

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND APPEAL CASE No. 44 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma  
in Land Application No. 11 of 2021 at Musoma)*

**DENIS KUBOJA MBUGE ..... APPELLANT**

*Versus*

**LOYCE M. WAMBURA ..... RESPONDENT**

**JUDGMENT**

30.05.2022 & 30.05.2022

Mtulya, J.:

The indication of cherishing new enactment of section 3(A) & (B) in the **Civil Procedure Code** [Cap 33 R.E. 2019] (the Code) and section 66 of the **Advocates Act** [Cap. 341 R.E. 2019] (the Advocates Act) is on the course. Today morning, Mr. Emmanuel Baraka Werema appearing for Mr. Deus Kuboja Mbuge (the appellant) dropped and entirely abandoned a totally of eleven (11) grounds of appeal in favour of one (1) ground of appeal after short discussions and congratulations with learned counsel Mr. Christopher Waikama, learned counsel for Ms. Loyce M. Wambura (the respondent). The maintained ground of appeal registered by Mr. Werema was drafted in the following words:

*That, the trial tribunal erred in law and fact for determining the matter in favour of the respondent as the*

*respondent was not appointed to be administrator of either the late Mgaya Yakobo or the late Wambura Yakobo.*

The ground was intended to protest the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 11 of 2021** (the application). When Mr. Werema was called to take the floor of this court today morning to explain on the ground and produce materials to substantiate the above quoted text in the ground, he briefly stated that the tribunal erred in law and in fact in determining the application in favour of the respondent while she was not an administratrix of the estates of either Mr. Wambura Yakobo or Mgaya Yakobo. In order to bolster his argument and persuade this court and learned counsel, Mr. Waikama, the learned counsel cited second paragraph of page 2 of the typed judgment and page 6 of the typed proceedings of the tribunal.

Mr. Werema argued that the respondent admitted in the tribunal that she was not an administratrix of the estates of the late Mzee Wambura Jacob hence she had no *locus standi* in the application. This submission was well received by Mr. Waikama for the respondent conceding that the respondent was summoned and appeared in the application without any legs to stand in the dispute.

I have perused the record of this appeal and found that the respondent at page 6 of the typed proceedings of the tribunal testified that: *Mgaya Yakobo was not the owner of the suit land. The owner of the suit land is Yakobo Wambura Yakobo. Wambura is dead. He was my father.* This testimony from the respondent was well captured by the tribunal and the tribunal at page 2 of the decision echoed the testimony in the following text:

*...the owner of the suit premises was one Yakobo Wambura, the grand parent of Mgaya Yakobo. That Yakobo Wambura is now deceased and the administrator of estates has not been appointed.*

From this noted crucial fact of the application, the tribunal formulated a total of three (3) issues, but declined to raise any issues related to administration of estates of the deceased, Mzee Yakobo Wambura Yakobo or move *suo moto* to inquire on the status of the parties in the dispute. Noting the issue of administration of estates of the deceased Mzee Yakobo Wambura Yakobo goes to the legality of the matter, Mr. Werema raised it as one of the reasons of this appeal and today during the hearing of this appeal it was well appreciated by Mr. Waikama.

The law regulating the matter is certain and settled by our superior court recently sitting at Tanga in the decision of

**Ramadhani Omar Mbugani v. Asia Ramadhani**, Civil Application No. 173/12 of 2021, when it stated at page 4 of the decision that:

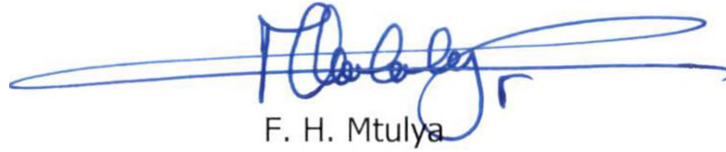
*...a party who commences proceedings in representative capacity, the instruments constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument renders the proceedings incompetent for want of the necessary standing.*

This thinking of our special count was invited and appreciated by this court last week, specifically on 25<sup>th</sup> May 2022 in the precedent of **Said Kahana Rwaki v. Nsanda Mabhari Sagire & Another**, Misc. Land Appeal Case No. 3 of 2022. Similar instance is displayed today in the present appeal, and it was fortunate that learned minds of both sides are well aware of the need of *locus standi* in suits like the present one. This court is the court of law and justice. It cannot close its eyes in a vivid display of breach of the law and directives of our superior court in this State.

Having said so and considering what has been alluded in this appeal, I have decided to quash the judgment and set aside proceedings of the tribunal in the application for want of necessary standing. I do so without any order to costs. The reasons are straight forward and obvious that the fault was caused by the parties in concealing the real owner of the disputed real property

and the dispute is still on the course after identifying proper parties.

Ordered accordingly.



F. H. Mtulya

**Judge**

30.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of the parties, Mr. Deus Kuboja Mbuge and respondent's representative, Mr. Mwita Kikondo and in the presence of learned counsels, Mr. Emmanuel Baraka Werema and Mr. Christopher Waikama.



F.H. Mtulya

**Judge**

30.05.2022