the same.

That in fact happened when the District Land and Housing Tribunal adjudged against the late Ibrahim Sikuyakwenda without hearing his legal representative when it held;

*"Conclusively as per the reasons adduced herein above, I proceed to allow the applicant's application by declaring that the suit house situated at Plot No. "A" 29 Block MD Gungu Kigoma/Ujiji Municipality is the lawful property of the applicants together with their brother the respondent since it is the estate left behind by their late father Selemani Sikuyakwenda and not their late grandfather Ibrahim Sikuyakwenda".*

In so holding, the District Land and Housing Tribunal was trying to render the decision of the probate Court useless or nugatory since the property which it entrusted to Amri Ibrahim to administer, the District Land and Housing Tribunal grabbed him and gave to the respondents.

That is purely an abuse of court process, which should at all costs not tolerated. The second ground of appeal is also allowed.

With these two grounds of appeal being allowed along with the findings on the issue which was raised by the court **suo moto**, I don't see the need to dwell into the remaining four grounds of appeal.

The proceedings, judgment and decree of the trial District Land and Housing Tribunal is hereby declared a nullity. The same are set aside.

Before I finalize the matter, I would like to make a finding on the issue that Amri Ibrahim had sold the dispute plot to the appellant before he had obtained letters of administration, his sale was thus questionable. It is undisputed fact that it is true the said Amri Ibrahim sold first the property

in question and later sought and granted letters of administration over the property. He sold the property in consensus with his sister Asha Ibrahim the only surviving children of the late Ibrahim Sikuyakwenda.

It is further stated in evidence that having sold the dispute plot he divided the proceeds to the five children and only legal heirs of his deceased father namely Selemani himself (Amri), Kekanwa, Moshi and Asha. As three of them Selemani, Kekanwa and Moshi had passed away he gave their respective portions to their children. The children of Kekanwa and Moshi are said to have received the portions of their parents but that of Selemani (the respondents) refused hence this dispute.

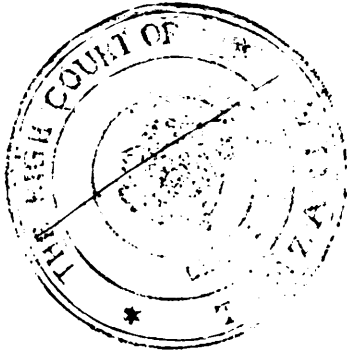
It is my settled view that despite the fact that Amri Ibrahim sold the dispute plot before his appointment as administrator of the estate, he realized to have no good title to pass and that is why he decided to formerly petition for letters of administration over the same property.

Upon being appointed, he did not rebut the sale. Even at the time he gave his evidence at the trial tribunal on the 26/5/2015 he confirmed the sale and maintained it. In the circumstances, under **section 123 of the Evidence Act, Cap.6 R.E 2002**, for the act of Amri Ibrahim not to rebut his earlier on sale of the dispute property after his appointment and by his declaration of the sale on 26/5/2015 when he was giving the evidence at the trial, can justifiably be inferred that he legalized the sale after he obtained the letters of administration. He cannot come to deny it later. I therefore, rule out that despite the sale to have been done on 25/1/2013 the same took effect and legal force on 19/4/2013 when the seller was formerly appointed as the administrator of the estate and did not take any

step to rebut the sale. The appellant is thus the lawful owner of the dispute plot as from 19/4/2013. Having held so, I hereby declare plot No. "A" 29 Block MD Gungu the lawful property of the appellant. The respondents are strangers and trespassers thereat and are hereby ordered to give vacant possession to the appellant with an immediate effect.

This appeal is allowed with costs both costs at the trial tribunal and in this Court. Whoever aggrieved with this judgment has right of appeal to the court of appeal of Tanzania subject to the relevant guiding laws of the Land.

***It is so ordered.***



A handwritten signature in black ink, appearing to be "A.K. Matuma", is written over a horizontal dotted line.

**A.K. Matuma,  
Judge,  
17<sup>th</sup> February, 2020**