

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO 11 OF 2022**

*(Arising from land appeal no 152 of 2020 in the DLHT – Musoma and Originating from land case No 02 of 2019 at Namhulu Ward Tribunal in Bunda District)*

**JOSHUA BUNDALA ..... APPELLANT**

***VERSUS***

**MEZA KABOJA ..... RESPONDENT**

**JUDGMENT**

27<sup>th</sup> July & 27<sup>th</sup> July, 2022

**F. H. Mahimbali, J**

The appellant in this case had first instituted his suit against the respondent on claim of land at the trial Ward Tribunal of Namhula where he lost. Dissatisfied, he unsuccessfully appealed against to the DLHT. Still undaunted, he has now as another bite challenged the decisions of the two lower tribunals amongst other things that he had no locus in instituting the said case from the beginning as he did so without being administrator of the estate of the late Christopher Bundala @ Maganga.

Whereas the appellant raised it as one of the grounds of appeal, the respondent on the other had raised it as legal objection.

During the hearing of the appeal, Mr. Gervas Emmanuel appeared for the appellant, whereas the respondent was dully represented by Mr. Aloyce Osewe Kijitanusi also learned advocate. I then tasked the both learned counsel to address me on the issue of locus standi of the appellant, he being not an administrator of the estate of the late Christopher Bundala whose land is the central of this land dispute.

At the hearing, both learned counsel had the same understanding that the appellant had no locus. Yet, whereas Mr. Gervas prays for the said proceedings to be quashed and set aside, Mr. Alyoce prays that the appeal be dismissed with costs as the appellant will benefit of his own wrong.

I have digested the submissions of both sides. The contest now seems to be one. If the proceedings and orders of the two lower tribunals are quashed and set aside, it will benefit the appellant to refile the case. If that happens, the appellant will benefit from his own omission.

According to paragraph 6 of the fifth schedule to the Magistrate Court's Act, Cap 11 R. E. 2019 section 71 of the probate Act Cap 352, R. E. 2019 provides that only the lawful appointed legal representative of the deceased estates can sue or be sued for or on behalf of the deceased, and no others. The section reads.

*"After any grant of probate or letters of administration no person other than the person whom the same shall have been granted shall have power to sue or prosecute any suit or otherwise act as representative of the deceased, until such probate or letters of the administration shall have been revoked or annulled"*

See also the case of **Omary Yusuph (legal representative of the late Yusuph Haji) vs Albert Munuo**, Civil Appeal No 12 of 2018 CAT at Dar es Salaam.

With the case at hand, there is no gain saying that the appellant had locus stand in instituting the original case and the subsequent appeals he being not the administrator of the estate of the late Christopher Bundala. I am aware that the appellant lost the suit in both proceedings below not on the ground of incompetency of his status but on merit. The fear of Mr. Aloyce is, the quashing of the two decisions of the two lower tribunals will entitle the appellant with powers to file the



similar application. I think that is a mere fear, which in any way cannot legalise the illegality. As the respondent won the case by evidence I hope, and not by gaming, the right is there to stay. That said, I quash all the proceedings of the two tribunals below and the resulting orders thereof. However, in the circumstances of this case, as the resulting nullity has been occasioned by the appellant himself and yet cherishes with it, I order costs to be borne by him as he had no clean hands in raising this ground of appeal now at this court level but for the wish in his mind. He is thus condemned to pay costs of the case at the DLHT and this court.

DATED at MUSOMA this 27<sup>th</sup> day of July, 2022.



F.H. Mahimbali

**JUDGE**

**Court:** Judgement delivered this 27<sup>th</sup> day of July, 2022 in the Appellant, Mr. Emmanuel Gervas, advocate for the appellant, Aloyce Osewe Kajitanusi, advocate for the respondent and Mr. Gidion Mugo, RMA.

Right of appeal explained.

F. H. Mahimbali

Judge

27/07/2022