

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF MWANZA

AT MWANZA

MISCELLANEOUS LAND APPEAL NO. 04 OF 2021

(Arising from Land Appeal No. 126 of 2015 before the District Land and Housing Tribunal of Mwanza, originating from Land Case No. 250 of 2015 Buswelu Ward Tribunal)

MUSSA HASHIMU APPELLANT

VERSUS

MABULA MSHIKILARESPONDENT

JUDGMENT

12th April & ...th May, 2022.

KAHYOZA. J.:

The Court heard the appeal on merit by way of written submissions. While composing the judgement, the Court found that the appellant indicated in the memorandum of appeal that he was appealing against the decision of the ward tribunal. The law provides that an appeal from the decision of the ward tribunal lies to the district land and housing tribunal and not to the High Court. The Court composed a judgment ordering parties to be summoned to address the following issue-

1. Hearing on the issue of propriety or otherwise of the petition of appeal before this Court as far as the grounds of appeal are concerned which, this being a second appeal, but the same

challenge a decision of the Tribunal instead of the District Land and Housing Tribunal for Mwanza be held on 11/02/2022.

I invited parties' advocates to address me on the issue raised by this Court (*Manyada, J.*). I ordered them to file written submissions on 16.5.2022. Neither party's advocate complied with the order. I examined the petition and found that the appellant stated in the opening statement in the memorandum of appeal that he is appealing against the decision of the District Land and Housing Tribunal (the DLHT). The appellant, however, while stating grounds of appeal wrote that the "*trial tribunal erred*" instead of **the appellate tribunal erred**. I agree with my brother judge that the appellant erred to write that the "*trial tribunal erred*" instead of **the appellate tribunal erred**. My position is that the error is not fatal.

The appellant stated in the opening statement that he was appealing against the decision of the DLHT. In the present case, the DLHT is an appellate tribunal and the ward tribunal is a trial tribunal. To hold that the appeal is incompetent since the appellant indicate that the "*trial tribunal erred*" instead of **the appellate tribunal erred** would be to betray the principal of overriding objective. The principal of overriding objective states that the Court shall handle all matters presented before it with a

view to attaining; **one**, the just determination of the proceedings; **two**, the efficient use of the available judicial and administrative resources including the use of suitable technology; and **three**, the timely disposal of the proceedings at a cost affordable by the respective parties. I find no reason to hold that the error is fatal. It did not occasion any injustice as both parties knew that the appeal is from the decision of the DLHT exercising appellate jurisdiction.

I vacate the issue this Court raised *suo mottu* and proceed to determine the appeal on merit. Parties argued the appeal by way of written submissions. The appellant raised seven grounds of appeal. The appellant's advocate argued the first, third and sixth grounds of appeal jointly. The first, third and sixth grounds of appeal raised an issue whether the respondent had *locus standi* to claim the deceased's estate.

It is on record that the suit land belonged to Mussa Mshikila. Mussa Mshikila is dead. The respondent, Mabula Mshikila is Mussa Mshikila's brother. He unsuccessfully sued the appellant, **Mussa Hashimu**, before the ward tribunal. Aggrieved, Mabula Mshikila appealed to the DLHT where he emerged a winner.

To support the first, third and sixth grounds of appeal the appellant's advocate argued that Mabula Mshikila instituted land dispute before the ward tribunal on 30th July, 2015 to claim the deceased's property before he was appointed to administrate the deceased's estate. He added that there is no dispute that Mabula Mshikila was appointed to administrate the estate of the late Mussa Mshikila 3rd December, 2015. He concluded that Mabula Mshikila instituted the suit at the ward tribunal before he was appointed to administrate the estate of the deceased Mussa Mshikila, hence the proceedings were a nullity.

The respondent's advocate replied that Mabula Mshikila instituted a suit before the tribunal without letters of administration of the deceased's estate to protect the estate of his late brother. He contended that Mabula Mshikila could not wait to obtain the letters of the administration while the appellant was mingling with the deceased's estate.

