

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)  
AT MWANZA  
LAND CASE APPEAL NO. 68 OF 2021**

**(Appeal from the Ruling and Order of the District Land and  
Housing Tribunal for Geita at Geita)**

**ALOYCE BATIHO KITOGWA.....APPELLANT  
VERSUS  
MABULA KITOGWA.....1<sup>ST</sup> RESPONDENT  
TELELA WILLIAM.....2<sup>ND</sup> RESPONDENT  
THOBIAS MABULA.....3<sup>RD</sup> RESPONDENT  
PASTORY MUKANGANYILILI.....4<sup>TH</sup> RESPONDENT  
WILSON CHALANGA.....5<sup>TH</sup> RESPONDENT  
PAULINA BENJA.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

18<sup>th</sup> May & 4<sup>th</sup> July, 2022

**DYANSOBERA, J.:**

In this appeal, the appellant Aloyce Batiho Kitogwa seeks to impugn the ruling and order of the District Land and Housing Tribunal in the Land Application No. 60 of 2020. According to the Petition of Appeal filed on 20<sup>th</sup> day of December, 2021 the grounds of appeal upon which the appellant pegs her complaints are four.

1. That the trial Tribunal erred in law and fact by finding that the dispute was *res judicata*

2. That the trial Tribunal erred in law and fact by holding that the applicant has no *locus standi* since he is not an appointed administrator of the estate.
3. That the trial Tribunal erred in law and fact by basing its decision on the reliefs sought instead of looking on the entire application
4. That the trial Tribunal erred in law and fact by considering the application as the Probate and Administration of Estate.

On 22<sup>nd</sup> day of April, 2022 the 1<sup>st</sup> and 3<sup>rd</sup> respondents opposed the appeal by filing a reply to memorandum of appeal.

Before the District Land and Housing Tribunal for Geita, the appellant sued the respondents in Land Application No. 60 of 2020 claiming the following reliefs:

- i. Declaration that the land in dispute was a property of the late Aloyce Batiho Kitogwa and not the respondents'
- ii. That the act by the respondent amounts to trespass to the land in dispute
- iii. Permanent injunctive order restraining the respondent, his agents and workers, his children from entering, locking and conduct any acts at the land in dispute
- iv. Costs of the suit
- v. Any other reliefs that the Honourable Tribunal would deem fit.

In resisting the claims, the respondents filed two preliminary points of law that is the appellant had no locus standi and that the appellant's suit was *res judicata*.

After hearing the submissions in support of and in opposition to the preliminary objections, the learned Chairperson, Mr. Masoe, E. in his reasoned ruling delivered on 27<sup>th</sup> October, 2021, upheld both preliminary objections and dismissed the appellant's suit. Each part was ordered to bear its own costs.

The appellant was aggrieved by that decision and has come to this court appealing.

At the hearing of this appeal, the appellant informed this court that initially he was being represented by his son one Revocatus A. Batiho but who then decided to withdraw himself from representing him. The appellant supported his argument by producing in court the letter that holder of power of attorney wrote withdrawing himself (Ref. No. PF/GT/2022/01 date 29.04.2022). The appellant, in addition to his grounds appeal which he adopted, denied to have been sued in the Primary Court and argued that his property was subjected as a probate matter, a fact which is not true. He said that where the owner of property is dead, the heirs or one of them has to petition for letters of administration. He argued

that since the suit land is his property and therefore not a probate matter, the need for him to petition for letters of administration does not arise. He maintained that he had *locus standi* as he was claiming his own property which had been invaded by the respondents.

As to the first ground of appeal, the appellant disputed there having been any decision given in respect of that property which could make the case to amount to res-judicata. He contended that the District Land and Housing Tribunal misdirected itself in failing to determine his application as a whole.

He maintained that the disputed property was not the deceased's estate but his own property and argued that he has evidence to prove it.

