IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LAND APPEAL NO 37 OF 2022

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

HADIJA RASHID.....1ST APPELLANT

DAUDI SHEMANGALE MWAMBASHI.....2ND APPELLANT

OMARI A. NDAGO.....3RD APPELLANT

VERSUS

LUKINDO RASHID MANENO (Administrator of Estate of the Late **RASHID MANENO).....RESPONDENT**

JUDGMENT

06/12/2022 & 15/2/2023

NDESAMBURO, J.:

The appellants represented by Mr Henry Njowoka, a learned advocate, being aggrieved by the whole judgment of the Lushoto District Land and Housing Tribunal (DHLT), have lodged this appeal against the respondent whom Mr Justus J. Ilyarugo, a learned advocate, is representing.

Given the nature of this appeal, I am compelled to give a brief background to appreciate the facts that led to this appeal. The dispute between the parties traces its genesis to the family of the late Rashid Maneno Mshana. Among the properties which he left, as per the respondent's case, is the piece of land measuring half an acre located at Kwemkwazu village, Mnazi ward, Lushoto District, the subject matter of this appeal which was alleged to be fraudulently sold by the first appellant to the second appellant on 1996 without the family consent or the administrators.

Following his death in 2002, Probate Cause No. 03 of 2004 before the Mnazi Primary Court was lodged; however, on appeal via Probate Appeal No. 02 of 2016, the District Court found that the Mnazi Primary Court did not enter any decision in Probate Cause No. 03 of 2004 and proceeded to quash the purported ruling and set aside all orders of the trial court. Accordingly, parties were advised to start afresh by adhering to the law.

Probate Cause No. 32 of 2016 was lodged before Dochi Primary Court. As a result, on the 9th of September 2016, Athumani Lukindo and Lukindo Rashid Maneno were dully appointed as administrators of the estate of the late Rashid Maneno Mshana.

The records further reveal that via the same file, Lukindo Rashid Maneno lodged a complaint complaining about Hadija Rashid having sold a piece of land which belongs to the estate of the late Rashid Maneno Mshana without the family's consent and before the appointment of the administrators. On 30th January 2017, the court decided that the land in question be returned to the estate of the late Rashid Maneno Mshana and the buyer to be refunded his money.

Athumani Lukindo and Hadija Rashid were not amused by the court's decision in Probate Cause No. 32 of 2016. Therefore, they lodged an appeal at Lushoto District Court in Probate Appeal No. 1 of 2017 against Lukindo Rashid. The District Court found that the appeal against the decision on the appointment

of the administrators was out of time and struck it out. However, the court held that the Primary Court had no jurisdiction to entertain the land matter. Therefore, all subsequence orders entered by the Primary Court were quashed, and a retrial was ordered.

To recover the land, the respondent claimed to have been sold by the first appellant, the respondent lodged a Land Application No. 31 of 2018 at Lushoto DLHT against the appellants. The appellants resisted the application. Upon hearing the matter, the DLHT held in favour of the respondent. Accordingly, it was ordered that the disputed piece of land was part and parcel of the estates of the deceased, and the appellants were ordered to vacate the same. As hinted before, the appellants were not amused with the decision, hence this appeal.

The appellants have raised five grounds of appeal; however, ground number five was abandoned during submission. The remaining four grounds are summarised below:

1. The respondent had no *locus standi* to institute a dispute over the disputed land at the trial Tribunal.
2. The trial Tribunal was wrong to entertain a time-barred suit in favour of the respondent.
3. The trial Tribunal erred in law by failing to determine that the disputed land was not described making the decision inexecutable.
4. The trial Tribunal erroneously took judicial notice in favour of the respondent over a document annulled by a superior court, thereby affecting the rights of the respondents being heard.

Based on the above grounds, the appellants pray for this court to nullify the judgment, decree, and orders of the DLHT and declare the 2nd appellant the lawful owner of the disputed land with costs.

In the cause of analysing the appeal, I have noted that the respondent did not file a reply to the memorandum of the appeal.

The appeal was argued through a written submission by consent, and the parties followed the scheduling orders.

Arguing in support of the first ground of appeal, the counsel submitted on two limbs. On the first limb, he argued that the respondent had no *locus standi* because in Probate Cause No. 32 of 2016, which was relied on by the respondent in filing the application before the DLHT was annulled by Probate Appeal No. 1 of 2017 of Lushoto District Court. He, therefore, stated that following the nullification, everything emanating therefrom ceased to exist, including the respondent's status.

