

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MOROGORO DISTRICT REGISTRY)**  
**AT MOROGORO**

**LAND APPEAL NO. 33 OF 2022**

*(Originating from Land Application No.114 of 2017, in the District Land and Housing Tribunal for Morogoro)*

**JAFARI JUMA MNYANDWA ..... APPELLANT**

**VERSUS**

**MWAJABU TWAHA ..... RESPONDENT**

**JUDGMENT**

*Hearing date on: 05/07/2022*

*Judgment date on: 20/07/2022*

**NGWEMBE, J.**

The appellant Mr. Jafari Juma Mnyandwa in this first appeal is faulting the decision of the District Land and Housing Tribunal of Morogoro which dismissed his application. Though he was an administrator of Ally Mussa Kimonje (deceased), he sued in his personal capacity for declaratory orders that an unsurveyed land located at Kunke Village in Mtibwa Ward and Lusanga Village Diongoya Ward in Mvomero District belonged to the deceased. In that application he contended that the respondent had trespassed to the suit land and started cultivating, leasing and selling the land in dispute.



it is important to trace just briefly the background of this appeal. It is evident that the appellant herein was the third administrator of the estate of the late Ally Musa Kimonje, his grandfather who died way back in year 1982. He was appointed after death of the first and second administrators. He claimed that the deceased had farms in which, he used to grow maize and paddy. One was at Lusanga Village, Diongoya Ward measuring 55 acres and another situated at Kunke Village, Mtibwa Ward measuring 110 acres.

His testimony before the tribunal was that the deceased left for Korogwe leaving some of his properties, shambas inclusive under the custody of the respondent's father, one Twaha Mohamedi. After the death of Ally Kimonje, the said Twaha did not surrender the said properties to the heirs.

The respondent's case was that the disputed land was originally owned by three brothers; Ally (the deceased), Mohamed and Mwajuma who were born of the same father Musa Kimonje. The area was divided into three parts for each family. Some of the heirs of the deceased Ally Musa Kimonje including the appellant sold their share. The respondent daughter of Mohamed Mussa Kimonje, kept theirs.

The tribunal noticed at the time of judgment that the appellant filed the case in his personal capacity, while he was the administrator but all his evidences he claimed for the deceased. Then the tribunal proceeded to deliver judgment based on the application and evidence adduced therein. Having analysed the evidence thoroughly, the chairperson dismissed the application for lack of merits and failure to





proof it. Now the appellant suggests that the tribunal ought not to have entertained the matter at all for lack of *locus standi*.

Being aggrieved with that decision the appellant ventured to challenge it in this court, armed with two grounds of appeal namely:-

- 1) That the honourable tribunal erred in law and in fact by entertaining the matter yet the applicant had no *locus standi*; and
- 2) That there were serious irregularities that went to the root of the matter.

The appellant prays this appeal be allowed with costs and the District Land Tribunal's decision be set aside. The respondent through the services of learned advocate Ignas Seti Punge, filed reply to the Petition of Appeal opposing the grounds specifically. After pleadings are complete, this court issued an order that, parties should address the grounds of appeal by way of written submissions. Both parties complied with the scheduled order of filing their written arguments.

The appellant's written arguments were significantly centred on *locus standi* when he instituted the application before the tribunal in his personal capacity. Thus, challenges the tribunal for entertaining his application while he had no *locus standi*. Further submitted that, by entertaining his application, while the applicant/appellant lacked *locus standi*, committed serious irregularity.

He claimed to have letters of administration of the estate of the deceased Ally Mussa Kimonje, and that the said land in dispute belonged to the deceased. He referred to pages 1 and 7 of the tribunal's judgment



that the appellant was an administrator while he filed the case in his personal capacity. The tribunal had a duty to decide otherwise.

Further argues that, since the tribunal knew that he had no *locus standi*, ought to dismiss the application. Doing otherwise by entertaining same committed gross miscarriage of justice. Proceeded to cite the case of **Lujuna Shubi Balози Vs. The registered Trustees of CCM [1996] TLR. 203** and **Petro Zabron Sinda and another Vs. Zabron Mwita, Civil Case No. 176 of 2017, (HCT at Dsm)**. He concluded that, it was irregular for the appellant to sue on his personal capacity and the tribunal erred in deciding in favour of the respondent.

