

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 10 OF 2021

*{Arising from the decision of the District Land and Housing Tribunal for Mara at
Musoma in Appeal No 94/2020 and Originating in the Neruma Ward Tribunal on land
Application No 1 of2020}*

THOBIAS YAKOBO MALIBWA

(As the Administrator of the Estate of Late Jacobo Zakaria

Malibwa.....APPELLANT

Versus

GATAWA MAGOMBA	1ST RESPONDENT
MSAFIRI MFUNGO.....	2ND RESPONDENT
MFUNGO MWIZARUBI.....	3RD RESPONDENT
SALVATORY MGANGA SILVANUS MASATU ... JIGE	4TH RESPONDENT
CHABAJA	5TH RESPONDENT
MFUNGO MAGESA	6TH RESPONDENT
RAMADHANI MUSSA .	7TH RESPONDENT
ALFRED MABUNDA	8TH RESPONDENT
SAMSON MBOGO9TH RESPONDENT
MUSIMU MUGETA .	10TH RESPONDENT
GIDION BWIRE	11TH RESPONDENT
NYAKATAGA KULWIJILA	12TH RESPONDENT
NYAMWAGA DAUDI	13TH RESPONDENT
IBRAHIM BWIRE	14TH RESPONDENT
MFUNGO MALANDO	15TH RESPONDENT
	16TH RESPONDENT

MAGESA SULUSI.....	17TH RESPONDENT
SOSPETER MASATU	18th RESPONDENT
THEOPISTA JOHN	19th RESPONDENT

JUDGMENT

2nd July & 1st October 2021

Kahyoza, J.:

Thobias Yakobo Malibwa sued **Gatawa Magomba, Msafiri Mfungo, Mfungo Mwizarubi, Salvatory Mganga, Silvanus Masatu, Jige Chabaja, Mfungo Magesa, Ramadhani Mussa, Alfred Mabunda, Samson Mbogo, Musimu Mug eta, Gidion Bwire, Nyakataga Kulwijila, Nyamwanga Daudi, Ibrahim Bwire, Mfungo Malando, Magesa Sulusi, Sospeter Masatu and Theopista John (Gatawa Magomba and 18 Other persons)** for trespassing to the land left behind by his late father Jacobo Zakaria Malibwa before Neruma Ward Tribunal in personal capacity.

Gatawa Magomba and 18 Other persons won the case. Aggrieved, **Thobias Yakobo Malibwa** appealed to the District Land and Housing Tribunal (DLHT) as the Administrator of the estate of the late **Jacob Zakaria Malibwa**. He appeared in the ward tribunal in personal capacity and appealed in the capacity of the legal representative of the late **Jacob Zakaria Malibwa**. The DLHT decided in the favour of **Gatawa Magomba** and 18 other persons, on the ground that the appellant had no *locus standi*.

Undaunted, **Thobias Yakobo Malibwa**, the Administrator of the estate of Late **Jacob Zakaria Malibwa**, appealed to this Court raising three grounds of appeal.

Briefly, **Thobias Yakobo Malibwa** alleged that **Jacob Zakaria Malibwa**, his father, passed away on the 1st January 1980 leaving behind the disputed land. After, **Jacob Zakaria Malibwa's** death, the appellant and his family left the land in dispute in the care of their relatives. The agreement was that, the caretaker use the land and return it to **Thobias Yakobo Malibwa** and his family upon their return. When they returned, they found the land invaded. The invaders told **Thobias Yakobo Malibwa** that the Village Land Council allocated the disputed land to them and some contended that they purchased the land from people who had title. Consequently, Thobias Yakobo Malibwa sued **Gatawa Magomba** and 18 Other persons.

The Court heard the appeal orally. During hearing, Thobias Yakobo Malibwa enjoyed the service of Mr. Godfrey Marobhe Muroba the learned advocate while Mr Emmanuel Baraka Werema, the learned advocate the represented respondents.

Mr Godfrey the learned advocated abandoned two grounds of appeal, which are the first and second grounds of appeal. He retained the 3rd ground of appeal, that-

- 1)the District Land and Housing Tribunal erred in both law and fact for failure to declare a nullity on the proceedings and judgment of the trial tribunal if truly the appellant lacked *locus standi* to file any civil action against the respondents.