On his part, the 1<sup>st</sup> respondent told this court that the piece of land in dispute belongs to the deceased Kitogwa Batiho and does not belong to the appellant. He argued that he a case at Bulale Primary Court and won. He could not recall the citation of that case on account that he is illiterate. According to him, the defendant in that case was Laurent Kitogwa and they were given thirty days but before the expiry of that period the appellant sued the 1<sup>st</sup> respondent at Geita District Court. The 1<sup>st</sup> respondent won and was given a letter for distribution whereby every child was given his/her portion. The appellant sold his piece of land to Chinese and to the Hospital but later sued the 1<sup>st</sup> respondent at Geita District Land and Housing Tribunal in Application No. 60 of 2020. He lost. He appealed to Mwanza. He again lost and appealed before Hon. Rose Ebrahim, J where he also lost. The 1<sup>st</sup> respondent informed this court that it is Laurent who was supervising the estate of the deceased. He maintained that the disputed

land belonged to the deceased. He concluded that the appellant failed to state how he came by the said piece of land he is claiming to own.

Supporting the version of the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent told this court that the case which was between the same parties in respect of the suit land was heard and determined and the respondents carried a day. He insisted that the appellant had no locus standi as he was their fellow child and the area belonged to their father which has been his property for a long time from the colonial period.

Elaborating on the appellant's suit being *res judicata*, the 3<sup>rd</sup> respondent stated that Land Application No. 6 of 2012 in the same District Land and Housing Tribunal Geita where he called himself Batiho Kitogwa while he is Aloyce Kitogwa and that the respondents were Mabula Kitogwa, Thereza William, Pastory Mukaganyilili, Mama Benja and others. They were 20 in total. The 3<sup>rd</sup> respondent clarified that the appellant instituted the same case in the same Tribunal only that he changed the name. He was of the view that the Tribunal was right in determining the issue on preliminary objection as such there was no need of hearing the whole application while there were legal issues to be determined first particularly where the property belonged to the late Kitogwa Batiho and if there was a case filed at Bulela the appellant could have instituted a criminal case on trespass. The 3<sup>rd</sup> respondent lamented that the appellant has been incessantly filing cases and this might be the 6<sup>th</sup> case but in different names. In that case, the appellant could have sued Laurent Kitogwa who was the supervisor and not against the respondents. It was prayed that the appeal be dismissed and the appellant be condemned costs.

In his rejoinder, the appellant informed the court that there is no document showing that the disputed land is a clan land or belongs to the

deceased. He argued that there was decision of Geita District Court which gave him the rights of ownership. The appellant admitted that their father died in 1962 and argued that the 2<sup>nd</sup> respondent was born in 1955. He asserted that he looked for a big shamba about more than 200 acres and the respondents are inside his land and that he has substantially developed it.

As far as the first ground of appeal is concerned, the issue is whether the suit before the District Land and Housing Tribunal was *res judicata*.

In **Black's Law Dictionary** (Ninth) Edition *res judicata* is defined as follows:

*"An affirmative defence barring the same parties from litigating a second law suit in the same claim, or any other claim arising from the same transaction or series of transactions and that could have been raised but was not raised in the first suit."*

For the doctrine of *res judicata* to apply, the matter directly and substantially in issue in subsequent suit must have been heard and finally determined by the court in a former suit. Heard and finally decided means that the court has exercised its judicial mind after argument and considerations, came to decision on contested matter and decision is made on the merits of the case. *Res judicata* is based on the need of giving finality to judicial decision.

This court has to ascertain and decide whether the decision in the first Land Application No. 6 of 2012 was conclusive as to the matters in the second application, that is Land Application No. 60 of 2020.

Having gone through the record in Application No. 6 of 2012 between Batiho Kitogwa as the applicant against Mabula Kitogwa and 19 others, as respondents,

some of the claims presented before the District Land and Housing Tribunal were for a declaration that the suit land belongs to the applicant, Batiho Kitogwa and an order for permanent injunction against the respondents from trespassing in the suit land. It is in record and the present appellant was clear in his version that Batiho Kitogwa is the deceased who died in 1962. According to the 3<sup>rd</sup> respondent one Thobias Mabula, the person who named himself in Application No. 6 of 2012 as the applicant is the same as the applicant in Application No. 60 of 2020 where he now calls himself Aloyce Batiho Kitogwa. The 3<sup>rd</sup> respondent was supported in this by his fellow respondents.