Responding to the appellant's arguments, the learned advocate noted that, the appellant's grounds and submissions in chief defeats his appeal, which disproves his claim of the disputed land. He submitted that the appellant actually had no *locus standi* when he instituted the case. The tribunal was correct to have dismissed the application. He prayed that the appeal be likewise, dismissed with costs for having no merit.

Having summarized the rival arguments of the disputants, I find the apparent question for consideration is whether this appeal has merits at all. From the outset, I subscribe to the parties' arguments related to the basic principles governing *locus standi* as expounded in **Lujuna Shubi Balonzi (supra)**, that where a person does not have *locus standi*, cannot sue. Both agrees that, the appellant lacked *locus standi* for suing in his personal capacity. What they differ is on the remedy or what the tribunal ought to do having noted that, the appellant had no *locus standi*. On their respective arguments, each party



defends his position, the appellant prays this court to allow the appeal while advocate Punge pleases this court to dismiss the appeal for lack of merits.

The law is very clear, when a person with *no locus standi* has filed a suit, the said suit must be dismissed. The rationale is to avoid multiplicity of suits and continuation of disputes.

I am also aware that the Court of Appeal in the case of **Abdulatif Mohamed Hamis Vs. Mehboob Yusuf Osman & Fatuma Mohamed, Civil Revision No. 06 of 2017**, (CAT at Mwanza) took same position that the administrator in his personal capacity is different from capacity as an administrator.

In this appeal, the tribunal dismissed the application not on the ground of *locus standi*, but due to lack of evidence. The tribunal went on analysing the evidence adduced therein and found that the appellant's case was very weak incapable of sustaining the claim. The case of **Hemedi Said Vs. Mohamedi Mbilu [1984] TLR. 113** was cited. The burden of proof in civil cases has been expounded in various decisions. Likewise, sections 110 and 111 of **The Evidence Act, [Now Cap 6 R.E 2022]**, provides that a duty to prove the case is on the person who wishes the court to give judgment on his favour. The standard of proof in civil cases under section 3 (2) (b) of the Act is on balance of probabilities.

The question is whether the trial tribunal erred in entertaining the land dispute while the applicant sued on his personal capacity as opposed to an administrator? Without prejudice to the principles of *locus*

*standi* referred above, with certainty, the scenario of this case is *sui generis* and dismissal on *locus standi* would be improper and would serve no purpose. The appearance of the appellant's name without a statement that he was suing as an administrator may be considered as improper citation. But taking the evidence as a whole and the whole conduct of the case, exhibits that the appellant acted as an administrator. Therefore, the tribunal was right to proceed with the application on merits.

Moreover, currently, the court and tribunal are guided with the principle of Overriding Objective as per section 3A of the Civil Procedure Code Cap 33 R.E. 2019. Procedural irregularities which do not affect the root of justice and cause miscarriage of justice may be dispensed with and substantive justice should prevail. Strictly, the appellant had no *locus standi* only on the basis of his identity on the pleadings. But in the testimonies, he testified with no iota of doubt that, he was an administrator by tendering all relevant documents of being an administrator. Failure to plead that the appellant was suing on behalf of the deceased did not occasion miscarriage of justice to the appellant. In fact, it is strange indeed, that the very person comes forward to challenge the court on his own misleading. Obviously, the intents of the appellant amounts to abuse of court process.

It is my considered view that, where a person was properly appointed by a competent court to act as an administrator and that appointment is not challenged in any court of law, the mere fact that he failed to register his citation properly to show his identity as an administrator and expressly shows that he is suing on behalf of the





deceased, and the case having been tried on merits, *locus standi* should not be used as a ground to defeat the ends of justice.

Having so reasoned, to decide otherwise would save no purpose, save only to pave ways to the appellant to abuse the court process through endless litigation purporting to claim under different capacities. I therefore, subscribe to the respondent's prayer that the appellant should be stopped from abusing this court by endless litigation. Accordingly, this appeal is dismissed with costs.

**Order accordingly.**

Dated at Morogoro this **20<sup>th</sup> day of July, 2022.**



**P. J. NGWEMBE**

**JUDGE**

**20/07/2022**

**Court:** Judgement Delivered at Morogoro in Chambers this 20<sup>th</sup> day of July, 2022 in the presence of the Appellant and the Respondent, both being present in person.

**Right to appeal explained.**



**P. J. NGWEMBE**

**JUDGE**

**20/07/2022**