Submitting on the second limb of *locus standi*, the counsel submitted that two administrators were appointed in Probate Cause No. 32 of 2016. That is the respondent and one Athuman Lukindo. He thus says the respondent had no *locus standi* to file the application alone in isolation of the co-administrator. He referred the court to numerous cases to manifest that where there is co-administration, they must be jointly and together responsible for administrating the estate. The cited cases are

May Mgaya v Salum Saidi (The Administrator of the Estate of the Late **Saidi Salehe) & Another** (Civil Appeal No. 264 of 2017) [2019] TZCA 12, **Simon Ngatola Woisso & Joseph Simon Woisso** (Misc. Civil Appl. No.308 of 2019) [2020] TZHC 1281, **Atufigwegwe Mwakakenda v Peter Mwakakend** (Land Appeal No.25 of 2018) [2020] TZHC 55 (All Reported in Tanzlii).

He further stated that *locus standi* being a jurisdictional issue, the DLHT had no jurisdiction to entertain the application as the respondent was not the administrator of the estate of the late Rashid Maneno Mshana at the time of filing the matter. Alternatively, he had no mandate to file the application alone without the co-administrator. To bolster his argument on the *locus*, he cited the case of the **Registered Trustee of SOS Children's Village Tanzania v Igenge Charles & Others** (Civil Application No. 426 of 2018) [2022] TZCA 428, where the Court of Appeal observed that;

'Locus standi is a jurisdictional issue; it is a rule of quality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action.'

Submitting on the second ground, the counsel submitted that the DLHT entertained a time-barred matter. He submitted that counting from the death of the late Rashid Maneno Mshana to the time when the application was filed before the DLHT, 15 years had lapsed. He supported his submission with the decision of **Miraji Amir** (Administrator of the Estate of **Hamisi Mdoe**) v **Minihaji Sufiani** (Administrator of the Estate of **Hamisi Mdoe**), Land Case No. 22 of 2016 HCT.

On the 3rd ground of appeal, the counsel faulted the DLHT for entertaining the subject matter not adequately described as required by the law. He says demarcations of the disputed land were very crucial as required by Regulation 3(3)(b) of the Land

Dispute Courts (District Land and Housing Tribunal) Regulations, GN No.124/2003. He referred the court to authorities to support that description of the subject matter in dispute is of paramount; these include **Abutwalib A. Shoko v John Long & Another** (Land Case No. 20 of 2017) [2018] TZHC 2182, **Rouald Andrea vs Mbeya City Council and Others** (Land Case No. 13 of 2019) [2020] TZHC 22386, **Hassan Rashid Kingazi & Another v Serikali ya Kijiji cha Viti** (Land Appeal No. 12 of 2021) [2021] TZHC 5534, **Martin Fredrick Rajab v Ilemela Municipal Council & Another** (Civil Appeal No. 197 of 2019) [2022] TZCA 434, (all reported in Tanzlii).

On the fourth ground, he faulted the DLHT for taking judicial notice in favour of the respondent over a document annulled by a superior court. He averred that since Probate Cause No. 32 of 2016 was annulled, relying on a nonexistence case was against the principle of natural justice as the appellants were condemned unheard. He cited the case of **Danny Shasha v Samson Masoro & Others** (Civil Appeal No.

298 of 2020) [2021] TZCA 653 (reported in Tanzlii) to emphasise that a denial of the right to be heard vitiates the proceedings, and it is an abrogation of the basic constitutional right.

In reply, the counsel submitted that Probate Appeal No. 1 of 2017 was struck out for being time-barred. He, therefore, stated that whatever was conversed by the appellate court was an *obiter dictum* with no legal base as the court became *functus officio* upon pronouncing the decision. The counsel further states that since no other appeal or application was preferred against Probate Cause No. 32 of 2016 of Dochi Primary Court, its decision remains unchanged.

Responding to the second limb of the first ground and the second ground of appeal, the counsel submitted that only one administrator was appointed to administer the estate of the late Rashid Maneno Mshana. That was the respondent whose time for the administration was enlarged.

Submitting on the 3rd ground of appeal, the counsel submitted that the land in dispute was adequately described as required by Regulation 3(2)(b) of GN No. 124/2003 and not Regulation 3(3)(b) as cited by the learned counsel. He averred that the size was clearly stated as ½ an acre located at Mnazi Ward, and the demarcation is the ½ an acre sold by Omary A. Ndago to Rashid Maneno Mshana.

Regarding the 4th ground, the counsel reverted to what he submitted in ground one because Probate Appeal No. 1 of 2017 did not annul Probate Cause No. 32 of 2016. The counsel thus prayed this court to dismiss the appeal with costs.

In rejoinder, the counsel essentially reiterated his submission in chief. He, however, specifically submitted that the issue of *locus* is a point of law which can be raised at any time. Supporting his argument, he cited the case of **Adelina Koku Anifa & Another vs Byarugala Alex** (Civil Appeal No. 46 of 2019) [2019] TZCA 416.

He also reiterated that Probate Appeal No. 1 of 2017 did nullify Probate Cause No. 32 of 2016. Therefore, he finally beseeched this court to allow the appeal with costs.

