

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

LAND CASE NO. 01 OF 2023

BRUCE ALEX MARO (*THE ADMINISTRATOR OF THE*

ESTATE OF THE LATE ANASTAZIA ALEX)**PLAINTIFF**

VERSUS

EMMANUAEL ALEX MARO.....**1ST DEFENDANT**

RITA ALEX MARO**2ND DEFENDANT**

FADHILI KIMWAGA.....**3RD DEFENDANT**

BASHIRI MUSA MFINANGA.....**4TH DEFENDANT**

ALLY MGWENU.....**5TH DEFENDANT**

BARAKA MICHAEL.....**6TH DEFENDANT**

ABDALA TEACHER.....**7TH DEFENDANT**

KIBASO KIBASO.....**8TH DEFENDANT**

JORDAN HERMAN.....**9TH DEFENDANT**

CHINA ALLY.....**10TH DEFENDANT**

SALOME MNYAU.....	11TH DEFENDANT
CHAGULA SAMORA.....	12TH DEFENDANT
SIMON ELIKANA MKUMBO.....	13TH DEFENDANT
ELISI MICHAEL.....	14TH DEFENDANT
JANE MBISE.....	15TH DEFENDANT
VINCENT JOSEPH.....	16TH DEFENDANT
PARKING PANKY.....	17TH DEFENDANT
CARLOS KAAYA.....	18TH DEFENDANT
ABDALA ABDALA.....	19TH DEFENDANT
FURAHA GILBERT.....	20TH DEFENDANT
STEVIN MARO.....	21ST DEFENDANT
LANGAI SARUNI.....	22ND DEFENDANT
HAWA IDDY.....	23RD DEFENDANT
SELEMANI HASHIMU.....	24TH DEFENDANT
PETER CHRISTOPHER HASSAN.....	25TH DEFENDANT
YUSUPH SAID.....	26TH DEFENDANT
JUSTIN SARAHIKIA.....	27TH DEFENDANT

CHARLES MWAKASEGE.....	28TH DEFENDANT
JOSEPH MASASI.....	29TH DEFENDANT
JUMA SELEMANI.....	30TH DEFENDANT
RAJABU MSUYA.....	31ST DEFENDANT
MOSES KOMBA.....	32ND DEFENDANT
CHRISTIOHER SANIRA CHENGULA.....	33RD DEFENDANT
OMARY KONSUMA NATE.....	34TH DEFENDANT
MICHAEL MWAKIBORU.....	35TH DEFENDANT
LUKAS MPANDA.....	36TH DEFENDANT
RAPHAEL MOLLEL.....	37TH DEFENDANT
SAKINA IJOLO.....	38TH DEFENDANT
ANNA LYANDALA.....	39TH DEFENDANT
LUCIANA SHAYO.....	40TH DEFENDANT
TAIKO TAUTA KULUCHU.....	41ST DEFENDANT
LAMECK SIMBA.....	42ND DEFENDANT
EUNICE NYITH.....	43RD DEFENDANT
DR. BUROYE MANGERA.....	44TH DEFENDANT

SAMUEL MBWAMBO.....	45TH DEFENDANT
PETER IRIGISHU.....	46TH DEFENDANT
DAVID GABRIEL.....	47TH DEFENDANT
ROY IHENANGU.....	48TH DEFENDANT
RAJABU ITITI.....	49TH DEFENDANT
JANETH MDUMU.....	50TH DEFENDANT
JOHAMA SIRYA.....	51ST DEFENDANT
AWAZI OMARY.....	52ND DEFENDANT
GERALD AYATA.....	53RD DEFENDANT
BARAKA MICHAEL.....	54TH DEFENDANT

JUDGMENT

6th & 12th July, 2023

Kahyoza, J.:

Bruce Alex Maro (*the Administrator of the estate of the late Anastazia Alex*) (**Bruce Alex Maro**) sued the **Emmanuel Alex Maro, Rita Alex Maro, Fadhili Kimwaga, Bashiri Musa Mfinanga, Ally Mgwenu, Baraka Michael, Abdala Teacher, Kibaso Kibaso, Jordan Herman, China Ally, Salome Mnyau, Chagula Samora, Simon Elikana**

