

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**PC CIVIL APPEAL NO. 21 OF 2018**

*(Arising from Civil Case No. 46 of 2013 of the Primary Court of Kondoa and Civil Appeal No. 5 of 2014 of the District Court of Kondoa at Kondoa)*

**SALIMA LUBUVA ODIMO ..... APPELLANT  
VERSUS  
HAMADI RAMADHANI ODIMO .....RESPONDENT**

**JUDGMENT**

16/08/2021 & 30/08/2021

**KAGOMBA, J**

The appellant SALIMA LUBUVA ODIMO by Petition of Appeal filed in this Court on 29<sup>th</sup> August 2018 moved this Court to overturn the decision of the District Court of Kondoa at Kondoa. The decision being impugned was delivered by Hon. F. R. Mhina on 02/09/2015 in favour of the respondent, HAMADI RAMADHANI ODIMO.

At the District Court of Kondoa, the appellant filed a Civil Appeal No. 5 of 2014 which originated from Kondoa Urban Primary Court, where the appellant herein was claiming for eleven (11) cows, five (5) donkeys, one (1) animal plough and two (2) chains for animal from the respondent being the property of her deceased father wrongfully and maliciously given to the respondent by his father RAMADHANI ODIMO who was the administrator of the estate of the deceased appellant's father. The District Court of Kondoa, found that the matter was purely a probate cause and that it was filed in the District Court wrongly.

The District Court discovered that the appellant is among the beneficiaries of their father's estate whose probate cause was heard and decided in a lower Court where the respondent's father was duly appointed the administrator. The administrator performed his duties including the division of the deceased's estate to the beneficiaries. The appellant was dissatisfied with the whole process of collection and distribution of the estate and decided to institute a case in the Kondoa Urban Primary Court against the respondent alleging that the respondent had withheld some of the deceased's properties which as a result were not included in the distribution to the beneficiaries.

From above findings, the District Court had to determine whether the appellant had *locus standi* to institute the matter in the first place. Guided by the provisions of sections 99 and 100 of the Probate and Administration of Estate Act, Cap 352 which provide to the effect that all legal representation of the deceased person is vested in the appointed administrator, who has the same power to sue as was the deceased, the District Court found the appellant lacked legal status in instituting the Civil Case No. 46 of 2013. The Court directed the appellant to follow legal procedures before instituting any other legal action in this regard.

The above judgment of the District Court of Kondoa aggrieved the appellant. She has now decided to appeal to this Court based on two grounds as follows:

1. The District Court erred in law and fact in holding that the Appellant lacks status in instituting Civil Appeal No. 46 of 2013.

2. The District Court erred in law and fact by failing to analyze the evidence submitted in the proceedings by the appellant.

The appellant prayed this Court to quash and set aside the Judgment of the District Court.

On the date fixed for hearing, both the appellant and the respondent appeared in person and addressed the Court with regard to their respective positions. The appellant submitted that the respondent had agreed to give her the land which she inherited from her father. She said the respondent made the promise before the village council when the matter was taken there for determination. She said the respondent had promised to give back the land and eleven cows by 30/11/2013 but he did not deliver the promise.

The appellant further mentioned the twists and turns their dispute has taken in at Kondoa Police Station and the lower Courts and prayed this Court not to order determination of this to be done case at lower Court because she has no confidence with such lower Courts.

On his part the respondent told the Court that after the demise of the appellant's father the family appointed Ramadhani Odimo to be the administrator of the estate of the late Lubuva Odimo. He submitted that the administrator executed his duties of collection and distribution of the deceased's estate to the satisfaction of family members. He said further that after collection of the properties, the administrator gave the assets to the appellant who was the daughter of the deceased.

He submitted that the appellant took the assets she was given but after several months she went to complain to the village government that the respondent had withheld some of those properties.

The respondent told the Court about his arrest and discharge on bail by the ward officials and about the case filed against by the appellant at the Primary Court in Kondoa where he was found innocent. He said the appellant decided to appeal of the District Court which upheld the decision of the Primary Court, hence this further appeal to this Court.

