

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 70 OF 2022

*(Arising from the decision of the District Land and Housing Tribunal for Mara
at Musoma in Land Application No. 120 of 2019)*

BETWEEN

JOSEPHINE WILEGI SONGAMBELE APPELLANT

VERSUS

MTANDA MAKUNJA 1ST RESPONDENT

JACK MAKUNJA 2ND RESPONDENT

FATUMA MAKUNJA 3RD RESPONDENT

CHRISTINA MAKUNJA 4TH RESPONDENT

RULING

5th & 25th April, 2023

M. L. KOMBA, J.:

This is the ruling in respect of the preliminary objection raised by the respondents that, the appeal is incompetent and bad in law since the appellant have no ***locus standi*** as she was not a part to the original suit and that she has also no order for extension of time for her to act as administratrix of the estate.

Briefly, before the District Land and Housing Tribunal for Mara at Musoma (the DLHT), the appellant herein (acting as administratrix of the estates of the late **Saramba Manyerere**) filed the land suits (Land

Application No. 120 of 2019) against the respondents herein. She claimed the respondents to have trespassed to her late grandfather land (**Saramba Manyerere**) measured 100 acres located at Mayani Village in Musoma Rural District.

Upon full trial in the DLHT, the judgment was delivered in favour of the respondents. The appellant's suit was dismissed for want of merits. Dissatisfied by the DLHT decision, the appellant appealed to this court armed with two grounds of appeal. In reply, the respondents raised together with the present preliminary objection which I have to deal with it first as it was held in the case of **Deonesia Onesmo Muyoga & 4 Others vs. Emmanuel Jumanne Luhahula**, Civil Appeal No. 219 of 2020 CAT at Tabora.

During the hearing of the preliminary objection the appellant was represented by Mr. Paul Mng'arwe whilst the respondents were represented by Mr. Emmanuel Gervas, both learned advocates.

Submitting in support of the preliminary objection, Mr. Gervas argued that the appeal lack base because the appellant was not party to the suit and his letter of administratrix has expired. He proceeded that the appellant filed the suit as an administratrix of the estate of the late Saramba Manyerere on 30th July 2019. The judgment of the DLHT

mentioned the appellant by her name without qualification. Referring to the case of **Nyambarya Warati vs. Charles Kirange**, Land Appeal No. 39 of 2020 at page 6, the counsel was of the opinion that are two different persons.

Regarding the issue of the letter of appointment of administratrix of the estates, the respondents' counsel argued that, by the time the appellant filed the present appeal on 14th November 2022 her letter of appointment was expired and she had no capacity. He proceeded that the appellant had no capacity since she did not activate her status and she appeared under her own name. Referring to section 51 of Cap 216, section 78 (1) and Order XLII Rule 1 and 2 of the CPC, the counsel was of the views that the appellant could have seek the DLHT to review its decision and rectify the error.

Mr. Gervas submitted further that, since the appellant introduced herself as an administratrix of the estates in her pleading, she then bound by her pleadings. The counsel prayed the preliminary objection to be allowed with costs.

Responding, the appellant's counsel submitted that the preliminary objection has no merit and has to be dismissed. He proceeded that at the time of drafting the judgment the DLHT Chairman forgot to include

the title that the appellant is an administratrix of the estates. The counsel was of the views that the problem raised is the minor issue and has been rescued by oxygen principle under section 3 (A) of the CPC.

Regarding the issues of letter of appointment Mr. Mng'arwe argued that at the time the appellant filed the suit she had the capacity. The counsel added that there is no need the appellant to have an appointment letter every time she came to court. He argued further that the **Nyambarya's case** mentioned by the respondents' counsel is distinguishable from our case at hand. In that case, a person filed the case from the start on his own capacity but in the present case the appellant uses her title as administratrix.

In rejoinder, Mr. Gervas submitted that the letter of appointment is always necessary, not only at the time of filing the case. He proceeded that section 3A of the CPC does not apply in this case. He was of the views that the appellant was supposed to make rectification of errors before the appeal.