Mkumbo, Elisi Michael, Jane Mbise, Vincent Joseph, Parking Panky, Carlos Kaaya, Abdala Abdala, Furaha Gilbert, Stevin Maro, Langai Saruni, Hawa Iddy, Selemani Hashimu, Peter Christopher Hassan, Yusuph Said, Justin Sarakikya, Charles Mwakasege, Joseph Masasi, Juma Selemani, Rajabu Msuya, Moses Komba, Christioher Sanira Chengula, Omary Konsuma Nate, Michael Mwakiboru, Lukas Mpanda, Raphael Molllel, Sakina Ijolo, Anna Lyandala, Luciana Shayo, Taiko Tauta Kuluchu, Lameck Simba, Eunice Nyith, Dr. Buroye Mangerera, Samuel Mbwambo, Peter Irigishu, David Gabriel, Roy Ihenangu, Rajabu Ititi, Janeth Mdumu, Johama Sirya, Awazi Omary, Gerald Ayata, Baraka Michael, (the defendants) claiming among other things, for a declaration that the suit land belongs to the estate of the late Anastazia Alex and a declaration that **Emmanuel Alex Maro**,(first defendant) and **Rita Alex Maro** (second defendant) are not warranted to distribute or sell the suit land to other defendants before closure of the pending administration cause.

Bruce Alex Maro served all the defendants with a Complaint and filed an affidavit of service. The defendants defaulted to file the Written Statement of Defence (the WSD) within the prescribed period, for that reason, the suit

proceeded *ex-parte* against them. The Court framed and the plaintiff's advocates agreed to the following issues-

1. whether the defendants trespassed to the deceased's estate; and
2. to what reliefs are the parties entitled to?

A brief background is that; **Bruce Alex Maro**, the first and second defendants are siblings of the late Anastazia Alex and the late Alex Maro. The late Alex Maro acquired the land under dispute and maintained the same un-interruptedly for many years. Upon Alex Maro's death, his late wife Anastazia Alex succeeded him. It is alleged that by her marriage to Alex Maro, Anastazia Alex assumed full ownership over the suit land.

The suit land is registered in the name of Alex Maro. Both, Alex Maro and Anastazia Alex died intestate. Following the death of Anastazia Alex Maro, **Bruce Alex Maro** was appointed to administer the estate of the late Anastazia Alex Maro, thus, the suit land is under his administration. The administration of estate of Anastazia Alex is still pending. **Bruce Alex Maro** alleged that due to elongated cases between the beneficiaries of estate of Anastazia Alex, he has not closed the administration of the estate of Anastazia Alex. **Bruce Alex Maro** alleged further that, the defendants took

advantage of the vacuum created by disputes among the beneficiaries, to trespass to the disputed land under administration.

Bruce Alex Maro, the plaintiff, testified as (**Pw1**) and summoned two other witnesses who are Evaline Alex Maro (**Pw2**), Penuel Godfrey (**Pw3**). **Bruce Alex Maro**, (**Pw1**) testified that he is the administrator of the estate of the late of Anastazia Alex and that he was appointed by Maromboso primary court in Arusha vide Probate and Administration Cause No. 159/2009. He tendered the letters of administration of the estate issued by the primary court as exhibit P.1. He deposed further that the disputed land is a farm of 300 acres allocated at Mirerani within Simanjiro district. He added that the suit land belonged to his late father Alex Maro. Following Alex Maro's death, Alex Maro's wife who is the late Anastazia Alex inherited it. He deposed that he was not been able to file a final statement of accounts as his siblings opposed his appointment and the suit is still pending in court. He tendered a copy of the judgment of the Court of Appeal as Exhibit. P2.

Bruce Alex Maro, (**Pw1**) sued Rita Alex Maro and Emmanuel Alex Maro, his siblings, as without colour of rights they sold land under his administration. He added that the third defendant up to the fifty fourth dependents trespassed to the suit land. He tender a certified copy of the

right of occupancy in the name of Alex Maro as the original certificate of right of occupancy is in the possession of NBC Bank as a collateral for the loan obtained by the late Alex Maro. He prayed the court to evict the trespassers.