The learned advocate submitted that the DLHT found that Thobias Yakobo Malibwa had no *locus standi* to sue **Gatawa Magomba** and 18 Other persons without letters of administration of his father's state. It was the appellant's advocate's submission that after the DLHT found that the appellant had no locus standi to sue it bound to declare the proceedings before the ward tribunal a nullity. He referred this Court to the case of

Lujuna Shubi Bagonzi (senior) V Registered Trustees of Chama cha Mapinduzi [1996] TLR 203. (Sammata J), which defined what is *locus standi*. He prayed for the proceedings to be declared nullity.

Replying to the appellant's advocate's submission, Mr. Emmanuel the learned advocate submitted strongly regarding the first and second grounds of appeal, which the appellant withdrew. With all due respect, I no reason to reproduce and consider his reply Mr. Emmanuel the learned advocate's submission against the grounds of appeal, which the appellant withdrew. It is a waste of Court's time and energy.

Mr. Emmanuel the learned advocate submitted regarding the ground of appeal the appellant retained that, the filed the matter before Ward Tribunal in 2019. The appellant filed the case on his own name while the land belonged to his late father who passed away in 1st January 2020. The appellant after realizing that he had no *locus standi* he went and applied for letters of administration of the deceased estate. After obtaining the letters of administration of the deceased's estate he appealed to the DLHT. The DLHT held that the appellant had no right to appeal. He concluded that it was an afterthought and payed the Court to dismiss it.

In his rejoinder, Mr. Godfrey, the appellant's advocate stated that it was true that the ground was not raised before the first appellate court. He argued that the third ground of appeal constituted the point of law, which can be considered at any stage. In support of his argument, he cited the case of **Godfrey Wilson Versus Republic** 128/2018 CAT at Bukoba (unreported). He prayed to this Court to consider the point of law.

I have considerably the submissions of the learned counsel of the appellant and the reply by the learned counsel of the respondents. In my considered view, I am unable to hold that the third ground is an

afterthought or that appellant ought to have raised it before the first appellant tribunal. As the record bears testimony is the appellate tribunal, which raised the question of *locus standi*, hence, the appellant could not have made it a ground to that tribunal. For that reason, it wrong to argue that the third ground of appeal is an afterthought as the appellant raised it for the first time before this second appellate Court.

The parties' advocates do agree that the appellant filed the case in his personal capacity. Having discovered that he had no locus to sue as he was not the administrator of his deceased father's estate, he quickly applied and obtained letters of administration of the estate. He lost the case before the ward tribunal in personal capacity and emerged before the appellate tribunal as the administrator of his deceased father's estate.

In addition, the parties' advocates do agree the appellant instituted the dispute before the ward tribunal without jurisdiction. The appellant filed the case against **Gatawa Magomba** and 18 Other persons under his personal capacity at the Neruma Ward Tribunal. The evidence showed that the appellant claim the disputed land, which was his late father's property. It is trite law it is the administrator of the deceased's estate who is competent to sue or be sued in relation to the deceased's property. Thus, it is the administrator of the deceased's estate who has a locus standi is the right or capacity, to bring an action or to appear in a court or tribunal to claim the deceased's property or

defend it. See the case of **Ibrahimu Kusaga v. Emanuel Mweta [1986] TLR 26** where the Court stated that-

7 appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases, all those interested in determination of the dispute or establishing ownership may institute proceedings against the Administrator or the Administrator may sue to establish claim of deceased's property."

Having considered the submissions and the analysis above, I buy the appellants counsel's submission that the appellant at the time he instituted the dispute at trial tribunal was neither the owner of the suit land nor the administrator of the deceased father's estate, hence, he (Thobias Yakobo Malibwa), had no *locus standi* to sue. Consequently, the proceedings and judgment of the trial tribunal and the subsequent proceedings and judgment before the appellate tribunal were a nullity.

In the end, I allow the appeal, quash the proceedings of both, the ward tribunal and district land and housing tribunal and set aside the judgments. Had the appellant not commenced incompetent proceedings before the ward tribunal, I would have awarded him costs. On the ground that the appellant won the appeal but he is blameworthy, each party shall bear its own costs.

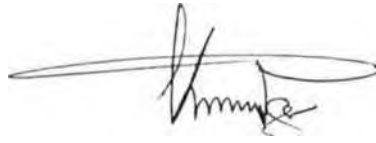
It is ordered accordingly.



J. R. Kahyoza
JUDGE
1/10/2021

Court: Judgment delivered in the presence Mr. Godfrey Marobhe Muroba for the appellant and Mr. Werema advocate for the respondents. B/C Ms.

Milling present.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a long horizontal flourish extending to the left.

J. R. Kahyoza

JUDGE

1/10/2021