

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA
LAND REVISION NO. 2 OF 2021.

**(From Land Case No. 317 of 2018, in the District Land and
Housing Tribunal of Mbeya, at Mbeya).**

MONICA DANTO MWANSASU

(By Virtue of Powers of Attorney

From Atupakisye Kapyela Tughalaga).....APPLICANT

VERSUS:

1. ESRAEL HOSEA.....1ST RESPONDENT

2. ISSA MWAKIJELE.....2ND RESPONDENT

RULING

26/05 & 21/09/2021.

Utamwa, J.

This is a ruling on a preliminary objection (PO) raised by the first respondent in this application, ESRAEL HOSEA. It is against the application at hand filed by one MONICA DANTO MWANSASU (passing as a holder of powers of attorney from one Atupakisye Kapyela Tughalaga). The application is essentially revisional by nature. It intends to revise the

proceedings of the District Land and Housing Tribunal of Mbeya, at Mbeya (the DLHT), in Land Case No. 317 of 2018, and set aside the judgment thereof. The application is preferred under section 79(1)(a)-(c) and 3 of the Civil Procedure Code, Cap. 33 R.E 2019. It was supported by the affidavit of the said Monica.

In his preliminary objection raised orally in court, the first respondent shortly submitted that, he objected to the hearing of the application on the ground that, the same has been filed by a person who was not a party before the DLHT. The actual party (applicant) was one Atupakisye Kapyela Tughalaga, however, the application has been filed by the above mentioned Monica Danto Mwansasu instead of the said Atupakisye Kapyela Tughalaga. The second respondent did not object to the application.

In her replying submissions, the applicant (the said Monica Danto Mwansasu) claimed that, she filed the application in that style because, she represents the said Atupakisye Kapyela Tughalaga by way of powers of attorney. That said Monica cannot conduct the matter for herself following her old age.

I have considered the record, the arguments by the parties and the law. Indeed, it is not disputed by the parties and according to the record that, before the DLHT the applicant was the said Atupakisye Kapyela Tughalaga. The respondents were Esrael Hosea and Issa Mwakijebela who also appear in their respective capacities in the matter at hand.

It follows therefore, that, though the first respondent did not properly and legally express his concern for being a layman, his reaction was justified in law. He can be understood as saying that, the applicant in

the matter at hand (Monica) lacks *locus standi* and cannot file the matter in her own name, hence the incompetence of the application itself. The applicant tried to justify her move by basing on the powers of attorney. The major issue here, is therefore, whether or not in law, the applicant (Monica) acquired *locus standi* by virtue of powers of attorney to the extent of instituting the present application in her own name.

In my view, our law is not in favour of any affirmative answer to the major issue posed above on the following grounds: in the first place the law instructs that, a party to court proceedings cannot prosecute or defend a matter into which he lacks *locus standi*, a court of law also lacks powers to entertain such proceedings. Otherwise, the proceedings become a nullity; see the holding of this court in the case of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203**. I also underscored this stance in the case of **Lazaro Kimbindu v. Athanas Mpondangi, High Court (PC) Civil Appeal No. 137 of 2003, at Dar es Salaam** (unreported). At this juncture, I add that, the fact that one holds powers of attorney for another person, does not in law afford him/her *locus standi* to the extent of entitling him/her the right to institute the proceedings in his/her own name. The powers of attorney are only limited to the representation of the donee of the powers where the matter is instituted in court in the donee's own name and not in the name of the holder of the powers of attorney.

In my settled opinion therefore, a holder of powers of attorney cannot be vested with an automatic mandate for instituting any proceedings for the donee of the powers in his/her (holder of powers) own

name. It is more so, where he/she (holder of powers) was not a party in the previous proceedings that raised the proceedings at issue (as it is in the matter at hand). This opinion is also based on the ground that, in our law, the representation by way of powers of attorney is itself, subject to proof by evidence before the court and approval by it. This is so because, not every holder of powers of powers of attorney can be permitted to represent the donee of the powers in judicial proceedings. Some legal conditions permitting such kind of representation must firstly be met before one is permitted to act in such capacity. In the case of **Julius Petro v. Cosmas Raphael [1983] TLR 346** for instance, this court found that, only genuine authorized agents are permitted by law to represent other persons by way of power of attorney.

As to which are the legal conditions (genuine reasons) for a proper representation by power of attorney, in my settled view, are all reasons which may, before the eyes of the law, legitimately cause undue hardship for a party to appear and defend his case. They include, and not limited to; established long-standing absence from the country or jurisdiction of the court, and inability for prolonged serious illness or old age; see the case of **Hamidu Ndalaha Magesha Mandagani v. Raynold Msangi and Reda Farm & Livestock Partners, HCT (Commercial Division), Commercial Case No. 52 of 2007, at Dar es Salaam** (unreported). Other factors of the like, being beyond the control of the party to proceedings, may form genuine reasons for the representation.

It follows thus, that, permitting proceedings of the nature under discussion without proper scrutiny on the genuineness of the representation may pose a great danger to judicial proceedings, especially where feign holders of powers of attorney may end up depriving the actual rightful parties of their entitlements by *inter alia*, executing court orders in their own favours and at the detriment of the holders of the powers of attorney. Courts of law should thus, avoid proceedings of this nature that are likely to cause such injustice.

Owing to the above cited imminent danger of the course opted by the applicant in the matter at hand, the irregularity she committed cannot be saved by the principle of overriding objective. This principle essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice as opposed to procedural technicalities. It was underlined by the Court of Appeal of Tanzania (the CAT) in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported) and its many other decisions.

Nonetheless, the principle of overriding objective was not meant to absolve each and every blunder committed by parties or adjudicating bodies. Had it been so, all the rules of procedure, including those which are significant in ensuring fair trials, would be rendered nugatory. The principle does not thus, create a shelter for each and every breach of the law on procedure. This is the envisaging that was recently underlined by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the

principle of overriding objective amid a breach of an important rule of procedure.

Having observed as above, I answer the major issue posed above negatively that, in law, the applicant (Monica) did not acquire *locus standi* by virtue of powers of attorney to the extent of instituting the present application in her own name. She was not thus, entitled to institute these proceedings the way she did.

I consequently find the irregularity fatal to the extent of vitiating the entire application. It is declared incompetent for want of *locus standi* on the part of the applicant (Monica). It is accordingly struck out with costs. In case the said Atupakisye Kapyela Tughalaga still wishes, she is at liberty to institute proper proceedings according to the law in seeking her justice (if any) in her own name. She may then follow the law on powers of attorney if she thinks she is entitled to be so represented (by way of powers of attorney) through the said Monica. It is so ordered.



JHK. UTAMWA.
JUDGE.
06/21/2021.

Date: 21.09.2021.

Coram: Hon. P.R. Kahyoza -DR.

Applicant: Present.

For the Applicant:

Respondent: Both present.

For the Respondents:

B/C: Patrick Nundwe.

Court: Ruling delivered in the presence of parties.



P.R. Kahyoza

Deputy Registrar

21/09/2021