

in quo and analysed two Wills concerning the land in dispute. The Will of Daud Nyonyi dated 28th November 1974 as well as that of Gaudencia Nyonyi dated 11th February 2006. At the end, it proceeded to divide the shamba afresh among the heirs, the Respondent being none of them. Dissatisfied, the Respondent appealed to the District Land and Housing Tribunal by filing five grounds of appeal. Two of the grounds were sustained thereby allowing the Appeal by quashing and setting aside the decision of the Ward Tribunal. Dissatisfied, the Appellant filed this Appeal.

At the hearing of the Appeal, both parties enjoyed legal services of learned advocates. The Appellant was represented by learned Advocate Eliphazi Bengesi while the Respondent was represented by learned Advocate Mswadick who also represented the parties in the appellate Tribunal. The Appellant filed 2 grounds of Appeal. The 1st ground was such that the appellate Tribunal erred in law as '*The Appellant has **locus standi in judicio**. He has lawfully inherited the suit premises from their mother as well as from their maternal grandparents*'. The 2nd ground reads as '*that the 1st Appellate tribunal misdirected itself in law. It decided the matter against the Appellant's weight of evidence.*'

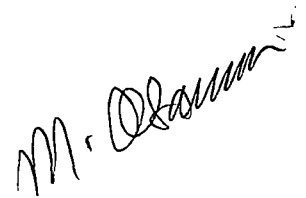
In arguing the Appeal, the Appellant through his learned Advocate argued both grounds together. He gave a background as to why he and his siblings should be recognized as lawful owners of the land in dispute. He also admitted that the

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process of administration of the deceased's estate was not done. That they assumed ownership relying on existence of the two Wills as earlier mentioned and him having lived on the land since his birth in 1958. As in the appellate tribunal, counsel for the Respondent reiterated that the Appellant has no *locus standi* as he is not authorized to represent interests of the deceased for lack of letters of Administration. In support of his arguments, he cited the following cases: **Ibrahim Kusaga v Emmanuel Mweta** (1986) TLR 26, **Kayenza Anthony v. Renatus Faida**, Misc. Land Case Appeal No. 11 of 2009 (HC Bukoba) (unreported), **Felix Constantine v. Geoffrey Modesti**, Land Case Appeal No. 9 of 2010 (HC Bukoba), **Shabani Musa v Mwanjira Hassan and Another**, Misc. Land Case Appeal No. 31 of 2015 (HC Dodoma) and **John Petro v Peter Chipaka** PC Civil Appeal No. 81 of 1996 (HC Mtwara). Further, counsel for the Respondent reiterated the argument that the matter is probate in nature while the Ward tribunal is not a special forum for probate matters. As such, the trial tribunal had no jurisdiction to act as a probate court, as discussed in the case of **Attorney General v. Lohay Akonay & Another** (1995) TLR 80. In that case, the court held that:-

'Courts would not normally entertain a matter for which a special forum has been established'.

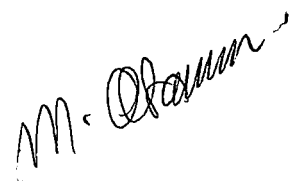
In considering if the Appeal has merits, I have carefully gone through the parties' submissions as well as the records of both lower tribunals and the relevant law.

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The land in dispute is a subject of the two Wills that were discussed in the trial tribunal. The Appellant had sued over the land in dispute on behalf of himself and his siblings while it is not in dispute that no probate proceedings have ever been initiated concerning these Wills. Evidently, the matter is probate in nature. As rightly argued by the counsel for the Respondent, to get authority to sue on the deceased's estate one has to have letters of administration/probate. This is well explained in the cases of **Ibrahim Kusaga, Kayenza Anthony, Felix Constantine, Shabani Musa** and **John Petro** cited above. In order to sue/be sued on behalf of heirs and on the property that is a subject of inheritance, one has to get *locus standi* through letters of administration/probate. The process of probate is inevitable before one could assume *locus standi* over the estate/property in question.

The Appellant having no letters of administration nor being a declared heir of the land in dispute, evidently lacks the requisite *locus standi*, as correctly stated by the counsel for the Respondent and held by the appellate tribunal. Further, in the case of **Mgeni Seifu v. Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009 (CAT Dsm) (unreported), the Court of Appeal held that;-

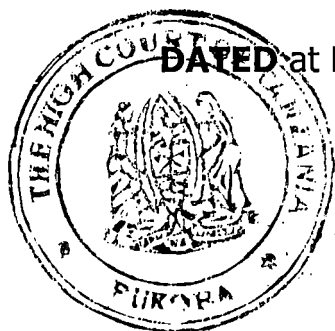
'Where there is a dispute over the estate of the deceased, only the probate and administration court seized on the matter can decide on ownership.'



What the Appellant is required to do, is to follow probate procedures through special forum with jurisdiction to deal with probate and administration of estates, process the requisite validations and finalize issues of inheritance so that the issue of ownership may be determined.

Consequently, I find the Appeal to lack merits and it is hereby dismissed in it's entirety. The Decision of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 44 of 2021 is hereby upheld.

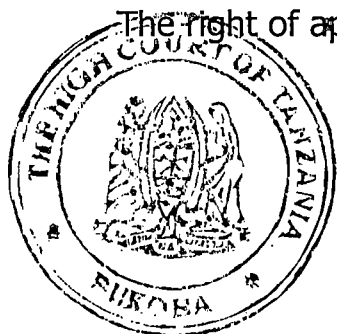
Due to the circumstances of the case, no order as to costs is given.




DATED at **BUKOKA** this 10th day of March, 2023.


M.P. Otaru
Judge

Court: Judgement delivered in court in the presence of the Appellant and the Respondent, both in person.



The right of appeal is duly explained to the parties.


M.P. Otaru
Judge
10/03/2023