Evaline Alex Maro, (Pw2) supported the evidence of **Bruce Alex Maro, (Pw1)** that the latter is the administrator of the estate of the late Anastazia Alex. She added that before **Bruce Alex Maro, (Pw1)**, was appointed to administrater the estate of the late Anastazia Alex, Rita Alex Maro, the second defendant was an adminitratrrix of the estate of Anastazia Maro. Later, the primary court revoked Rita Alex Maro's appointment and appointed **Bruce Alex Maro, (Pw1)**. She confirmed that despite Rita Alex Maro's objecting the appointment of **Bruce Alex Maro, (Pw1)**, she has not succeeded to cause his revocation.

She deposed further that, the late Alex Maro, her father, purchased the suit land in 1986 and that after his death in 2008 Anastazia Maro took over. She stated that her mother took over ownership of the disputed land as she was a lawful wife of the late Alex Maro. She averred that Rita Alex Maro and Emmanuel Alex Maro are disposed and are disposing part of the disputed land. Penuel Godfrey (**Pw3**) confirmed the allegation that Rita Alex

Maro and Emmanuel Alex Maro are selling the disputed land. Penuel Godfrey (**Pw3**) deposed that she owns a plot close to the disputed land and she has lived at the place since 1993. She witnessed the land being surveyed. She was a caretaker of the land in dispute, the role she was assigned by the late Alex Maro, since he stayed in Moshi.

Penuel Godfrey (**Pw3**) witnessed some of the defendants being allocated pieces of land. She mentioned some of the people who were allocated land as Frank Sulle, Joseph Masasi, Peter Ingish, Barala Marko, Anna Mwakasega, Rajabu Msuya, Kibazo Kibasa, Abdallah Ticha and Taiko. She added that some have built houses on the land, which does not belong to them.

Before the closure of the plaintiff's case, the plaintiff's advocate prayed to re-summoned **Bruce Alex Maro, (Pw1)** to testify as they could not summon the Registrar of titles from Arusha to testify. **Bruce Alex Maro, (Pw1)** appeared and tendered a certified copy of the offer of a Right of occupancy in the name of Alex Maro. He added that after his father Alex Maro, died intestate, his mother, the late Anastazia Alex was appointed to administer the estate of her late husband, Alex Maro. Unfortunately,

Anastazia Alex met her demise before she administered the estate of her late husband to finality.

After hearing the evidence that the late Anastazia Alex was the administratrix of the estate of the late Alex Maro and that she died before she accomplished her duties, I entertained doubts whether **Bruce Alex Maro, (Pw1)**, the administrator of the estate of Anastazia Alex, could administer with the estate of Alex Maro. I invited **Bruce Alex Maro's** advocate to address me on the issue whether the administrator of the estate of Anastazia Alex would administer the estate Alex Maro.

The plaintiff's advocate, Mr. Yoyo submitted that the issue raised by the court was both factual and legal issue. He submitted that Alex Maro and Anasazia Maro were married couple. He submitted further that from the evidence of Penuel Godfrey (**Pw3**), the property in question was a matrimonial property. After the death of Alex Maro, ownership of the suit land construe constructively went to the hands of the late Anastazia Maro the plaintiff's advocate submitted. He was emphatic that the late Anastazia Maro became the owner of the suit land as it was a matrimonial property, even though the land was not registered in her name. He submitted further that the late Anastazia Maro was granted of letters of administration of the

estate of the late Alex Maro and that she could not transfer the right of occupancy to her name as the disputed land was mortgaged and the right of occupancy was held by the Bank.

Having heard the evidence and the submission, I propose to commence with the issue framed by the court as it is legal and factual. The issue is whether the administrator of the estate of Anastazia Alex would administer the estate Alex Maro. It is on record that the late Anastazia Alex and the late Alex Maro were married couple. As any married couple, Anastazia Alex and Alex Maro may have acquired, during the subsistence of their marriage, matrimonial property. No wonder going by the definition of what is a matrimonial property or assets the suit land was matrimonial asset.

