IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUB – REGISTRY)

AT MOROGORO

LAND APPEAL CASE NO. 11 0F 2021

(From the decision of District Land and Housing tribunal of Morogoro Application No. 63 of 2018)

MKASI IDDI ..... APPELLANT

VERSUS

HALIMA RAMADHANI ..... RESPONDENT

JUDGEMENT

Last Court Order on: 20/9/2022

Judgement on: 6/10/2022

HASSAN, J

The appellant Mkasi Iddi, being aggrieved by judgment and decree of the District Land and Housing Tribunal (DLHT) of Morogoro at Morogoro delivered on 24th September, 2021 from application No. 63 of 2018, preferred this appeal.

A brief background of the matter is that on 18th February, 2014 Mr. Mkasi Iddi, now appellant in the instant appeal, approached the Ward Tribunal of Milimani contesting for ownership of the suit land against Halima Ramadhani. In the Ward Tribunal, the matter was left unsolved.

On 25th February, 2014 the parties were advised to refer their dispute to upper authority. Taking the advice on board, the respondent geared up her claim to the DLHT where it was decided meritorious in her side. Pained by the outcome, the appellant herein lodged the memorandum of appeal on 5th November, 2021 grounded with six grievances namely:

1. *The tribunal erred in law and in giving its decision in favour of the respondent herein who had not proved her locus to institute the impugned suit.*
2. *The trial District Land and Housing tribunal erred in law and fact in not holding that the Respondent herein is time bared*
3. *The trial District Land and Housing tribunal erred in law and fact in declaring the Respondent herein who was not suing in her personal capacity the owner of the suit Land.*
4. *The trial District Land and Housing tribunal erred in law in giving its land in respect of un-surveyed piece of land that was not sufficiently described so as to enable its proper identification and isolation from another pieces of land.*
5. *The trial District Land and Housing tribunal was biased, ignored the Appellant herein testimony, and decided the dispute on the matter in respect of which no evidence was given.*
6. *The trial District Land and Housing tribunal's decision is against the weight of evidence in record.*

At the hearing, the appellant enjoys the legal representation from the learned advocate Benjamin Jonas, while the respondent was

represented by Advocate Alpha Boniface. Consequently, parties were desired to address the court orally.

Arguing on this ground, the counsel for the appellant Mr Benjamin Jonas submitted forcefully, that the respondent did not prove that she has *locus* to institute her application before the Trial Tribunal. He submitted further that, the application which is the subject of this appeal was instituted by Halima Ramadhan in her own name, but under paragraph 6 of the application she claims to be the administratrix of the estate of the late Ramadhani Dilunga and that the respondent had invaded her late fathers' Shamba.

That being the case, it was not correct for respondent to file that application in her own name and capacity. Mr. Benjamin preferred this court to the case of **The Registered trustees of SOS children village Tanzania Vs Igenge Charles and 9 others** Civil Appeal No. 426/08/2018 (unreported). Which on page 10 and page 11 of the judgment, the court categorically indicates that;

> *"The applicant who does not show to sue as personal and Legal representative of the deceased will be taken to lack locus standi to institute the matter".*

Moreover, Mr. Benjamin submitted that, before the trial tribunal the respondent had annexed a copy of the letter that she claimed to have

been appointed as the administratrix of the estate of the late Ramadhan Dilunga Senembo. This latter was neither tendered nor admitted as evidence in the trial tribunal. Hence, it cannot be considered to form part of the record of the court. That means, she cannot be taken to have acted as a personal and legal representative of the deceased. In that effect he cited the case of **MHUBIRI ROGEGA MONGA'ATEKO VS MARK MEDICS LTD Civil appeal No 106 of 2019 on page 10** where it was held that:

> *"It is titre law that a document which was not admitted in evidence cannot be treated as forming part of the record even if it is found amongst the paper in the record."*

Mr. Benjamin further added that, the annexure (the letter claimed to be letters of administratrix) by the respondent before the trial tribunal, cannot be relied upon to treat the respondent as acting in the capacity of legal representative.

In finalising first ground of appeal Mr. Benjamin submitted that it is in the record of the proceeding that the respondent testified on the 2nd June 2021 that she was claiming the right of her mother. This is not what she pleaded before the trial tribunal. Lastly, the learned counsel prayed to the court to find this ground with merits.

In response, the counsel for respondent vehemently contended that, the respondent has stated clearly before trial tribunal that she was the administratrix of estate for the late Ramadhani Dilunga Senembo. He submitted that the respondent was appointed by the Urban Primary Court of Morogoro in the Probate Cause no 26 of 2018, dated 13th March, 2018. He further submitted that the letters of administration shows that, the respondent herein sued in the capacity of adminitratrix of estate of the late Ramadhani Dilunga Senembo. The learned counsel stressed that the same was proved by the decree issued by the Tribunal. To strengthen his argument, he referred the court to the record of tribunal, of which he dictated in Kiswahili as it is for clarity as follow:

> *"Kwa kuwa mleta maombi, msimamizi wa mirathi ya marehemu Ramadhani Dilunga alifungua shauri linalohusu ardhi ya mgogoro iliyoko TOWERO MOROGORO dhidi ya MKASI IDDI na aliomba nafuu zifuatazo"*

He finally submitted that, basing on that quotation it is clear the District Land and Housing Tribunal (DHLT) was aware that the respondent herein was suing in the capacity of administratrix. Hence, first ground of appeal lacks merit, as the respondent herein had *locus stand* to institute the application and proved the same by annexing the letter for administration.

Having pursued the records and the submissions by both learned counsel, I have observed the centre on the issue of *locus standi*. That being the point of law, I wish to start with it as it can dispose the appeal in the entirety. From the outset, the main issue for court determination is whether or not the suit was properly filed in the district Land and Housing tribunal.

