

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA DISTRICT REGISTRY)**

AT TABORA

LAND CASE NO. 10 OF 2022

MASANILO KAYANDAMBO

(Administrator of estate of the late Kayandambo Lukuba Kusekwa) **PLAINTIFF**

VERSUS

THE ATTORNEY GENERAL **1ST DEFENDANT**

MISWAKI VILLAGE COUNCIL..... **2ND DEFENDANT**

Date of Last Order: 21.03.2023

Date of Ruling: 28.04.2023

RULING

KADILU, J.

The plaintiff under legal representation of the learned Advocate, Mr. Frank Samwel filed this suit against the defendants. In the defendants' written statement of defence, Mr. Lameck Merumba, Senior State Attorney raised a Preliminary Objection (P.O.) based on two grounds, **firstly** that, the suit is time-barred and **secondly**, the plaintiff has no *locus standi* to sue the defendants. On 21/03/2023 when the matter came for hearing of the P.O., the plaintiff was represented by Mr. Frank Samwel, learned Counsel while Ms. Mariam Matovolwa, State Attorney appeared for the defendants.

On the first ground of the P.O., Ms. Mariam submitted that the plaintiff's claim is based on the tort of trespass whose limitation period is three (3) years as stipulated under item 6 of the first schedule to the Law of

Limitation Act [Cap. 89 R.E. 2019]. She stated that the plaintiff's cause of action arose in 2013, which is ten (10) years now. The learned State Attorney cited the case of ***NBC & Another v Bruno Vitus Swalo***, Civil Appeal No. 331 of 2019 in which the Court of Appeal held that the effect of the suit which is time-barred is dismissal.

Responding to this point, Mr. Frank submitted that this is a claim for land ownership and it has nothing to do with tortious claim of trespass. The learned Advocate elaborated that time limitation for recovery of land is twelve (12) years therefore, the suit is well within time required by the law. On this point of preliminary objection, I should hasten to state that I have failed to comprehend its legal basis. The plaint is crystal clear from paragraphs 4 to 13 that the plaintiff's claim is over land ownership. The learned State Attorney did not refer to any authority which describes claims of this nature as tortious claims. Thus, I dismiss this ground for lack of legal base.

Regarding the second limb of the preliminary objection, Ms. Mariam argued that under Order VII, Rule 4 of the CPC, the plaintiff has no locus standi to sue the defendants as he is suing in representative character, but he has not shown his interest over the subject matter. In particular, the State Attorney submitted that the plaintiff has sued as an Administrator of estate of the late Kayandambo Lukuba without showing any proof that he is the administrator. She stated that the plaint has contravened the provisions of Order VII, Rule 9 (1) of the CPC [Cap. 33 R.E. 2019].

Mr. Frank responded that the case has not been filed as a representative suit within the meaning of Order I, Rule 8 of the CPC. According to him, this is a typical land case and in case there was an omission in printing the annexures to the plaint, he said he will utilize the avenue available under 'the list of documents to be relied upon' to file Form No. IV to prove that the plaintiff was appointed as the administrator of the late Kayandambo Lukuba's estate.

I have gone through the case file and found that there is nowhere in which the learned Advocate had stated that he would file additional documents. As alleged by the defendants' Attorney, there is no proof of the plaintiff's appointment as administrator of the deceased's estate. I therefore agree with the contention by Ms. Mariam that the suit offends the provisions of Order VII, Rule 4 of the CPC which stipulates that where the plaintiff sues in a representative character, the plaint should show not only that he has an actual existing interest in the subject matter, but that he has taken the steps necessary to enable him to institute a suit concerning it. In the present case, the necessary steps could be petitioning for probate or letters of administration and obtaining the same.

It is elementary rule of law that a person with capacity to institute any civil suit is either that person himself as the owner, his agent or legal representative as an administrator/administratrix of the estate, if the owner is dead. Thus, after a person has passed away, it is the administrator or administratrix of estate only who has *locus standi* to bring and defend a suit


on behalf of the deceased. The law is clear that by being duly appointed administrator of the estate, a person becomes a legal representative of the deceased for all purposes and all the properties of the deceased person are vested on him as such. This is per Section 99 of the Probate and Administration of Estates Act and the case of ***Joseph Shumbusho v Mary Grace Tigerwa & 2 Others***, Civil Appeal No. 183 of 2016 in which the Court of Appeal stated that:

"As legal representative of the deceased's estate, all the deceased's estate are vested to him and has all the powers over the deceased assets as the deceased would have, save that he is acting in a representative capacity."


In the present case, the plaintiff indicated in the plaint that he is suing as the administrator of estate, but he did not show that he was duly appointed as such. Despite the promise by the plaintiff's Advocate that he would file the letter of appointment, he never honoured the said promise. Further to that, on 21/03/2023 when the matter was called for hearing of the P.O, the plaintiff's Advocate addressed the court as follows: "... I am ready to proceed. However, I pray to amend the plaint in respect of the names of the parties." The court granted that prayer as there was no objection from the defendants. Nonetheless, up to 10/04/2023 when I was composing this ruling, the Advocate had never amended the plaint as prayed.

As a result, the suit contravenes the law. In addition to the legal position which I have discussed above, the plaint violates the provisions of Sections 25 and 30 of the Written Laws (Misc. Amendments) Act No. 1 of 2020 for not joining the District Executive Director. Consequently, I uphold the second limb of the preliminary objection to the effect that the Plaintiff has no *locus standi* to sue the Defendants. Therefore, the suit is struck out with costs.

Order accordingly.


KADILU, M.J.,
JUDGE
28/04/2023

Ruling delivered in Chamber on the 28th Day of April, 2023 in the presence of Mr. Frank Samwel, Advocate for the plaintiff and Mr. Gureni Nzinyango Mapande, State Attorney.


KADILU, M. J.
JUDGE
28/04/2023.