

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. LAND APPEAL NO. 13 OF 2022**

(Arising from Land Appeal No. 64 of 2020 of Kigoma Land and Housing Tribunal  
before Mbarouk W. Mwinyi, Chairman)

**PEREPETUA D/O COSMAS.....APPELLANT**

**VERSUS**

**ISSA S/O JAFARI BICHAKILA..... RESPONDENT**

**J U D G M E N T**

12/08/2022 & 19/08/2022

**MANYANDA, J**

This is a second appeal, Perpetua Cosmas, the appellant, is dissatisfied by the decision of the District Land and Housing Tribunal (DLHT) for Kigoma in its appellate jurisdiction in Land Appeal No. 64 of 2020 dated 30/09/2021. The appellant is appealing against the DLHT decision which decided in favour of the Respondent hence reversing a decision of the trial Ward Tribunal for Rusesa Ward in Land Case No. 01 of 2020 dated 07/04/2020.



Before the trial Ward Tribunal, the Appellant successfully sued the Respondent for ownership of a parcel of land measuring about two (2) acres located at Zeze village, Rusesa Ward in Kasulu District. It was the contention of the Appellant that the suit land belonged to her after clearing a virgin land under a practice known at the locality as "**kukamata shamba**" meaning taking and clearing a virgin land. However, the Respondent contended that the suit land belongs to his father one Jafari Bachakila, now deceased; that the suit land was lended to the Appellant from his deceased father for crop cultivation.

After full trial, the Ward Tribunal decided in favour of the Appellant. The Respondent appealed to the DLHT which quashed the proceedings and the judgment of the trial Ward Tribunal and set aside the decree thereof on grounds that the same was illegal for the Respondent, who was the Appellant before it namely Issa Jafari Bichakila that he had **locus standi** to stand for his deceased father but was been not dully appointed administrator of the estate. This is the decision which has aggrieved the Appellant. She has raised three grounds of appeal which may be paraphrased as follows:-

- 1. That the chairman of the DLHT erred in law and fact for holding that the Respondent was not administrator of the estate of late Jafari Bichakila and nullify the proceedings and judgment;*
- 2. The chairman of the appellate District Tribunal erred in law and facts for finding that the suit land belongs to the Respondent while there is no evidence to prove the same;*
- 3. The chairman of the DLHT erred in law and facts to nullify the whole proceeding of the trial Ward Tribunal on reasons concerning probate and administration cause while the dispute filed by the Appellant was about trespass to land.*

With leave of this court hearing was conducted by way of written submissions. Both submissions were filed by the parties themselves.

The Appellant in her short submissions argued together all the three grounds that it was wrong for the DLHT to declare the Respondent as not administrator of the estate of Late Jafari Bichakila. She contends that the issue was on land ownership dispute which the trial ward tribunal rightly declared her to be owner based on evidence she adduced. According to



her there was no issue of probate and administration of the estate before the trial ward tribunal, the DLHT acted on extraneous matters.

The Respondent opposed the appeal submitting that the decision of the DLHT is well reasoned and was correct to nullify the proceedings and the decision because the Respondent had no capacity of being sued in his personal capacity in respect properties of his deceased father Jafari Bichakila.

He gave a definition of **locus standi** found in the law dictionary called **The Black's Law Dictionary**, 7<sup>th</sup> Edition 1999 by Bryan Garner which defined the term as "*the right to bring an action or to be heard in a given forum*".

He also referred this court to the case of **Lujuna Shubi Balonzi Senior vs. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 which defined the term "locus standi" in Tanzanian context.

He argued that there is ample of evidence that the suit land belonged to his father, the Late Jafari Bichuka. He added that the DLHT dealt with this legal issue not the merit of the appeal, therefore a question on balance of probability is new in this appeal.

In this appeal basically, the complaint is that the DLHT acted wrongly when it nullified the proceedings and decision of the trial Ward Tribunal on ground that the Respondent was wrongly sued in his personal capacity because the suit land is a property of his father the Late Jafari Bichakila.