The law is settled that, the issue of *Locus standi* in any civil suit or suit of civil in nature including Land matters, is always treated as cornerstone upon which, a suit or dispute is built. The appellant must demonstrate that he/she has *locus standi* over the disputed matter. Likewise, the respondent/defendant has a duty to inform the court or tribunal that the applicant/plaintiff has sued a wrong person. This position was well stated in the case of **Attorney General Vs. the Malawi Congress Party and another, civil appeal no. 22 of 1996,** the Malawian Supreme Court of Appeal provided the test for *locus standi* is by holding that:

> *"Locus Standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say unless he stands in a sufficient dose inrelation to it so as to give a right which requires prosecution or infringement of which he brings the action".*

The reasoning of Malawian Supreme Court, is similar to ours, since the same is now settled that *locus standi* is a right to bring an action or to be heard in a given forum. Therefore, a person without *locus standi* has no right to bring any action in a court of law.

Justice Samatta JK (as he then was) took pain to amplify and provide a comprehensive guidance on *Locus Standi* in the case of **Lujuna Shubi Balonzi Vs. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203, where he said:

> "*In this country, locus standi is governed by the 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: Courts do not have power to determine issues of general interest: They can only accord protection to interests which are regarded of being entitled to legal recognition. They will thus not make any determination of any issue that is academic, hypothetical, premature or dead. 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 which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application. of course, provided the interest is recognised by law,*

the smallness of it is immaterial. It must also be distinctly understood, I think. That not every damage or loss can be the subject matter of court proceedings".

This position is based on the principle of law that courts must always be certain of the identity of the parties, so as to avoid entertaining fictitious or dishonest persons and so entitlement of rights goes to the rightful persons and liability likewise, goes to the proper liable person. This position gets support in the case of **Unilife Group Investment Vs . Biafra Secondary School and another**, Civil Appeal No. 144 (B) of 2008, at Dar es Salaam, (unreported). Also see **K. J. Motors and 3 others Vs. Richard Kashamba and others**, (CAT) Civil Appeal No. 74 of 1999, at Dar es salaam (unreported), the founded principle is that:

> *"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 against a person capable to comply with the final court order. Courts do not have powers to determine issues of general claim of interest".*

Given the above stance, I am mindful that, proceedings on behalf of a deceased person may only be commenced by the administrator or administratrix of the estate of the deceased as it was held by the Court

in the case of **Zuhura Bakari Mnutu v Ali Athumani**, Miscellaneous Land Case Appeal No. 9 of 2015 H.C Mtwara (unreported).

Coming back to the instant appeal, I find it imperative to go through the record industriously with a view to observe the profiling sequences of the matter at DLHT. In the spirit of my observation, I find it obliged to unveil the following:

That, the claim was instituted by the respondent herein at the District Land and Housing Tribunal at Morogoro against the respondent herein. Dictating her own words, for clarity and references the claim read as follows:

> *"Name and Address of the applicant (1) HALIMA RAMADHANI DILUNGA P.O.BOX, KIHONDA MOROGORO mkazi wa Majengo"*

Also, when giving his testimony at the District Land and Housing Tribunal, the Respondent herein stated that,

> *"I was born there and the suit area belongs to my father"*

That being said, while the respondent is recognising that the suit land is belonged to his late father Ramadhani Dilunga, she instituted the matter in her own personal capacity. Guided by the principle expounded in the case of **Registered trustees** (supra), what the respondent herein has

done is contrary to the principles governing *locus standi* as highlighted in this case.

Moreover, observing the trial tribunal's record, I also discover a letter of administration of estate of the late Dilunga Sinembo, which conferred administratrix status to the respondent. Although, the letter was attached in the trial tribunal's file, it was not tendered and admitted as an exhibit.

In the upshot, I find this argument fronted by the learned counsel for respondent upon this point in particular is devoid of merit. The mere words that the respondent has stated in her application that she is an administratrix of the late Ramadhani Dilunga does not hold water. In my view, the administratrix status is conferred by the court using well authenticated document as in this case. Therefore, to be part of evidence, it should be tendered and admitted by the court to form part of proceedings. Thus, a mere declaration of possession or trivial attachment of document in the case file without being tendered and admitted to the court will not salvage the legal battle. The position of law is settled. See the case of **Chantal Tito Mziray & Another V. Ritha John Makala & Another**, Civil Appeal No. 59 of 2018, and **Shemsa Khalifa & Two Other V. Suleiman Hamed Abdallah**, Civil

Appeal No. 82 of 2012, (all unreported) where addressing issue at hand, the court has this to say:

"We out-right of a considered opinion that, it was improper and substantial error for the high court and all other court bellow to have relied on a document which was neither tendered nor admitted in the court as exhibit. We hold this led to a grave injustice"

In this appeal, the Respondent had no claim of right or interest over the suit land, save his father. The evidences quoted above, proves that the respondent's father had a claim of right, and because he has passed way, the respondent is supposed to challenge her father rights under legal capacity. In the event, guided by the above authority I am certain that, the respondent had no capacity to sue the appellant from the beginning.

Therefore, since this appeal was founded on a wrong foot, it cannot stand. That being the case, on this point alone I find no reason to proceed with other grounds of appeal. The reason is simple, even if I may consider them, yet they won't change the already arrived conclusion.

For the reasons so stated, appeal is allowed, I nullify the whole proceedings and judgement of the District Land and Housing Tribunal.

Consequently, parties are at liberty to institute a fresh charge as to the law in order to meet the end of justice. As such, it is logical to order each party to bear his own costs.

It is so ordered.

S. H. Hassan
Judge
06/10/2022

Right of appeal explained to the parties.

S. H. HASSAN
JUDGE
06/10/2022