

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

AT ARUSHA

LAND APPEAL NO. 110 OF 2022

(C/F Application No. 18 of 2021 in the District Land and Housing Tribunal for Karatu)

JOSEPH BURA.....APPELLANT

VERSUS

ADELA SIMON.....1ST RESPONDENT

CHRISTINA IMBORI.....2ND RESPONDENT

LOHAY NEEMA MCHUNO.....3RD RESPONDENT

JUDGMENT

08th & 16th June 2023

TIGANGA, J

Dissatisfied by the decision of the District Land and Housing Tribunal of Karatu, Joseph Bura, the appellant has filed this appeal with five grounds of appeal as hereunder indicated;

1. That the Honourable Chairman erred in law by striking out the application based on the objection that was not purely an objection on point of law and that required much evidential proof and satisfaction.

2. That the Honourable Chairman erred in law and fact by holding that the land in dispute is the deceased property without conclusive proof of that and without determining the matter on merit.
3. That the Hon. Chairman and trial Tribunal erred in law and fact by vesting itself with probate jurisdiction while it is a land court.
4. That the Hon. Chairman erred in law and fact by ruling out that the suit land was wrongly sold to the appellant while the matter was not heard on merit and not fully determined.
5. That the Hon. Chairman erred in law and fact by not according to and explaining to the parties the right of appeal.

Perhaps it is apposite to give a brief historical background giving rise to the appeal at hand. At the District Land and Housing Tribunal for Karatu at Karatu (trial tribunal) the appellant filed a suit against the respondents claiming to be declared the owner of the suit land that was sold to him by the third respondent.

Responding to the appellant's claims, the 1st and 2nd respondents denied being aware of the sale of the suit land between the appellant and the 3rd respondent, and more so, they added that the appellant has wrongly sued them as the land in dispute belonged to their late mother Siyaki Neema Mchuno whose petition seeking the appointment of the

administrator of her estate is still pending before the Court. The 3rd respondent on the other hand admitted to having sold the land in dispute to the appellant. According to him, the said land belonged to him following his share from the estate of his late father Niima Mchuno by virtual mutual understanding among the surviving children which was done on 20/09/2012. He further stated that the respondents herein have no interest in the land in dispute save that they intend to cause unnecessary litigations.

On 15/02/2022 the 2nd respondent filed a notice of preliminary objection on the point of law that the appellant has no *locus standi* because the land in dispute is the deceased's property. Expounding on the raised preliminary objection, the 2nd respondent stated that the land in dispute belonged to the late Siaki Niima Muchuno who died in 2009 and since then an administrator of the estate has not been appointed as the case is still pending at the High Court of Tanzania Arusha Registry before Hon. Gwae, J. She went further to state that, all arrangements between the appellant and the 3rd respondent are illegal as the same was done in the absence of the administrator.

In the determination of the preliminary objection raised, the trial tribunal was of the finding that, since the land in dispute belonged to the

deceased and the administrator of the estate is yet to be appointed as the case is still pending at the High Court through Civil Appeal No. 21 of 2021, therefore, the respondents have been sued wrongly as they are not the administrators of the deceased one Siyaki Niima Muchuno who died on 17/06/2009. Consequently, the application was dismissed with costs.

When the matter came for hearing of the appeal, the appellant was represented by the learned counsel Mr. Gabriel F. Rwahira, on the other hand, the 1st and 3rd respondents did not enter appearance nor did they file their written submissions save for the 2nd respondent who appeared in person and filed her written submissions.

Supporting the grounds of appeal, the appellant abandoned the 5th ground of appeal and argued on grounds number 1, 2, 3, and 4 as follows; In grounds number 1 and 2, the appellant submitted that the point of objection raised was not a pure point of law as the same based on probate case and which needed proof. According to him, there was a need to prove whether the land belonged to the deceased or not. To support his argument the counsel cited the cases of **Soitsambu Village Council vs Tanzania Breweries Limited & Tanzania Conservation Limited**, Civil Appeal No. 105 of 2011, and **Jackline Hamson Ghiks vs Mllatie Richie Assey**, Civil Application No. 656/01 of 2021 in which it was held

inter alia that, a preliminary objection should be free from facts calling for proof or requiring evidence to be adduced for its verification.