The Respondent told this Court that all the inheritance matters were handled by the Administrator of the estate of the late Lubuva Odimo. He therefore found no reason why he was sued by the appellant. He prayed the Court to follow the law and do him justice.

In her rejoinder, the appellant denied being given her inheritance. She said that the respondent promised on 14/11/2013 in writing that he will give back to her ten (10) cows, five (5) donkeys and Tsh 100,000/= but he has not done so. She rejoined that the appellant's father who was the administrator of the deceased's estate gave the respondent assets which belongs to her as part of her inheritance. She prayed the Court to help her get her rights. She said the respondent is doing her injustice because of her gender. She clarified that the respondent had signed a document promising to give back the inheritance after his father had pleaded with the village government to release him on bail the day he was arrested.



Having gone through the submissions of both parties, it is clear in my mind that this case is centered on distribution of the estate of the Late Lubuva Odimo, the appellant's father. Therefore, the issue before this Court is whether the appellant's claim against the respondent is tenable in law.

To determine the stated issue, the Court has to consider the appellant's main claim that the respondent was given properties from the deceased's estate by his father who was the administrator of the deceased's estate. She made reliance on the document purported to be signed by the respondent on 14/11/2013 whereby the respondent voluntarily committed himself to give back her ten (10) cows, five (5) donkeys and cash Tsh. 100,000/=. However, my perusal of the five grounds of appeal filed by the appellant in the District Court of Kondo, none of those grounds showed that the appellant was suing the respondent to enforce a promise to give back the stated properties. Only two grounds can be related to the claims made before this Court. I wish to reproduce grounds number 4 and 5 for further discussion.

*" 4. That, The Primary Court erred in law and fact in not consideration (sic) Respondent used or by fraud pretended opened letters of administration at the Kondo Urban Primary Court whereby on being appointed administrator of deceased estate LUBUVA ODIMO was able to withdraw cash 100,000/= from the Nation (sic) Microfinance Bank without the knowledge of the Appellant.*

*5. That, The Primary Court erred in law and fact in not considering the issue of the assets left by LUBUVA ODIMO was decided, and the elders of KWAMAFUNJI Village found the Respondent who was the caretaker of LUBUVA*

*ODIMO 19 cows, 5 punda, one jembe, nyororo mbili (2) under a Muhtasari written was order to had over those assets to the Appellant the lawful heir of LUBUVA ODIMO and in fact handed some of the cattle or cows and not the 14 acres of land and the rest assets the admission is in written in the Court below”.*

The appeal to the District Court was argued by way of written submissions. On Appellant's behalf, Advocate Mtui in his written submission regarding ground 4 and 5 told the District Court that there was Tsh. 100,000/= that was sent by the British Government for ex-soldiers who served in the Second World War, as was the appellant's deceased father, but the money was withdrawn without the appellant's knowledge. In a rather unclear submission, it appears that the money was withdrawn by the respondent. It was further submitted that the clan members' meeting ordered the respondent to refund the appellant all the cows, farms and other assets which were being cared for at the respondent's father area. The appellant, thus prayed the District Court to quash the decision of Kondoa Urban Primary Court and set aside all orders made by that trial Court.

In his reply to the Petition of Appeal the respondent, among other things, submitted that “the appellant is misdirecting herself as she is equating new issues which are not the basis of her claim in a Civil Case No. 46/2013” at Kondoa Urban Primary Court. The respondent vehemently denied the appellant's appeal.

