

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

LAND CASE APPEAL NO. 29 OF 2021

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Application No. 31 of 2018)

**HIZIDORY TIMANYWA LEONARD..... APPELLANT
VERSUS**

**JULIANA PAULO RUHUTA
(Administrator of Clemence P. Ruhuta's Estate)..... RESPONDENT**

JUDGMENT

Date of Judgment: 21.03.2022

Mwenda, J.

The respondent filed Application No. 31 of 2018 before the District Land and Housing Tribunal for Muleba at Muleba against the appellant for the following reliefs, to wit:

- a) The Tribunal's order declaring the appellant as rightful owner of the disputed land. (sic)
- b) The Tribunal's order for vacant possession against the Respondent. (sic)
- c) The Tribunal's declaratory order that the respondent's act to claim part of the late Clemence Paulo Ruhuta's land fraudulently is unlawful.
- d) The Tribunal's order compelling the respondent to pay compensation for the crops he had already harvested since January, 2018 till when the order will be pronounced. (sic)

e) Costs of this application to follow the course; and

f) Any other relief (s) as the Honorable Tribunal would deem fit and just to grant.

At the end of the judicial day, the trial Tribunal decreed in favor of the respondent.

Aggrieved the appellant preferred this appeal challenging the trial Tribunal's findings by filing a memorandum of appeal with three grounds. On his part, the respondent responded by filing a reply with two points.

When this appeal was set for hearing both parties were represented by learned counsels. The appellant was represented by Mr. Gildon Mambo, learned counsel and the respondent was represented by Mr. Danstan Mujaki, learned counsel.

Before hearing commenced the learned counsel for the appellant informed this court that in the course of reading the trial tribunal's records, they have noted an anomaly which automatically vitiates the whole proceedings. The learned counsel said, the said anomaly is in regard to the respondent's locus standi to sue before the tribunal. He thus prayed to abandon the grounds of appeal as appearing in the memorandum of appeal and remain with the new raised issue. When asked if he had any objection, Mr. Danstan Mujaki, learned counsel for the respondent informed this court that he also detected the said anomaly and he prayed that leave be granted for them to submit in that regard.

When leave to submit in that regard was granted, the learned counsel for the appellant submitted that on 19/3/2019 when the hearing before the District Land and Housing Tribunal was set the respondent (the applicant) sought for leave to

file a letter of administration (Form No.IV). But until the pronouncement of judgment the records are silent in that aspect. The learned counsel said, since the applicant filed the suit in the capacity as administratrix of the estate, then lack or absence of letter of administration make her application incompetent for want of Locus standi to sue and for that matter the proceedings and judgment of District Land and Housing Tribunal are a nullity. He thus prayed this appeal to be allowed and any interested party to institute a fresh suit before a new chairman and a new set of assessors. With regard to costs of the matter, the learned counsel for the appellant prayed each party to bear its own costs.

Responding to the submissions by the counsel for the appellant, Mr. Mujaki, learned counsel for the respondent conceded to that submission and added that Form No. IV ought to be in court file and it should be reflected in the proceedings as well but by looking on the records they are silent on that issue. He thus prayed this court to nullify the trial tribunal's proceedings and for an order that each party bear its own costs.

Having gone through the submission by the counsels for both parties, this court is in all fours with them that the respondent had no locus standi to sue before the District Land and Housing Tribunal. This is so because this court went through the records and at page 7 of the typed proceedings, the respondent while testifying before the tribunal uttered the following words and I quote:

"....The suit land was the property of Clemence Paulo, and I am the administrator of his estates. I have an instrument of appointment, today I have not come with the same, I will bring the same on another date. That's all, I pray my application to be allowed."

The take away from the quotation above is that the respondent was mindful that she sued in the capacity of administratrix and she knew that to prove the same she ought to have produced the instrument of appointment which is form No. IV. As it was rightly pointed out by the learned counsels for the appellant and the respondent, until the judgment was pronounced, the said instrument was never submitted as promised. The respondent's failure to produce the said document means she sued without having locus standi to sue. The effect of suing without locus standi to sue has been discussed/stated in various authorities of the court of appeal. In the case of **Lujuna Shubi Ballonzi, vs. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203** it was held inter alia that:

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

Guided by the above authority, this court is in agreement with the learned counsel for the appellant and the respondent that failure by the respondent to submit her instrument of appointment as administratrix of estates meant she had no locus standi to sue and the effect of which makes the whole proceedings nullity. This appeal therefore is allowed, the proceedings and judgment of District Land and Housing Tribunal in Application No. 31 of 2018 are nullified and set aside respectively.

Any party interested to pursue this matter shall prefer a fresh suit before a new chairman and new set of assessors and each party shall bear its own costs as the anomaly so envisioned was not caused by either of the parties.

It is so ordered.



A. Y. Mwenda
Judge
21.03.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Gildon Mambo the learned counsel for the appellant and in the presence of Mr. Dastan Mujaki learned counsel for the respondent.



A. Y. Mwenda
Judge
21.03.2022



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