On the 3rd ground of appeal, the appellant submitted that the Chairman of the trial tribunal assumed the role and jurisdiction of a probate court and resolved probate issues while the case was at a land tribunal. He invited the Court to have a close look at paragraph 3 of page 2 in the ruling of the trial tribunal.

Submitting on the 4th ground, it was the submission of the appellant that the chairman determined the main application that the land was wrongly sold by the 3rd respondent while the same was not heard on merit. He said the conclusion that the land was wrongly sold went to the merit of the disputes while the dispute was not heard on merits.

Opposing the appeal, the 2nd respondent maintained that the objection was on a pure point of law as opposed to the appellant's assertion. According to her, the objection was on the *locus standi* of the appellant to sue the respondents over the deceased's estate whose appointment of the administrator is still pending. Thus, it was his view that this was a pure point of law.

Submitting on the 3rd ground of appeal the 2nd respondent argued that the trial tribunal did not perform the duties of the probate court as the ruling was meant to wait for the finalization of the administration process.

On the 4th ground, the 2nd respondent submitted that the land in dispute was not distributed among the heirs including the 3rd respondent who sold the same to the appellant. Therefore, it was her view that in the circumstances of this case, the administrator of the late Siaki Niima Mchuno is the proper person to be sued by the appellant.

Having gone through the record of the appeal together with the submissions of the parties, it is my considered view that this court that the main issue for determination is whether the trial tribunal was justified to strike out the application based on the preliminary objection raised by the 2nd respondent.

In the first ground of appeal, the appellant is challenging the objection raised by the 2nd respondent stating that, the same was not a pure point of law and that it required certain facts to be proved. I wish to begin by appreciating the guidance of the decision of the Court of Appeal of Tanzania in the case of **Peter Mlapanzi vs Christina Mbaruka**, Civil Appeal No. 153 of 2019 which was cited with approval in the case of **Alliance One Tobacco Tanzania Limited & another vs Martin John**

Mwita & another, (Civil Appeal No. 2 of 2022) [2023] TZHC 3398 (24 May 2021) regarding the status as a point of law, where it was stated as follows;

".....locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised."

Fortified by the above decision of the Court of Appeal, this court differs from the counsel for the appellant on the reason that *locus standi* is a factual issue, I find based on the position in the case I have just cited hereinabove that *locus standi* is a pure point of law which intends to determine as to whether the person who moves the court or against whom the motion is brought has the capacity and sufficient interest to do so in the matter. This point determines the jurisdiction of the court whether to determine the matter or not, therefore, the same need to be determined at an early stage after it has been raised.

From the facts that have been gathered from the record of this appeal, it is apparent that both parties are in agreement that the land in dispute did not originally belong to the respondents. While the 3rd respondent alleges that he obtained the suit land from his late father Niima Mchuno on the other hand the 1st and the 2nd respondents alleged

that the land in dispute belonged to their late mother Siyaki Niima Mchuno. It is also stated by the 2nd respondent that the administrator of the late Siyaki Niima Mchuno has not yet been appointed as the case is still pending at the High Court. From the above facts, this court is of the view that, whether the land in dispute belonged to either Siyaki Niima Mchuno or Niima Mchuno but since all of them are deceased therefore the proper person to be sued was the administrator of the estate of the respective deceased and not the respondents in their capacity. Had the appellant sued the 3rd respondent alone as the person who sold the land to him, without suing the rest of the respondents it would have been proper and correct, but the inclusion of the 1st and 2nd respondents who claim not to be the administrators makes their being sued to be unmaintainable.

That being the case, it is clear that the trial tribunal was justified to have the matter struck out as without the administrator being appointed parties had no *locus standi* before the court and the court could not proceed to hear and determine the dispute relating to the parties who claim to have no direct interest in the suit property except that of the prospective heirs of the deceased, without there being administrators appointed to administer the respective estates of the deceased.

Having determined the first ground of appeal as I have stated hereinabove. In my firm view, as the decision goes to the root of the existence of the matter, determining the rest of the grounds serves no meaningful purpose except academic exercise which is not the business of this court. As the first ground of appeal suffices to dispose of the appeal I hereby dismiss the appeal with costs, the appellant is advised to wait for the appointment of the administrator of the estate of the late Siyaki Neema Mchuno, who is alleged to be the original owner of the suit land.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 16th June 2023



A handwritten signature in black ink, appearing to read "J. C. Tiganga".

J. C. TIGANGA

JUDGE