

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND CASE NO. 2 OF 2019

SOLOMONI NJIKU (As Administrator
of the Estate of the late LIMU DUHIA).....**PLAINTIFF**

VERSUS

SALUM MTINDA AND 12 OTHERS..... DEFENDANTS

JUDGMENT

23/11/2022 & 13/12/2022

KAGOMBA, J

Solomon Njiku, suing as the administrator of the estate of the late Limu Duhia (henceforth "the plaintiff") filed this suit against Salum Mtinda and twelve (12) others (henceforth "the defendants") over ownership of land with a total of 835.2 acres located at Kisaki village in Singida municipality (henceforth the "land in dispute"). The plaintiff prayed for eviction of the defendants and their agents from the land in dispute, as well as for the said land to remain in possession of the plaintiff, as the administrator of the estate of the late Limu Duhia. He did not forget to pray for costs of the suit and any other reliefs as this Court shall deem fit to grant.

Prior to the hearing of the case, the defendants raised a preliminary objection with three points of law to the effect that the plaintiff's Letter of Administration was not lawfully genuine, the same was time barred and that the plaintiff had no *locus standi* to sue over the land in dispute. The Court

overruled the preliminary objection having found that the first two grounds were not pure points of law, as they needed evidence to be adduced to determine them. The third one was found to be devoid of merits. Thus, the matter proceeded to hearing after failure of the statutory mediation.

The following five issues were adopted to guide the determination of this suit, to wit;

- i) Who is the lawful owner of the land in dispute.
- ii) Whether the plaintiff was appointed as administrator of the estate of the late Limu Duhia.
- iii) Whether the land in dispute is the whole of 835.2 acres or a portion thereof.
- iv) Whether the valuation report attached to the plaintiff's pleadings does not refer to the land in dispute.
- v) What relief(s) are the parties entitled to.

During hearing, the plaintiff was represented by Mr. Francis Kesanta, learned advocate and brought five witnesses to prove his case, while Mr. John Chigongo, also learned advocate represented the defendants, who had two witnesses.

The evidence adduced for the plaintiff's side was mainly geared to prove that the late Limu Duhia, in whose shoes the plaintiff is suing, was the owner of the land in dispute. Also, the plaintiff's witnesses, particularly the plaintiff himself, who testified as PW4, came all out to prove that he was duly appointed the administrator of the estate of the late Limu Duhia, and if there were any flaws, he was not to blame.

On the other hand, the two witnesses for the defendants adduced evidence to prove that the land in dispute belonged to none but the late Mtinda Mjunga who was the father of Salum Mtinda, the 1st defendant. They also testified to the effect that the plaintiff had no *locus standi* to sue on behalf of the estate of the late Limu Duhia, owing to the fact that his Letter of appointment as the administrator of the estate of the late Limu Duhia was proved to be forged.

Now, having heard and recorded the testimonies of all the witnesses in this suit, and after a careful consideration of the position of the law governing institution of suits, I am minded to start determining the second issue as framed, which is whether the plaintiff was appointed as administrator of the estate of the late Limu Duhia. It is imperative to determine this issue first for a simple and obvious reason that it establishes the plaintiff's *locus standi*, without which this suit becomes unmaintainable.

In Halbury's Law of England, 4th Edition paragraph 49 at page 52 the issue of *locus standi* is addressed in the following words: -

"..... a party must not only show that the court has power to determine the issues but also that the party is entitled to bring the matter before the court."

When the issue of *locus standi* was argued by way of a preliminary objection by the advocate for the defendants, some of the arguments put forth needed evidence to be appreciated. For that reason, they were not

entertained for not being pure points of law. However, this time around I have the opportunity to receive evidence and to consider whether the plaintiff has the requisite *locus standi*.

Solomon Njiku, the plaintiff herein, testified on oath as PW4. He told the Court that he was a son and the Administrator of the estate of the late Limu Duhia, who died on 01/10/1999. That, his family appointed him to administer the deceased's estate, for which he tendered minutes of the family meeting dated 15/06/2002 (exhibit P1).

PW4 further testified that after being so appointed by the family meeting, he went to Ipembe Primary Court in Singida town (officially known as Urban Primary Court) which appointed him the administrator, and was he granted Letters of Administration to that effect. He explained that he took with him the said minutes (exhibit P1) to Ipembe Primary Court where he was asked by the Court if there was any objection against his appointment from any family members. He added that upon replying that there was none, he was told to go to collect his Letters of Administration.