In the course, the court probed the parties to address on the issue that, what proved that the appellant's letter of appointment of administratrix of the estates expired.

The respondents' counsel submitted on the issue that according to the records at DLHT that when the appellant filed the case on 30th July, 2019 she introduced herself as the administratrix of the estate of **Saramba Manyerere** and that when the matter was in progress she submitted the letter of appointment which its life span was four months. Since then, she was never submitted the letter to show that she has that capacity.

On his part the appellant's counsel argued the case was filed at the DLHT on 30th July, 2019 and finalized on 26th October, 2022 and that in all time the 4 months has been expiring in many times. He proceeded that the appellant has been renewed their letter of appointment severally and that she was supposed to be in the Primary Court which appointed her on 3rd May, 2023 for further related orders.

Having heard the submissions of both parties and pass through the record of appeal, it is now my turn to determine whether the preliminary objection raised by the respondents has merit.

Upon perusal of the appeal records, I found that the application filed by the appellant before the DLHT to initiate the suit, identified her as the administratrix of the estates of the late **Saramba Manyerere** (her grandfather) and that she acts on that capacity. But when the DLHT

delivered the judgment, the Chairman titled the appellant on her own name **Josephine Wilegi Songambe** and did not add that she acts in capacity of administratrix of the estate of **Saramba Manyerere**, although in contents he described that the appellant act as administratrix of the estate of **Saramba Manyerere**.

On this point am at per with the appellant's counsel that is the typing mistake done by the DLHT Chairman who forgot to title the appellant as the administratrix of the estate. I am also agreed with the respondents' counsel submission that error should have been corrected by the DLHT, but upon application of the parties.

Can this error be cured by the Principle of Overriding Objective?

My answer is affirmative. This is minor issue which can be corrected by the DLHT upon notification. As the appellant declared herself as administratrix of the estates of **Saramba Manyerere** in her pleadings before the DLHT, and in its judgment the DLHT described the appellant as an administratrix of the estates of **Saramba Manyerere**, I do not see that mistake is fatal to the extent to hinder this court not to go to the merit of the case.

As to the issue of expiration of the letter of appointment of the administratrix of the estates, I found that the respondents' counsel

failed to show the proof that the letter of appointment has expired. His submission based on assumption that since the appellant appointment was issued long time (since 2019) and that there was no document submitted to prove that her appointment was extended after four months legal requirement, thus, her appointment should have been expired.

In contesting the appellant's counsel submitted that, it is not necessary to bring the letter of appointment whenever the appellant attended to the court. He added that the appellant has been renewed or extend her appointment severally and that even on 3rd May, 2023 it has been scheduled she will attend the appointing court for further related order.

I found that is not the issue to detain me long, but for the purpose of the records I prefer to differ with the appellant's counsel submission that it is not necessary to bring the proof of running appointment whenever you go to the court. As it has been widely happening, the probate cases have the history of involving the interesting *saga* from the parties and relatives that may happen any time. You may find that you proceed in hearing of this case in this court, but the administratrix of the estates has been revoked long time ago, or the probate cause has been closed since then. Therefore, the proof that the administratrix of the estate is

still active and still have the power to administer the deceased estate is of most important. Whenever necessary, the administratrix has to prove to the court that she is still active and have the *locus standi*.

Therefore, from the reasons I endeavor to explain above, I find the Preliminary Objection raised by the respondents is of no merit and I proceed to overrule it. I further order the following;

1. The appellant to notify the DLHT to rectify her title in the judgment delivered by the DLHT in Land Application No. 120 of 2019.
2. Following the DLHT rectification, the parties in this appeal to amend their documents to fix the affected title of the appellant.
3. The appellant to submit the relevant document proving that her administration on the deceased estate is still intact.

Each party should bear its own costs.

It is so ordered.

M. L. KOMBA
JUDGE
05th April, 2023

Ruling delivered by F. L. Moshi, Deputy Registrar on this 25th day of April, 2023 in presence of both parties.



F.L. MOSHI
DEPUTY REGISTRAR
25th April, 2023