IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 10 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Babati at Babati in Land Application No. 46 of 2022)

MARTHA DAGHARO.....APPELLANT

VERSUS

GEOFREY SINDANO.....1ST RESPONDENT

NANAGI BARHE.....2ND RESPONDENT

RULING

14th & 28th June, 2023

Kahyoza, J.

Martha Dagharo sued **Geofrey Sindano** and **Nanagi Barhe** for declaration that she was the owner of the suit land in the district land and housing tribunal (the DLHT). Before the DLHT heard the suit on merit, **Geofrey Sindano** and **Nanagi Barhe** raised a point *in lamine* that **Martha Dagharo** had no *locus standi* to sue as she was not an administrator of the estate of the late, Dawite Baries, her son or step son. The DLHT upheld the preliminary objection and struck out the application.

Aggrieved, **Martha Dagharo** appealed raising three grounds of complaint, which capped to the following issues-

1. Are the ruling and drawn order marred with irregularities?
2. Was the appellant denied the right to heard?
3. Was the tribunal justified to dismiss the suit for want of appearance?

A brief history of the dispute is that; the land in disputed was a property of the late Dawite Baries. Dawite Baries was either **Martha Dagharo**'s son or step son. The record does not clearly depict the relationship between **Martha Dagharo** and the late Dawite Baries. It is not clear whether the late Dawite Baries was **Martha Dagharo**'s son or step son. Part of the record reads-

"... marehemu Dawite Baries ambaye ni mtoto wa mume wake."

Martha Dagharo claimed that after Dawite Baries passed on, the disputed land reverted to her husband. She argued that she had interest in her husband's property including late Dawite Baries's land, for that reason entitled to sue to claim late Dawite Baries's estate.

Martha Dagharo, the appellant, had nothing to argue in support of her appeal. She simply submitted that the DLHT dismissed her claim without hearing her.

Mr. Abdallah, learned advocate, who appeared for **Geofrey Sindano** and **Nanagi Barhe**, the respondents, opposed the appeal vehemently. He

argued against the appeal generally that, the appellant's complaint that she was not heard was false. He argued that the DHLT heard the argument in support of the preliminary objection by way of written submissions. The appellant filed her written submission to oppose the preliminary objection. Thus, the appellant was heard, he concluded. He added that the tribunal was right in its findings that the appellant was required to apply for letters of administration of the estate of either her son or the husband before she sued the respondents.

Are the ruling and drawn order marred with irregularities?

Given the arguments pro and against, I will proceed to settle issues raised. The first issue is whether the ruling and the drawn order are marred with irregularities. The appellant complained without expounding or pin pointing out the alleged irregularities in the ruling and drawn order. Unfortunately, after painstakingly examining the ruling and drawn order, I was unable to find the irregularities, the appellant complained about. Thus, without much ado, I find no merit in the first ground of appeal and dismiss it.

Was the appellant denied the right to heard?

The appellant complained that the tribunal did not preside over the application properly as it denied her the right to be heard. She did not explain this complaint. The respondent's advocate refuted the appellant's allegation that she was not heard. I reviewed the proceedings. To say the least, the complaint is unsubstantiated. The tribunal's proceedings show that after the respondents raised a preliminary objection, the chair allowed parties to file written submissions to support or oppose the preliminary objection. The appellant filed her written submission. Filing of written submissions is one the forms of hearing of parties to a suit or an application. It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to a hearing. This Court elucidated legal status of filing written submissions in **P3525 LT COL Idahya Maganga Gregory v. The Judge Advocate General, Court Martial,** Criminal Appeal No. 4 of 2002 (unreported), where it held that-

> ***"It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution.*** *The attendant consequences of failure to file written*

submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound...Similarly, courts have not been soft with litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded."

I find that the tribunal did hear the appellant, hence, the appellant's contention that the tribunal did not hear her is a fallacious argument. Consequently, I dismiss the appellant's second ground of appeal.

Was the tribunal justified to dismiss the suit for want of appearance?

The appellant complained in the third ground of appeal that being a widow who inherited the disputed land from her late husband, she had a right to be heard and that the tribunal erred to dismiss her application on the allegation that she absconded. The respondents' advocate did not argue strongly against the complaint. It is clear as daylight, that the appellant's complaint, in the third ground of appeal, is fallacious. The record depicts that the tribunal dismissed the appellant's application because she had no *locus standi* to sue, thus, the tribunal did not dismiss the application for non-appearance of the appellant. The tribunal's ground for dismissing the

application is the appellant's failure to apply for letters of administration of the deceased's estate before she instituted a suit. The tribunal stated-

> *"Nimepitia mawasilisho ya pande zote mbili. Hakuna ubushi mleta maombi haya katika hati yake ya madai aya ya sita nzima amekiri kwamba eneo lenye mgogoro lilikuwa mali ya maehemu Dawite Barhe na kwamba alipofariki eneo lilirudishwa mikononi mwa baba yake yaani mume wa mwombaji. Hakuna ubuishi wa jambo hilo. Lakini pia hakuna ubuishi kwamba wote yaani Dawite Barhe na baba yake ni marehemu. Na hakuna ubushi kwamba mleta maombi sio msimamizi wa mirathi ya yoyote katika marehemu hao.*
>
> *Ninashawishika na maelezo ya wakili wa mjibu maombi hapa kwamba maombi haya yameletwa bila kuzingatia kipengele hicho muhimu kisheria.*
>
> *Maombi haya yanafukuzwa kwa gharama."*

It is evident from the tribunal's record that the appellant was heard and the application was dismissed or struck out for want of *locus standi* and not for non-appearance of the appellant. I find no merit in the third ground of appeal and dismiss it.