PW4 told the Court that following his appointment, a forgery case was instituted against him in the District Court of Singida, with allegation that he had forged the said Letters of Administration. He added that the District Court acquitted him but the said Letters of Administration remained in the custody of the said Court, which later advised him to request the same from the National Prosecution Services (NPS), who had instituted the criminal case. His letter dated 31/5/2022 requesting NPS to release the Letters of

Administration was tendered and duly admitted as exhibit P2 while a reply thereof was also tendered and duly admitted as exhibit P3.

For the above reason, PW4 told this Court that the Letters of Administration granted to him was a legal document as there was no any appeal lodged to challenge his acquittal on the charge of forgery. In the circumstances, PW4 successfully prayed the Court to admit a photocopy of the Letters of Administration (Form No. IV), which was tendered and admitted as exhibit P4.

When cross-examined by Mr. Chigongo with regard to the said Letters of Administration, PW4 replied that he was unsure if the granting of the same did observe the law. He also acknowledged that the office of the Attorney General, meaning NPS, refused to give him the original Letters of Administration for a reason that the same was illegally obtained.

PW4 also conceded that he once filed a suit against the defendants to claim ownership of the land in dispute at the District Land and Housing Tribunal for Singida (henceforth the "Tribunal") but the suit was dismissed for failure to submit Letters of Administration.

For the the defendants, Salum Mtinda, the 1st defendant testified on oath as DW1. He vehemently challenged the legality of the appointment of the plaintiff (PW4) as administrator of the estate of the late Limu Duhia. He also recalled how the plaintiff failed to prove his administrator-ship before the Tribunal, as a result of which his case was dismissed. To this end, DW1

tendered the ruling of the Tribunal in Land Application No. 3 of 2017 which was admitted as exhibit D1.

It was DW1's further testimony that after having been served with the copies of summons and claims in respect of this case, he, together with other defendants inquired about the legitimacy of Form No. IV, which was among the documents served upon them by the plaintiff. That, in their inquiry the said Primary Court disowned the form, through its letter dated 11/04/2019 (exhibit D2) by saying that there was no such Probate Cause No. 10 of 2004 filed in that Court. He testified further that it was the said inquiry which led to the filing of forgery charges at the District Court of Singida vide Criminal Case No. 125 of 2019 against the plaintiff, whereby the District Court was satisfied in its judgement (exhibit D3) that the Form No. IV was a product of forgery hence invalid, despite the plaintiff not being held responsible.

During cross examination by Mr. Kesanta, DW1 conceded that the plaintiff was set free by the District Court on forgery charges because the said Court found that the alleged forgery was conducted by a Court clerk. He agreed with Mr. Kesanta that there was no any action taken against that Court clerk and that no appeal was preferred against the District Court's decision in the forgery case and the decision of the Singida Urban Primary Court in the administration cause.

With the above testimonies at my disposal, the following questions arise; whether the plaintiff has proved before this Court that he was duly appointed the administrator of the estate of the Late Limu Duhia?. Could this Court legally decide that the plaintiff has *locus standi* to bring up this suit?

Obviously, the answers to both questions are in the negative. The plaintiff has failed to prove, on balance of probabilities, the existence of his appointment as the administrator of the estate of the late Limu Duhia. I shall demonstrate as here below.

The only proof tendered before this Court by the plaintiff in respect of his appointment are the minutes of the family meeting and a photocopy of Form No. IV. The minutes, by itself is not a conclusive proof of one's appointment as administrator of the deceased's estate since such an appointment is legally a preserve of a court of law with competent jurisdiction. As for the Form No. IV, Mr. Kesanta anchored its admission by citing section 67(1) (a) (ii) of the Evidence Act [Cap 6 R.E 2022]. It provides:

"S. 67. Proof of documents by secondary evidence

(1) Secondary evidence may be given of the existence, condition or contents of a document in the following evidence cases-

(a) when the original is shown or appears to be in the possession or power of-

(i) the person against whom the document is sought to be proved;

*(ii) **a person out of reach of, or not subject to, the process of the court; or***

(iii) a person legally bound to produce it, and when, after the notice specified in section 68, such person does not produce it".

