

**IN THE HIGH COURT OF TANZANIA**

**IN THE SUB-REGISTRY**

**AT MWANZA**

**PC. CIVIL APPEAL CASE NO. 59 OF 2021**

*(Arising from Civil appeal case no. 14 of 2021, Original Civil Case No. 85 of 2021 from Primary Court of Magu Urban at Magu before Hon. S.R. Maro)*

**EDWARD HENERICO BUBADALAJA.....APPELLANT**

**VERSUS**

**MINZIMALI LUCHAGULA .....1<sup>ST</sup> RESPONDENT**

**MBUGA MINZIMALI.....2<sup>ND</sup> RESPONDENT**

**MUSSA MINZIMALI.....3<sup>RD</sup> RESPONDENT**

**RULING**

*27 & 27<sup>th</sup> January, 2022*

***J.R. Kahyoza, J.***

The appellant, Edward Henerico Bubabalaja, filed a case against Minzimali Luchagula, Mbuga Minzimali and Mussa Minzimali praying the trial court to order them to return the deceased's property. The appellant lost the suit before the trial court. He appealed to the district court where he lost against. Aggrieved, he appealed to this court.

Before the hearing of the appeal *ex parte* commenced, I invited the appellant to address me if he had a *locus standi* to sue on behalf of the deceased. The appellant submitted that he was the *locus standi* as he was appointed to administer the deceased's estate on the 29/9/2020 and he instituted the current suit on the 23/12/2020.

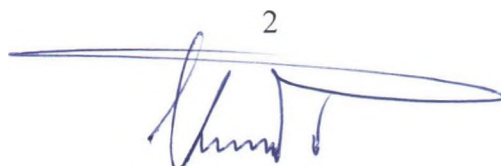


## **Did the appellant have locus standi?**

The issue I raised *suo mottu* is whether, the appellant had *locus standi* to sue the behalf of the deceased. I examined the appellant's document and the record and found undisputed that the appellant, Edward Henerico Bubadalaja was on 29/9/2020 appointed to administer the estate of the late Charles Minzimali Luchagula. The record further shows that he opened Civil Case No. 85/2020 on the 23/12/2020. Thus, at this time the appellant instituted Civil Case 85/2020 before the primary court, he was already appointed as the administrator. Unfortunately for the appellant, he instituted the suit in his own name instead of as the administrator of the late Charles Kinzimali Luchagula's estate.

It is trite law that for a person to institute a suit he must have *locus standi*, he must be able to show that his rights or interest has been breached or interfered with. See the case of **Omary Yusuph (Legal Representative of the late Yusuph Haji) V. Albert Munuo** Civil Appeal No. 12/2018 CAT – Unreported). The Court of stated further that: -

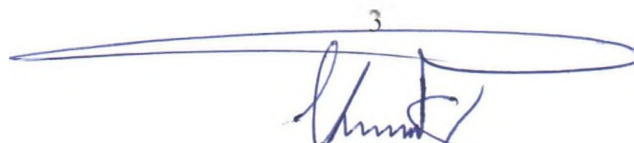
*"After any grant of probate or letters of administrator no person other than the person to whom the same shall have been granted shall have powers to sue or prosecute any suit, or otherwise at as representative of the deceased, until such*

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*probate or letter of administration shall have been revoked or annulled”*

In the current suit, the appellant sued in his person capacity instead of as an administrator of the deceased's estate. He did so after he had already been appointed as the administrator. He had no *locus standi*, as stated above, he could only to sue as an administrator of the deceased's estate. It is settled that the appellant in his personal capacity is a different person from the appellant in his capacity as the administrator of the deceased's estate. The Court of Appeal in the case of **Abdulatif Mohamed Hamis V. Mehboob Yusuf Osman & Fatuma Mohamed**, Civil Revision No. 6/2017, (CAT unreported) took a position that the administrator in his personal capacity is different from that administrator in his capacity as an administrator. The Court of Appeal in that case confronted a situation where the administratrix had been sued in her personal capacity in a case where in real sense she was acting as an administratrix of the deceased's estate. The Court remarked as follows;

*"... the 1<sup>st</sup> respondent's ownership of the suit land was not in her personal capacity, rather, it was on account of her being the legal representative of the deceased. Thus, in our view, to the extent that the suit had was vested upon the 2<sup>nd</sup> respondent*

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*by virtue of her capacity as the deceased's legal representative, any suit with respect to that property ought to have been instituted against her in that capacity ..."*

Given the above position, I hold that the appellant had no *locus standi* to sue in his personal capacity to claim the deceased's estate. He was required to sue in the capacity as the legal administrator of the late Charles Minzimali Luchagula's estate. Consequently, I find the proceedings and judgment of the trial and the appellate courts nullity. I quash the proceedings and set aside the judgments of both courts below. The appellant is at liberty to see in his capacity as the administrator of the late Charles Minzimali Luchagula's estate.

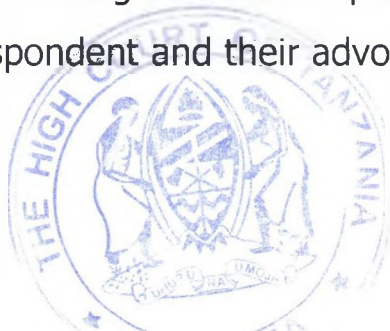
I make no order as costs as the respondents did not enter appearance and the appeal has been determined on the issue raised by this Court *suo mottu*.



**J.R. Kahyoza**  
**Judge**  
**27/01/2022**

It is so ordered.

**Court:** Ruling delivered in presence of the appellant and in the absence of the respondent and their advocate. B/C Ms. Martina (RMA) present.



**J.R. Kahyoza**  
**Judge**  
**27/01/2022**