The Court of Appeal defined matrimonial assets in **Gabriel Nimrod Kurwijila vs Theresia Hassan Malongo** (Civil Appeal No. 102 of 2018) [2020] TZCA 31 (20 February 2020) as those assets acquired by one or other spouse before or during their marriage, with the intention that there should be continuing provisions for them and their children during their joint lives. I have no doubt that the suit land was a matrimonial asset, thus, Anastazia Alex and Alex Maro had interest protected by the **Law of Marriage Act**, [Cap. 29 R.E. 2019].

In the present case, the suit land was registered in the name of Alex Maro. According to the settled position, Alex Maro was the owner of the suit land. The Court of Appeal in **Amina Maulid Ambali & Others vs Ramadhani Juma**, (Civil Appeal No. 35 of 2019) [2020] TZCA 19 (25 February 2020) held that-

*"In our considered view, when two persons have competing interests in a landed property, **the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained.** In the case of **Leopold Mutembe** (*supra*) cited by Mr. Mutalemwa, the Court cited with approval the following excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. S.J. Mramba, Law Africa, Dar es Salaam, 2017 at page 330:-*

the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title. "

Undoubtedly, Anastazia Maro as wife of Alex Maro had interest protected by sections 56, 58, 59 and 114 of the **Law of Marriage Act**, during Alex Maro's life time. After her husband's death, Anastazia Maro's rights under the **Law of Marriage Act**, came to cessation. I wish to associate myself excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** (supra) at page 168 that-

*"It is however, to be noted that the provision under section 114 of the **Law of Marriage Act** does protect the wife's property interest over wealth acquired with her husband through their joint efforts during their marriage, only when such marriage ceases by divorce and **not by death.**"*

After Alex Maro's death, Anastazia Maro could no longer exercise her matrimonial rights under the **Law of Marriage Act**, since when a person dies his property is regulated under the Administration of Estates and Rules of Succession. The Court of Appeal made a clear distinction between probate matters and matrimonial matters in **Mariam Juma v. Tabea Robert Makange** Civ. Appeal No. 38/2009 CAT-unreported) and **Stephen Maliyatabu and Another V. Consolata Kahulananga**, Civil Appeal No. 337/ 2020. In the latter, the Court observed that-

"In the premises; the probate and administration of estates matter

*was not a proper forum to address issues relating to matrimonial disputes. See: **MARIAM JUMA VS TABEA ROBERT MAKANGE, Civil Appeal No. 38 of 2009 (unreported).***"

It is therefore, not legally right to argue that Anastazia Maro acquired, after her husband's (Alex Maro's death) death, rights in the disputed land under the **Law of Marriage Act** as after the death of her husband the property in dispute is regulated under the Administration of Estates and Rules of Succession. Since Alex Maro died intestate, it was mandatory an administrator be appointed to manage the estate of the late Alex Maro. The effect of appointing the administrator as stated under section 44 of the **Probate and Administration Act**, [Cap. 352 R.E. 2002] is to bestow to him all rights of the deceased. Section 44 stipulates-

*44. Subject to all such limitation and exceptions contained therein and, where the grant is made for a special purpose, for that purpose only, **letters of administration entitle the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death:***

Provided that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

From the above position of the law, the administrator appointed to administer the estate of late Anastazia Maro has **all rights belonging to**

Anastazia Maro. I have already demonstrated that Anastazia Maro's matrimonial right in the disputed property ceased following her husband's death. For that reason, the administrator of late Anastazia Maro's estate cannot have a better title than Anastazia Maro's title when she was alive.

Indisputably, the suit land is registered in the name of Alex Maro. It is Alex Maro or after his death, the administrator or executor of late Alex Maro's estate who has rights to sue and be sued regarding the suit land, which is registered in his name. As Alex Maro died intestate, it is the administrator who has a right to sue and be sued. In **Omary Yusuph** (Legal Representative of the Late Yusuph Haji) **v. Albert Munuo**, Civil Appeal NO. 12 OF 2018 (CAT-unreported) held markedly 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 Mapinduzi [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 prerequisite 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)*

I find unreservedly that, it was the administrator of the estate of late Alex Maro has right to sue to *establish claim of deceased's property* and not any other person including Alex Maro's wife or a person claiming under her title.