[Emphasis added]

In **Daniel Apaël Urio vs Exim (T) Bank**, Civil Appeal No. 185 of 2019 CAT, Arusha, reported at www.Tanzlii.org the Court of Appeal had a similar matter to decide with regard to secondary evidence which was in the hands of Regional Crimes Officer. The appellant in that case complained that the trial Judge erred in rejecting to admit the said secondary evidence. In rejecting the claim, the Court of Appeal observed as follows: -

*"According to the evidence on record in this appeal, the original copy of the document intended to be tendered in evidence by the appellant, was in the possession of the RCO for Arusha Region, **who was within the court's reach. In terms of section 68 of the TEA, before the appellant could rely on the copy of the document there were two options open for him that is, one, serving the party in possession of the document with a notice to produce the document in court, or two, by requesting the court to issue summons to the party in possession of the document to appear in court and testify.** Nonetheless, for reasons best known to the appellant himself, he resolved to opt to neither of the two".*

[Emphasis added].

In the case at hand, the learned advocate for the plaintiff submitted before the admission of exhibit P4 that since he had filed a notice to use secondary evidence and served the same on the other party, the production of the said secondary evidence was in compliance with the law.

Mr. Chigongo objected to the admission of the exhibit P4. He anchored his objection on the reasons that the exhibit, was not in the record of Ipembe Primary Court and it deceitfully purported to have been issued under Probate Cause No. 10 of 2004 which the plaintiff himself testified that such a cause was never filed by him. I now realize that I should have sustained the objection in light of the decision in **Daniel Apael Urrio vs Exim (T) Bank (supra)**. However, I overruled the objection for a reason that the admissibility of a document was one thing and acceptance of its legality or its evidential value is another. The Court is now presented with another opportunity to consider the weight and the legality of that exhibit.

No doubt that a photocopy of Form No. IV, (exhibit P4) is secondary evidence. In terms of section 67 (1) (a) (ii) which was cited by Mr. Kesanta, the exhibit could be admitted if the person holding the original was out of reach of, or not subject to, the process of the court. PW4 testified that the original was with NPS, a public office in Singida, which is very well within the reach of the Court. Under such circumstances, the plaintiff was expected to take one of the two options stated in quoted decision of the Court of Appeal in **Daniel Apael Urrio vs Exim (T) Bank (supra)**.

However, after having admitted the said photocopy as exhibit P4, what follows is to gauge its legality and evidential value. In my opinion, the same could only be relied upon if it was genuine and above all if its original existed. The evidence adduced by DW1, and which corroborate what was stated by the plaintiff in his testimony, showed that there was no Probate Cause No. 10/2004 and *ipso facto*, the original decision under which the said exhibit was derived never existed. It is for this reason, I find that the plaintiff

was not legally appointed the administrator of the estate of the late Limu Duhia, hence lacking *locus standi* to bring up this suit.

The Magistrate Courts Act, [Cap 11 R.E 2019] under paragraph 2(a) of its Fifth Schedule, as well as the Primary Courts (Administration of the Estate) Rules, GN No. 49 of 1971 under rules 3, 5, 6 and 7 provide for steps or procedure, which is indispensable, for the appointment of an administrator of a deceased' estate. These steps include the filing of an application for appointment (if the appointment is not done by court's own motion); notice of hearing to both the applicant and to all persons known or alleged to be the near relatives of the deceased person or to have been named in his will; the actual hearing of the application and finally granting of the administration which shall state the property to be administered.

There are also requirements for payment of necessary fees under Part B of the Court Fees Rules, 2018 GN No. 247 of 2018. It is the position of the law under the cited Rules that a document is deemed to be filed in court when payment of court fees is done and proof thereof is exhibited by exchequer receipts. (See also **John Chuwa vs Anthony Ciza** (1992) T.L.R 233). The evidence adduced by PW4 has confirmed that all the above mandatory procedure were not observed in the appointment of PW4.

It would have sufficed to strike out this suit for a reason that no notice was issued to near relatives and persons interested in the estate of the late Limu Duhia. All persons concerned must be made aware of the administration proceedings in compliance with the fundamental right to be heard. In my view, the same consequences that would befall a case where

right to be heard was denied shall apply *mutatis mutandis* in a probate cause where interested parties were not notified of its proceedings.

That being said, for lack of *locus standi* and in the interest of justice too, I struck out this suit. However, having read in the testimonies that the parties are likely to be neighbours, I make no order as to costs.

Dated at Dodoma this 13th day of December, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA
JUDGE