

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM
MISC. LAND CASE APPEAL NO. 35 OF 2019

*(Arising from the decision of District Land and Housing Tribunal for Morogoro in Land Appeal
No. 45 of 2018 originating from Land Case No. 5 of 2016 – Sungaji Ward Tribunal)*

NASIBU SHABANI MWINJAKU APPELLANT

VERSUS

HALIMA IDI KIDANGA.....RESPONDENT

JUDGMENT

Hearing date: 25/11/2021

Judgement on: 15/11/2022

NGWEMBE, J:

This is the second bit of appeal from Sungaji Ward Tribunal, whereby the appellant herein was dissatisfied with that decision, hence appealed to the District Land and Housing Tribunal for Morogoro. After close scrutiny over the evidences adduced during trial before the ward Tribunal, the Appellate Tribunal upheld the decision of the ward Tribunal by declaring the respondent (Halima Idi Kidanga) an administrator was the true owner of the disputed piece of land.

The appellant was aggrieved with that decision, hence, preferred an appeal to this court clothed with four (4) grounds enumerated hereunder:-

1. That the first appellate Tribunal erred in law and in fact by holding that the respondent was the lawfully owner of the disputed land while the case proceeded against a wrong party;
2. That the first appellate Tribunal erred in law and in fact by deciding Appeal No. 45 of 2018 without taking into consideration the directives issued by the same Tribunal and chairman in appeal No 111 of 2016;
3. That the first Appellate Tribunal erred in law and in fact by determining the second appeal from the same matter which originated from Land case no 05 of 2016 at Sungaji Ward Tribunal; and
4. That the first Appellate Tribunal erred in law and in fact by failure to analyze and re asses evidence properly.

The appellant proceeded to pray that this court may allow the appeal, and set aside the judgement of the District Land Tribunal with cost.

On the hearing of this appeal, both parties did not procure legal representations. Being unrepresented, they had no useful assistance to the court. Briefly, the appellant claimed to have inherited the suit land, (3.5 acres) of land from his grandmother. Explained that the suit land is located at Matombo area within the peripheral of Morogoro Municipality. Continued to claim that he has been using it for thirty years (30) undisturbed. However, in year 2019 the respondent came up claiming ownership of same, hence this appeal.



In reply the respondent briefly alleged that the appellant is a stranger to their family and family properties. That she is an administrator of the deceased estate who was the true owner of the disputed piece of land. Therefore, the appellant has no colour of rights to claim any thing in the suit land. Rested by urging this court to dismiss this appeal for lack of merits.

Having calmly gone through the grounds of appeal and inquisitively perused the whole evidences on record as well as the arguments advanced by both parties, I find it is imperative to determine on the legality and *locus standi* of both parties. This issue has been raised by the respondent in her argument that she is an administrator of the deceased estate who was the original owner of the suit land. Also argued that the appellant is a stranger to their family and family properties. As such I find important to determine *locus standi* of both parties before discussing on the grounds of appeal.

It is settled in our jurisdiction that, a person bringing a suit in a court or tribunal for determination, first must show that his legal right has been interfered unlawfully. It is an accepted principle of law, that a court must always be certain on the identity of parties in dispute so as to avoid entertaining fictitious suits from dishonest persons. Basically, entitlements declared by a court of law must go to the rightful person, likewise liabilities should go to the proper liable person. This position is supported by the judgement 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). K. J. Motors and 3 others Vs. Richard Kashamba and others, (CAT) Civil Appeal No. 74 of 1999,**

at Dar es Salaam (unreported) and **Christina Mrimi Vs. Coca cola Kwanza Bottlers Ltd, Civil Appeal No. 112 of 2008**, (unreported). I fully, subscribe on the same position of law enunciated by the above cited precedents that the same principles apply in this land dispute.

In respect to this appeal, the appellant argued as quoted hereunder:- "*My Lord the disputed piece of land I did inherit from my grandmother, a farm land of 3.5 acres*"

It means the appellant is claiming ownership of the suit land based on inheritance from his grandmother. Notably, in the whole trial proceedings and before the 1st appellate Tribunal, the issue of inheritance of the suit land was not raised and decided. There is no evidence suggesting that the appellant inherited the suit land from his grandmother and that he was appointed an administrator of the estate of his late grandmother Daima Ramadhan. Therefore, the issue of inheritance is raised for the first time in this appeal.

I think the law is likewise settled in this issue as per sections 99 & 100 of the **Probate and Administration Act Cap 352** which provide legal guidance on how to proceed with the deceased estate. Once an administrator is appointed by a competent court of law, becomes mandated to step in the shoes of the deceased and do whatever allowed by law over the deceased properties as if, the deceased has arisen from grave. He can institute any claim or suit in any court of law or tribunal and can be sued by any person on behalf of the deceased.



The administrator of the deceased estate has *locus standi* as was rightly discussed in the case of **Lujuna Shubi Ballonzi Senior Vs. Registered Trustees of Chama cha Mapinduzi [1996] TLR203**, where the court held:-

"Locus standi is governed by common law, when a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with "

There is a cherished principle of law, that generally, in land law, the protection of the court can only be granted or extended to a person who has valid, subsisting right.

In this appeal, it is undisputed fact that, the respondent is not the owner of the suit land, but rather is an administrator of the estate of Iddi Hassani Kidanga (late father). The law as it stands, is that a claim for and on behalf of the deceased may only be instituted by an administrator of the deceased estate. As such, the appellant is not an administrator of the alleged grandmother and there is no clear explanation on how he inherited such piece of land.

In the contrary, the respondent, while recognising that the suit land belonged to their late father, she instituted Probate Cause No. 9 of 2004 and obtained letters of administration of the estate of Iddi Hassan Kidanga from Urban Primary Court of Morogoro on 20/03/2006. Therefore, she acquired legal status to step in the shoes of the deceased and sue or be sued on behalf of the deceased Iddi Hassan Kidanga, as if the deceased himself has arisen from the grave. The appellant though raised valid grounds of appeal, yet he lacks *locus standi* to step in the shoes of his

grandmother. Above all there is no evidence indicating that he inherited the said piece of land from the claimed grandmother. In the contrary, the respondent proved *locus standi* by producing letters of administration from Urban Primary Court for Morogoro.

This ground alone is capable of disposing off the whole appeal. Considering the grounds raised by the appellant will only be for academic purposes, while this court is a court of law not an academic institution. I therefore, find no reason to consider them because the one who raised them had no *locus standi* from the beginning.

Accordingly, I find no cogent reason to depart from the decision of the 1st appellate tribunal. I proceed to dismiss this appeal with costs.

I accordingly order.



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P.J. NGWEMBE
JUDGE
15/2/2022

Court: Judgement is delivered at Dar es salaam in Chambers on this 15th day of February, 2022 in the presence of all parties.

Right to appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to be "P.J. NGWEMBE".

P.J. NGWEMBE
JUDGE
15/2/2022