The plaintiff's advocate impressed on this Court that before she met her demise, Anastazia Maro was the administratrix of the estate of the late Alex Maro. And that she died before she accomplished her task as an administratrix. Even if, Anastazia Maro was the administratrix of the estate of the late Alex Maro and died before she completed her task, it is not a duty of the administrator of her estate to complete the duties she had as the administratrix of the estate of late Alex Maro. A person to accomplish the

late Anastazia Maro's duties as the administratrix of the estate of late Alex Maro was required to apply to accomplish the task she left behind when she met her demise.

An application to accomplish a task left by the deceased administrator, is lodged in the same Probate and Administration cause file and is not lodged by instituting a fresh petition as **Bruce Alex Maro** did in the instant case. Thus, it cannot be construed that **Bruce Alex Maro** stepped into the shoes of the late Anastazia Maro as the administratrix of the late Alex Maro's estate. Section 46 of the Probate and Administration of Estate Act stipulates that-

46. On the death of a sole or sole surviving executor who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting such letters of administration the court shall apply the same provisions as apply to original grants:

Provided that where one or more executors have proved the will or letters of administration with the will annexed have been issued, the court may grant letters of administration under this section without citing an executor who has not proved the will.

Rule 46 of the Probate Rules, GN. No 10/1963, provides for the procedure to be adopted when a person is applying to letters of

administration in respect of unadministered estate upon death of a sole administrator. It states that-

"46. Grant in respect of unadministered assets

*A petition under section 46 of the Act **for grant of letters of administration in respect of unadministered estate upon the death of a sole or sole surviving executor or a sole or sole surviving administrator shall be in the form prescribed in Form 33** set out in the First Schedule and shall describe and state the value of the estate remaining unadministered and shall be supported by a certificate of the death or an affidavit as to the death of the executor or the administrator and by an affidavit stating that such executor or administrator was the sole or sole surviving executor or administrator, as the case may be."*

Had **Bruce Alex Maro** applied to accomplish duties left behind by Anastazia Maro as the administratrix of the late Alex Maro, he would have petitioned **for grant of letters of administration in respect of unadministered estate of Alex Maro upon of the death of** Anastazia Maro. He would not have applied for grant of letters of administration in respect of the estate of the late Anastazia Maro.

I am alive of a fact that **Bruce Alex Maro** was granted letters to administer the deceased's estate by the primary court, where, the Probate and Administration of Estate Act does not apply, still, (**Bruce Alex Maro**)

was not required to petition for grant of letters of administration of the estate of Anastazia Maro so as to accomplish her task as the administratrix of the estate of the late Alex Maro. The estate of Anastazia Maro was distinct from the estate of Alex Maro in law, despite the fact that Anastazia Maro and Alex Maro were married couple.

In the end, I am of the decided view that **Bruce Alex Maro**, the administrator of the late Anastazia Maro had not right to sue to claim rights in the disputed land registered or owned by the Anastazia Maro's husband. Otherwise put, **Bruce Alex Maro**, the administrator of the late Anastazia Maro had no *locus standi* to sue in respect of the disputed land registered or owned by the Anastazia Maro's husband, Alex Maro. It is the administrator of the estate of the late Alex Maro who had right to sue to establish claim of deceased's property. Consequently, **Bruce Alex Maro**, the administrator of the late Anastazia Maro cannot establish claim against the defendants for want of *locus standi*.

Having held that, **Bruce Alex Maro**, the administrator of the late Anastazia Maro cannot establish claim against the defendants for want of *locus standi*, there is no legal or even academic duty to reply to other issues. The only remedy available is to dismiss the suit, as he herby do, for want of

locus standi to sue. **Bruce Alex Maro**, the administrator of the late Anastazia Maro has *no locus standi* to sue to the defendants. I make no order as to costs as the defendants did not make appearance.

It is ordered accordingly.

Dated at Babati this 12th day of July, 2023.



A handwritten signature in black ink, appearing to read "John R. Kahyoza".

John R. Kahyoza,
Judge

Court: Judgment delivered in virtual presence of the plaintiff's advocate Mr. Kyashama and the absence of the defendants although Ms. Ritha Alex Maro joined the virtual court and left before delivery of the judgment. B/C Ms. Fatina present.

A handwritten signature in black ink, appearing to read "John R. Kahyoza".

John R. Kahyoza,
Judge

12/7/2023