

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND REVISION NO. 12 OF 2020

VESTINA MPELWA BERNADO.....APPLICANT
VERSUS
GODWIN KABAHAULA.....1ST RESPONDENT
LAURENSIA KATOMBO.....2ND RESPONDENT
JORAMU MUSHAIJA.....3RD RESPONDENT

JUDGMENT

13th June & 24th June 2022

Kilekamajenga, J.

The first respondent filed a case against the second and third respondent in Nshamba Ward Tribunal vide Civil Case No. 33 of 2018. In that case, the first respondent alleged that, the second respondent illegally sold a clan land to the 3rd respondent. To justify his *locus standi*, the 1st respondent alleged that he was appointed by his clan to prosecute the case. He, however, lost the case in the Ward Tribunal and appealed to the District Land and Housing Tribunal at Muleba vide Land Appeal Case No. 29 of 2019 where he again lost the case. Thereafter, the applicant filed the instant revision alleging that the land sold by the second respondent belonged to his father called Bernado Kalyango Katombo who died in 1997. In the affidavit accompanying this application, the applicant stated that, there was no administrator appointed to administer the estates of his father. In the instant application the applicant sought for the following orders:

- i. This Honourable Court be pleased to revise the decision dated 30th September 2020 of the District Land and Housing Tribunal for Muleba*



at Muleba exercising its appellate Jurisdiction in Land Appeal No. 29 of 2020 (sic) as there has been an error material to the merits of the case involving injustice, particularly on the decision made regarding the ownership of the land in dispute and the locus standi of the 1st respondent.

- ii. Cost of the instant application.*
- iii. Any other reliefs as the court deems fit.*

The Court finally invited the parties to argue the application. The applicant was present in person and enjoyed the legal services of the learned advocate, Mr. William Myumbu. The first respondent was present in person and without representation. The second respondent was absent and the 3rd respondent was present in person but both of them were represented by the learned advocate, Mr. Remidius Mbekomize. The counsel for the applicant had only one major issue to inform the court; that the first respondent filed the case in the Ward Tribunal while he had no *locus standi*. The decision of the District Land and Housing Tribunal stated that the land in dispute belonged to Bernardo Katombo who is now the deceased. Therefore, the right person to sue was the administrator of the estate of Bernardo Katombo.

However, there is no evidence to show that the first respondent was ever appointed the administrator of estate. Appointment by the clan does not, normally, grant a person the right to sue as an administration of estate. To bolster his argument, he cited the case of **Claud Masinzo v. Maria Kisizi and another, Land Appeal No. 46 of 2020**, HC at Mwanza (unreported). He

invited the Court to investigate the proceedings and records of the lower tribunals and grant justice in this case. He cited the case of **Sanai Marumbe and Another v. Muhere Chacha [1990] TLR 54.**

In response, the first respondent simply insisted that, he was appointed by the clan to take care of the land which was illegally sold by the 2nd respondent to the 3rd respondent. He further told the court that the land does not belong to him and that the 3rd respondent who bought the land is a member of the same clan too.

On his part, Mr. Mbekomize for the 2nd and 3rd respondent further argued that, even the applicant in this case lacks *locus standi* to sue because the owner of the land, Barnardo Katombo, died in 1997. A person must have an interest in the property before filing the suit. Also, the first respondent ought to know whether he had *locus standi* before filing the case. The counsel invited the court to dismiss the case with costs

When rejoining, the counsel for the applicant submitted that, the applicant is the daughter of the deceased and therefore she has interest in land in dispute. He insisted that the applicant had locus standi to file the case.

In disposing of this case, there are obvious facts which have not been objected by the parties during the trial and at an appellate level. **First**, there is no doubt

that the first respondent is not the owner of the land in dispute because the land was owned by someone called Bernardo Katombo who died in 1997. In his own words, the first respondent stated that, he believed to have the *locus standi* to sue as he was appointed by the clan as the care taker of the land in dispute. **Second**, it is not contested that, the applicant is also not the owner of the land in dispute nor the heir because her affidavit accompanying the application lucidly states that her father, who was believed to be the owner of the land, died in 1997 and there was no administrator appointed to administer the estate. The record does not show whether the applicant was ever appointed the administrator of the estate of her father. Though she has interest in the land, she ought to have applied for the administration of estate before stepping into the case. **Third**, during the hearing of the appeal, the first respondent confirmed that, the third respondent bought the land from the second respondent. Furthermore, the first respondent confirmed the fact that the third respondent is the member of the same clan; he therefore bought the clan land.

In his oral submission, the counsel for the applicant insisted that the first respondent who took the case to the Ward Tribunal had no *locus standi* to sue.

On the other hand, the counsel for the 2nd and 3rd respondent stated that, even the applicant had no *locus standi* to file the instant application. I actually agree with the submissions from the learned counsels; both the first respondent and applicant had no *locus standi* to sue for the land which they did not own. Neither

of them was appointed the administrator of estate of the later Bernardo Katombo who was actually the owner of the land in dispute. The applicant alleged that, she is the daughter of the deceased but there is no sufficient reason to explain why she did not file the suit in the Ward Tribunal after the land was sold.

Also, the first respondent alleged that, he was appointed by the clan to take care of the land and therefore he had *locus standi* to sue. I should make it clear; appointment by the clan does not make a person an administrator of estate. A person only becomes an administrator of estate after appointment by the court and after filling-in appropriate forms for the appointment. In fact, the requirement to present minutes from the clan meeting when applying for appointment in court is not the requirement of the law but a matter of practice. A person may still be appointed an administrator of estate even in absence of the appointment by the clan.

I should further stress that, a person whose interest in the matter has not affected cannot just arise and claim rights over the matter that he has no interest. The case of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203** provides guidance on this matter thus:

'Because a court of law is a court of justice and not an academy of law, to maintain an action before it, a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or

interest with the law takes cognizance of. Since court will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application.'

It was therefore wrong for the 1st respondent to usurp rights over the land that he never owned. It was also wrong for the applicant to file the instant application without stepping into the shoes of the deceased by being appointed an administration. If courts may allow this trend, then any person who has no any interest may claim properties not even belonging to him/her. I therefore find the instant application improperly filed; also even the case before the Ward Tribunal was filed by a person who had no *locus standi*. However, it is high time to curb unscrupulous persons who just approach the justice system and cause costs to innocent persons. Whoever files a case without having any interest in the matter must pay for the costs arising from the case. For that reason therefore, the applicant should pay the costs of this case and first respondent should pay the costs of prosecuting the case at the District Land and Housing Tribunal and costs involved in the Ward Tribunal. I hereby dismiss the application, quash and set aside the proceedings and decisions of the Ward Tribunal and that of the District Land and Housing Tribunal as they were founded on proceedings of the case filed by person with no locus stand. I leave the matter open for any interested person to file a fresh suit before the competent forum. It is so ordered.

Dated at Bukoba this 24th Day of June 2022.



Ntemi N. Kilekamajenga.

JUDGE

24/06/2022

Court:

Judgment delivered this 24th June 2022 in the presence of the first respondent and in absence of the applicant and second and third respondents. Right of appeal explained.



Ntemi N. Kilekamajenga.

JUDGE

24/06/2022