This appeal is the first appeal, thus, my duty apart from considering the grounds of complaints the appellant raised, is to review the proceedings before the trial tribunal. It is trite law that a first appeal is in the form of a rehearing. The first appellate court has a duty to re-evaluate the entire

evidence in an objective manner and arrive at its own findings of fact, if necessary. See the decisions of the Court of Appeal in **Future Century Ltd v. TANESCO,** Civil Appeal No. 5 of 2009, **Leopold Mutembei v. Principal Assistant Registrar of Titles; Ministry of Lands, Housing and Urban Development and the Attorney General,** Civil Appeal No. 57 of 2017, and **Makubi Dogani v. Ngodongo Maganga,** Civil Appeal No. 78 of 2019 (all unreported). The Court of Appeal held in **Future Century Ltd v. TANESCO,** (supra) that-

> *"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision."*

Indisputably, as the appellant alleged before the tribunal, the disputed land belonged to the late *Dawite Barhe.* The late *Dawite Barhe* was the appellant's step son or son. As previous stated, it is not clear whether the late *Dawite Barhe* was the appellant's son or her step son. Regardless the imprecise relationship between the appellant and the late *Dawite Barhe,* what is clear is that the disputed land was a property of the late *Dawite Barhe.* It was therefore, imperative for the appellant to apply for letters of administration of the late *Dawite Barhe*'s estate before she could sue.

It is trite law that it is an administrator of the deceased's estate who is competent to sue or be sued in relation to the deceased's property. See the case of **Ibrahimu Kusaga v. Emanuel Mweta** [1986] TLR 26 where the Court stated that-

> *"I appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases, all those interested in determination of the dispute or establishing ownership may institute proceedings against the Administrator or the Administrator may sue to establish claim of deceased's property."*

The Court of Appeal also, pronounced itself in **Mohamed Hassan vs. Mayase Mzee & Mwanahawa Mzee [**1994] TLR. 225 CA, that-

> *"Administrator is the person who has mandate to deal with the deceased's properties".*

In addition, the Court of Appeal in **Omary Yusuph** (Legal Representative of the Late Yusuph Haji) **v. Albert Munuo,** Civil Appeal NO. 12 OF 2018 (CAT-unreported) held excessively on the right of administrator to sue on behalf of the deceased and not any other person. It held-

> *"We are aware that locus standi is all about directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted which among the initial matter to be established in a litigation matter. That said,* ***it is a settled principle of law***

that for a person to institute a suit he/she must have locus standi *and this was emphasized by the High Court in the case of* ***Lujuna Shubi Ballonzi, Senior Vs Registered Trustees Of Chama Cha Maplnduzi*** *[1996] TLR, 203 (HC) where it was stated that:*

"Locus standi is governed by Common Law, according to ***which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with"***

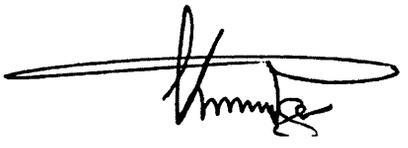
Apart from fully subscribing to the cited decision, it is our considered view that the existence of legal rights is an indispensable pre-requisite of initiating any proceedings in a court of law. In this particular case, since Yusuph Haji had passed away, ***according to the law it is only the lawful appointed legal representative of the deceased who can sue or be sued for or on behalf of the deceased*** *....." (Emphasis added)*

Given the position of the law, it is an administrator *who has mandate to deal with the deceased's properties.* **Martha Dagharo,** the appellant, who was not an administratrix (administrator) had no **standing** to sue on behalf either of her late son or husband. For that reason, the tribunal was justified to struck out **Martha Dagharo's** application for want of *locus standi.*

In the upshot, I find that **Martha Dagharo's** appeal meritless and dismiss it with costs. I uphold the decision of the tribunal.

It is ordered accordingly.

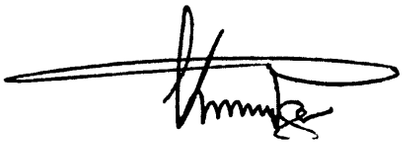
Dated at **Babati** this 28th day of June, 2023.



John R. Kahyoza,

Judge

Court: Judgment delivered in virtual presence of the appellant, the respondents and Mr. Abdallah, the respondents' advocate. B/C Ms. Fatima present.



John R. Kahyoza,

Judge

28/6/2023