Indeed, the same appellant in Land Application No. 60 of 2020 had claimed inter alia, for a declaration that the land in dispute was a property of the late Aloyce Batiho Kitogwa and not the respondent's. In the subsequent suit, that Land Application No. 60 of 2020, the same appellant who appeared as the applicant sued the former respondents, excluding only others.

As rightly observed by the trial District Land and Housing Tribunal, Land Application No. 60 was res judicata Land Application No. 6 of 2012 and the doctrine of res judicata was rightly invoked in the suit, the subject of the present appeal. As rightly pointed out by the learned Chairman, section 9 of the Civil Procedure Code [Cap. 33 R.E.2002] was undoubtedly applicable in the situation before the Tribunal. It is provided under that section thus:

***"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court of competent jurisdiction to try such subsequent suit or the suit in which such issue has been***

***subsequently raised and suit has been heard and finally decided by such court."***

The Court of Appeal the case of Kamunye **and others v The Pioneer General Assurance Society Limited** (1971) EA 263 enunciated the principle of res judicata where it stated thus:-

*"The test whether or not a suit is barred by res judicata seems to me to be – is the plaintiff in the second suit trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. **If so the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time – Greenhalgh Mallard, (1947) 2 ALL ER 255. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply-Jadva Karsan Harnam Singh Bhogal (1953), 20 EACA 74.***

The Hon. Chairperson, being aware of this legal position, citing the case of **Gerald Chuchuba v. Rector Itaga Seminary** [2002] TLR 213, observed at p. 17 of the typed judgment as follows: -

*'Kimsingi, msimamo katika kesi hizi kwa mtizamo wangu in kwamba ndicho kilichoko kwenye shauri lililoko mbele ya baraza hili kwa sababu ili kubaini kama shauri ni res judicata au la, jaribio ni endapo mleta maombi katika shauri hili anajaribu kuleta kwa njia nyingine*



*shauri lilelile kwa mfumo wa shauri jipya kwa viini vya mgogoro ambavyo vilishawahi kutolewa maamuzi kwenye mahakama yenye mamlaka kwenye kesi iliyopita.'*

With due respect, the Hon. Chairperson was right. There is no gainsaying that *res judicata* is a fundamental legal doctrine that there must be an end to litigation. The objective is to bar multiplicity of suits and guarantees finality of litigation. The Tribunal was enjoined to observe that salutary legal principle. That being the case, the first ground of appeal falls away.

On the second ground of appeal, it was amply established in evidence that the suit land belonged to the late Batiho Kitogwa. Indeed, this is what the appellant was seeking before the District Land and Housing Tribunal that Declaration that the land in dispute was a property of the late Aloyce Batiho Kitogwa and not the respondents'

*Locus standi* is the right to bring an action in a court of law. In essence, the question of *locus standi* is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.

As a general rule, a person who commences an action in a court of law is required to have *locus standi*. This requirement is so basic that a decision reached by a court of law upon an action commenced by a person who lacks the right to bring it is a nullity. This is particularly so because courts exist to conduct serious business and deal with real live issues affecting the parties to an action.

In the present case, the appellant was seeking for a declaration that the land in dispute was a property of the late Aloyce Batiho Kitogwa and not the respondents. The appellant was not the administrator of the estate of the deceased as such, he lacked a legal capacity to litigate in a court of law in respect of the property of the deceased.


The appellant's 2<sup>nd</sup> ground of appeal also crumbles.

Since the first and second grounds of appeal sufficiently disposes of the present appeal, I see no reason of discussing the rest grounds of appeal as that would amount to an academic exercise and a wastage of court's precious time.

With the foregoing reasons, I am satisfied as was the District Land and Housing Tribunal, that the appellant's suit was *res judicata* and that he lacked *locus standi*.

The appeal fails and is dismissed with costs to the respondents.

Order accordingly.

  
**W. P. Dyansobera**

**Judge**

**4.7.2022**

This judgment is delivered under my hand and the seal of this Court on this 4<sup>th</sup> day of July, 2022 in the presence of the appellant and his learned Counsel Mr. Dotto Laurent Bija. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents are also present.

Rights of appeal explained.



**W. P. Dyansobera**  
**Judge**