Having considered the submissions of both parties and perused the entire record of this appeal, the main issue to be determined is whether the appeal has merit.

I had enough time to go through the record of appeal. For clarity, I wish to state at the onset that Probate Appeal No. 1 of 2017 did not nullify Probate Cause No. 32 of 2016 as far as the appointment of the administrators of the estate of the late Rashid Maneno Mshana is concerned, the appeal on this part was struck out for being lodged out of time. The only orders nullified are those regarding the decision of Honorable Maira, which was delivered on 30/1/2017.

However, before going further in analysing the merit of the appeal, I wish to state that the administrator of the estate, duly appointed by the Primary Court, is vested with powers to bring and defend proceedings on behalf of the estate (section 6 of part II of Fifth

Schedule of the Magistrates Courts' Act, Cap 11 R.E 2019 (the MCA). From that provision, it is clear that only the administrator can sue or be sued on behalf of the deceased's estate.

I will now determine the first ground of appeal, which focuses on the respondent's *locus standi*. A pertinent question is whether the respondent had the *locus* to institute Land Application No. 31 of 2018 before Lushoto DLHT.

The position of the law is clear as to what is meant by *locus standi* and its applicability which entails that a person may sue if and only if he has *locus standi*, that is, where he has an interest or right to protect. In the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203, the 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"*

The pleading reveals that the respondent sued the appellants as the administrator of the late Rashid Maneno Mshana, which is not disputed. What is disputed by the appellants is that the respondent, being a co-administrator, did not have the *locus* to institute the matter alone. In his submission, the respondent's counsel disputed that two administrators were appointed. Instead, only one administrator was appointed, who was the respondent, and therefore, the respondent had the *locus* to institute the land matter at the DLHT.

I have seen the ruling of Dochi Primary Court in Probate Cause No. 32 of 2016. The ruling discloses that when the Probate Cause was lodged, Hadija Rashid filed an objection resisting the respondent being appointed as an administrator of the deceased's estate. Upon hearing the parties, Athuman Lukindo was appointed along with the respondent to administer the deceased's estate. The appointment and grant of letters of administration were effected on 9/11/2016.

It is not only the ruling of the court that evidenced the facts that two administrators were appointed but also the typed proceedings of the DLHT on page 12. When the respondent was being crossed examined, he admitted that two administrators were appointed to administer the deceased's estate. Another piece of evidence is the decision of Dochi Primary Court rendered by honourable Maira on 31st January 2017, attached by the applicant in his application before the DLHT, which shows that two administrators were appointed to administer the deceased estate. With due respect to the learned counsel for the respondent, the record indicates that the respondent was not appointed as a sole administrator but was jointly appointed along with Athumani Lukindo to administer the estate of the late Rashid Maneno Mshana.

As earlier reasoned, Probate Cause No. 32 of 2016 is still in force, and since the appointment of the duo has not been challenged, it is without query that the two administrators still administer the said estate.

That being the case, I now revert to the question of whether the respondent had the *locus* to institute Land Application No. 31 of 2018 before Lushoto DLHT alone.

It is settled law that where there is an appointment of more than one administrator, the co-appointed administrators must work jointly in the estate administration: **Simon Ngatola Woisso** (supra). The Court of Appeal in **May Mgaya v Salimu Saidi** (supra) insisted that where there are two administrators, as in this appeal, they are to work with cooperation to safeguard the interest of the beneficiaries. Accordingly, on page 10 of the decision, the Court held that:

> *"As co-administrators, the respondents were jointly and together responsible for everything in respect of the administration of the estate."*

The decisions above entail that where more than one administrator is appointed, they are supposed to work together in administering the estate which they were appointed to administer. The act of the respondent to institute the land application before the DLHT

alone is not legally accepted as he had no locus. His claims that he was the only administrator is a lie, which his attached documents to the pleading can prove and his testimony on page 12 of the typed proceedings where he admitted that he was appointed along with his co-administrator Athumani Lukindo, whom he claimed to have passed away. The story about the death of Athumani Lukindo was a mere allegation warranting a justification for his death. The respondent never pleaded nor afforded a justifiable explanation as to why he decided to exclude the co-administrator when he lodged the land application before the DLHT.

From the above analysis, this court is satisfied that the respondent had no *locus standi* to institute the Land Application No. 31 of 2018 before the DLHT in isolation of the co-administrator. Therefore, the first ground of appeal is merited. Having found merit on the first ground of the appeal, I do not see the reason for determining the other grounds.

In final, the appeal is allowed. The proceedings of the DLHT are nullified, the judgment quashed, and the subsequent orders set aside. Each party is to bear its costs.

DATED at **TANGA** this 15th Day of February 2023

H. NDESAMBURO

JUDGE