Now, having gone through the record of the Kondoa Urban Primary Court in Civil Case No. 46/2013, I find difficulties to see how the appellant

proceeded directly against the respondent in a matter that is basically an inheritance matter where the respondent was not the administrator of the deceased's estate. The appellant's original claim before the Primary Court in Civil Case No. 46/2013 was recorded as follows:

*" Namdai Mdaiwa Hamadi Ramadhani Odimo mali ya marehemu baba yangu ikiwa ni ng'ombe (11) thamani ya Sh. 7,700,000 Jembe la ng'ombe 1 na minyororo 2 thamani ya Sh. 160,000, Punda (5) thamani ya Sh. 700,000/= na mashamba 3 ambayo yapo Kondoa kwa kuwa mnamo tarehe 30/11/2013 mdaiwa aliahidi kwa maandishi kunikabidhi vitu hivyo mbele ya wazee wa Baraza Kijiji Kwamafinchi bila kufanya hivyo. Hivyo nimeamua kumdai mali za marehemu baba yangu kisheria".*

*(Direct translation: I claim from the defendant assets of my late father being eleven (11) cows, valued at Tsh. 7,700,000/=, one plough plus two chains valued at Tsh160,000/=, 5 donkeys and three farms located in Kondoa, because on 30/11/2-13 the Defendant promised in writing to hand over to me those properties in front of the Elders Council of Kwamafinchi village but has not done so".*

The trial Court record shows that on 29/1/2014 when the appellant's case opened, she told the Court that her uncle gave her four cows and four calves. The appellant asked the respondent about other cows, and she was told to come back later. However, when examined by the Court, she said an administrator of her late father's estate was appointed. She mentioned the administrator as her uncle, the respondent's father.



Trial record further shows that the appellant was not satisfied by division of her late father's estate. This is in accordance with SM II Jumanne Ally Mataka. This appellant's witness also told the Court about payment for ex-Second World War soldiers which the appellant was not given. The testimonies of the rest of the appellant (then plaintiff's witnesses) talked about the appellant's dissatisfaction with the distribution of the deceased's estate. It is for this reason the District Court on appeal found that the appellant had no *locus Standi* to sue the respondent but could properly sue the administrator of the deceased's estate, the appellant's uncle. I think the District Court was right in holding so. The law is very clear under section 99 of Probate and Administration of Estates Act, [Cap 352 R.E 2002], which proved thus:

*"99. The Executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such".*

By virtue of the above cited provision, any property of the late Lubuva Odimo, upon grant of letters of administration of his estate, vested in Ramadhani Odimo, the respondent's father. As such the appellant could only sue the administrator of the estate for his alleged breach of duty as the administrator, including a claim for unaccounted inheritance, such as the cows, ploughs and chains, and the farms at Kondoa. For this reason, even the claim that the respondent has not implemented his promise to refund those assets cannot be enforced by the Court so long as the same is based on the estate of the deceased person that is legally vested in the administrator.



It is trite law that one cannot claim anything against the other if he has no *locus standi* to present such claims against that person for enforcement by the Court.

In **Lujuma S. Ballonzi Vs. the Registered Trustees of Chama cha Mapinduzi** [1996] TLR 2003 it was held that a person bringing a matter to Court should be able to show that his right or interest has been breached or interfered with.

In view of the provision of section 99 and 100 of the Probate and Administration of Estate Act, [Cap 352 R. E 2002] collection of the deceased's estate belonging to the deceased's estate, it was for the administrator is a matter placed by law in the hands of the administrator. In this case, if the respondent had unlawfully taken properties to take action as he holds the title to such properties until he is duly discharged from his duties.

Even when it is alleged that the administrator is the culprit for having divided inheritance to a third party, the appellant would still be needed to proceed against the said administrator for as long as he is alive. He has a duty to administer the estate faithfully.

In **Christina Mrimi V. Coca Cola Kwanza Bottles Ltd**, Civil Appeal No. 122 of 2008, the Court of Appeal held that the appeal was incompetent for failure to identify the appropriate party.

From the foregoing discussion, I find the appellant lacking the necessary legal status to claim anything from her deceased father's estate without involvement of her uncle who was duly appointed as the Administrator of the deceased's estate.

For the above reason, I dismiss the appeal with no order to costs.

**Dated at DODOMA this 30<sup>th</sup> day of August, 2021**

A handwritten signature in blue ink, appearing to read 'ABDI S. KAGOMBA', is positioned above the printed name.

**ABDI S. KAGOMBA**

**JUDGE**