It is a position of the law that following death of a property owner, no any other person can sue or be sued unless there has been grant of letters of administration by a court of competent jurisdiction. This was the holding in the case of **Ndamo Kulwa vs. Salumu Mihangwa**, Land Appeal No. 30 of 2011 where this court, Hon. Ndika J. as he then was, stated as follows:-

*"I take it as basic rule of law that following the death of a person, no person other than the person granted probate or letters of administration has power to sue or prosecute a suit or other wise act as a representative of the deceased."*

In its judgement the DLHT decided to determine a complaint which questioned the trial Ward Tribunal to try a case in which the respondent was wrongly sued without "locus standi". This was the second ground among the seven grounds of appeal. The DLHT found that if that ground is accepted, then the whole appeal would be disposed of. After discussing it, the DLHT upheld the same and allowed the appeal. This means it was

found that the Respondent was wrongly sued. The DLHT stated as follows:-

*"Hivyo basi kwa kuwa hakuna Ushahidi wowote uliotolewa unaothibitisha kwamba mwomba rufaa alikuwa ni msimamizi wa mirathi ya baba yake Jafari Bichakila hivyo basi rufaa hii imekubaliwa kwa kuwa mwomba rufaa hakuwa na uwezo wa kushtaki wala kushitakiwa".*

Literally means that since there was no evidence that the appellant was an administrator of his deceased father estate Jafari Bichakila therefore this appeal succeeds because the appellant could not sue or be sued in his personal capacity.

Was the finding of the DLHT backed up by the evidence adduced in the trial ward? My perusal of the DLHT judgement reveals that the DLHT reached at that finding because the evidence adduced at the trial Ward Tribunal shows that the suit land was a property of Late Jafari Bichakila and Issa Jafari Bichakila was not an administrator of the estate.

In order to verify the propriety of the DLHT findings this Court need to enter into the DLHT shoes and see if it correctly apprehended the evidence concerning this aspect of facts and properly apply the law. The reason for doing that is because this is a second appellate court which



mainly deals with matters of law. However, in dealing with application of law it is entitled to visit the evidence adduced at the trial tribunal.

In the case of **Godfrey Chilongola vs. Nicodemus Martine and 19 Others**, Land Appeal No. 29 of 2018 (unreported) this Court, Hon. Mruma, J. stated as follows:-

*"This been a second appeal, this court is not required to re-evaluate the evidence. That is a duty of the first appellate court which must review the evidence and consider the material before the trial court (See **Pandya vs. Republic** [1957] EA 336 and **Okena vs. Republic** [1972] EA 32. The second Appellate Court has no duty to re-evaluate the evidence adduced at the trial but it has the duty to consider the relevant points of law or mixed law and facts as raised in the second appeal., In the process it may review the evidence (in facts) adduced at the trial and particularly so if the first appellate court failed to discharge its primary obligation the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion".*

In this appeal the appellant challenges the DLHT for its finding that the Respondent had no **locus standi** to be sued arguing that there was no

evidence to that effect. The Respondent argues that there was such evidence.

My perusal of the evidence adduced at the trial Ward Tribunal reveals that in his testimony the Respondent testified that he was administrator of the estate of his father and that he was told by his father that he had invited the Appellant to cultivate crops on lease at area which now is the suit land. That, the suit land belonged to his father; it is part of his father's estate. However, my further perusal of the record of the trial Ward Tribunal found that there is no evidence the Respondent was a duly appointed administrator of the estate of Late Jafari Bichakila. The Appellant's testimony was that she acquired the suit land by clearing a virgin forest adjacent to that of late Jafari Bichakila from these pieces of evidence it is my finding that the Respondent knew that the dispute over of the suit land is over ownership of the same between herself and the Respondent's father she also knew that the Respondent's father is dead, therefore she could only sue an administrator of the estate.

In the circumstances, can the Respondent be said to have no locus standi.

The word "*locus standi*" is defined in the book Black's Law Dictionary (supra) to mean.

*"the right to bring an action or to be heard in a given forum".*

Judiciously the word "**locus standi**" was well construed in the case of **Lujuna Shubi Balonzi Senior vs. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 where it was stated as follows:-

*"In this country, locus standi is governed by common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court".*

Although the principle of law in **Lujuna Shubi Balonzi Senior case (supra)** dealt with plaintiffs or applicants, it is true also of defendants or respondents. This in view is in order to enable the court give effectual and executable orders.

In the matter at hand as explained above it can be seen that the evidence as presented before the trial ward tribunal the Respondent was sued in his personal capacity not as administrator of the estate of late Jafari Bichakila. Even if he was so sued, yet there was no evidence to that effect.



In the circumstances it is my finding that the DLHT was correct on reaching to its finding that the Respondent was wrongly sued. I am increasingly of the view that the DLHT rightly quashed the proceedings and the judgement of the Ward Tribunal for Rusesa which tried the case. The appeal has no merit.

Consequently I do hereby make the following orders:-

- i. The appeal is dismissed in its entirety
- ii. The DLHT decision is upheld
- iii. Costs of the appeal to be paid by the appellant.

Order accordingly.

Dated at Kigoma this 19<sup>th</sup> August, 2022.



  
**MANYANDA**

**JUDGE**