The respondent's advocate submitted further that there is no a legal requirement that a person suing before the ward tribunal to protect the estate of the deceased should first obtain letters of the deceased's estate. To support his argument, he cited the decision of this Court (Mruma, J.) in **Osnawi Ramadhani v. Hamisi Ally**, Misc. Land Appeal No. 24/2019. The

Court held that “*in the first place there is no law which specifically which require that a person suing over an estate of the deceased person to obtain letters of administration before he/she can institute a claim in the ward tribunal, and given the simplicity obtaining and intended the procedure in the ward tribunals the reason is not farfetched*”. He added that the ward tribunal is not be bound by the rules of evidence or procedure applicable in any court but it regulates its own procedure. He referred this Court to sections 15(1) and (2) of the Ward Tribunal Act, [Cap. 206].

in his rejoinder, the appellant’s advocate submitted that the case **Osnawi Ramadhani v. Hamisi Ally**, (supra) do not apply to the present case. He stated that the position in **Osnawi Ramadhani v. Hamisi Ally** (supra), which the respondent seeks to rely upon is an *obita dictum* and that in this case and facts **Osnawi Ramadhani v. Hamisi Ally** (supra) are different.

Having heard the rival submissions, I gathered the facts that the suit land is the property of Mussa Mshikila and that Mussa Mshikila is dead. I also ascertained from the submissions, that Mabula Mshikila instituted the suit in the ward tribunal before he was appointed to administrate the late

Mussa Mshikila's estate. It is common ground that a person may sue if and only if he has *Locus standi*, that is he has an interest or right, to protect. In **Lujuna Shubi Bagonzi (senior) V Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 this Court held 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"

Mabula Mshikila had not legal interest in his late brother's land. It is obvious that Mabula Mshikila would not have sued sue to claim his brother's dead if his brother, Mussa Mshikila was alive. Thus, Mabula Mshikila had *no locus standi* to sue while Mussa Mshikila was alive he cannot assume *locus standi* once Mussa Mshikila is dead. It is Mussa Mshikila or the administrator of his estate who has interest in the suit land. It is trite law that it is an administrator of the deceased's estate who is competent to sue or be sued in relation to the deceased's property. Thus, it is the administrator of the deceased's estate who has a *locus standi*, that is the right or capacity, to bring an action or to appear in a court or tribunal to claim the deceased's property or defend it. See the case of **Ibrahimu Kusaga v. Emanuel Mweta [1986] TLR 26** where the Court stated that-

"I appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases, all those interested in determination of the dispute or establishing ownership may institute proceedings against the Administrator or the Administrator may sue to establish claim of deceased's property."

The Court of Appeal pronounced itself in **Mohamed Hassan vs. Mayase Mzee & Mwanahawa Mzee** [1994] TLR. 225 CA, that-

"Administrator is the person who has mandate to deal with the deceased's properties".

I am of the firm view that Mabula Mshikila had no right to institute the dispute at trial tribunal as he was neither owner of the suit land nor the administrator of the deceased brother's estate. He had no *locus standi* to sue. Consequently, proceedings and judgment of the trial tribunal, the subsequent proceedings and judgment before the appellate tribunal were a nullity.

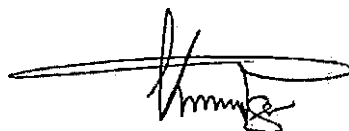
Having upheld the first, third and sixth grounds of appeal that Mabula Mshikila, the respondent, had no *locus standi* to sue before he was appointed the administrator of the late Mussa Mshikila's estate, there is no impetus to determine the remaining grounds of appeal. I find that the

appeal meritorious, I quash the proceedings and set aside the judgment of both tribunals for being a nullity. Mabula Mshikila, the now administrator of the estate of the deceased Mussa Mshikila is at liberty to re-institute the claim subject to the law of limitation.

Each party shall bear its own costs as the dispute is still alive.

It is ordered accordingly

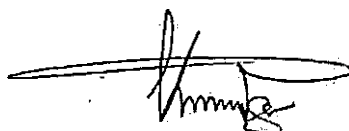
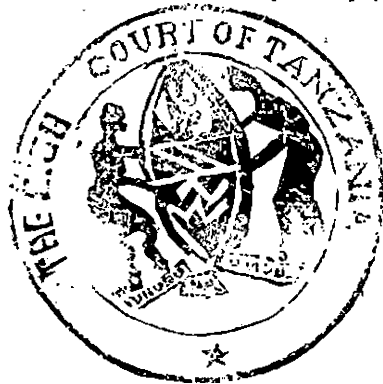
Dated at Mwanza this 26th day of May, 2022.



**J. R. Kahyoza
JUDGE**

Court: Judgment delivered in the presence of the parties duly notified. B/C

Jackline (RMA) present.



**J. R. Kahyoza
JUDGE
26/05/2022**