IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

LAND REVISION NO. 21 OF 2022

(Originating from Magugu Ward Tribunal in Land Complaint No. 18 of 2017 and Land Complaint No. 04 of 2017 in the District Land and Housing Tribunal, and in Misc. Land Application No. 171 of 2022)

LUKAS KATAMBALA _____ **APPLICANT**

VERSUS

FATUMA SALIMU _____ **RESPONDENT**

RULING

28/04/2023 **&** *28/07/2023*

BADE, J.

The Applicant filed a Revision Application before this Court under sections 43 [1] [a], [b], and 43 [2] of the Land Disputes Courts Act Cap 216 R.E 2019 supported by the sworn affidavit of one Lukas Katambala the applicant, moving this Court by way of chamber summons praying that the Court be pleased to call and examine the records of the District Land and Housing Tribunal for Babati at Babati in Misc. Application no 171 of 2022 which was for the purpose of examining the records of Land Complaint no 18 of 2017 and Land Complaint no 4 of 2017 both of which were determined by Magugu Ward Tribunal.

The background of this matter is that The Applicant was the respondent in Land Complaint no 18 of 2017 which was before the Magugu Ward Tribunal of which on his side he raised the point of preliminary objection on matters of pecuniary jurisdiction, his objection was sustained and the case was

referred to the District Land and Housing Tribunal for Babati according to the record of Magugu Ward Tribunal the matter was referred back to Magugu Ward Tribunal and was determined ex- parte against the Applicant herein.

Before I proceed to deliberate on the grounds of revision, this courts attention is called on to look at two points that should have been probably embodied in preliminary objections had they come from the other side, but it is the Applicant raising the same in the attempt to assail the responses against revision application. Both of these are in my view technical, and in any case, the counsel herein has not been able to show in which way the same have prejudiced their side of the case. Regarding the issue of having the counter affidavit by the Respondent attested by a firm rather than by the officer who is a notary public, my take is that the same shall stand struck out as a result, which still leaves the revision application intact. The other issue is the Respondent being one day late in filing the Reply submissions, to which I overrule and allow the said filing in the application of the oxygen principle as provided under the Appellate Jurisdiction Act Cap. 141 RE 2002. This principle requires the Court to avoid technicalities in the dispensation of justice. See **Jacob Bushiri vs Mwanza City Council & 2 others**, Civil Appeal No. 36 of 2019 (unreported) Having done away with the two hurdles, I now proceed to determine the Revision Application on merit.

Looking at the records, there is no basis one way or the other to hold true the allegations of lack of pecuniary jurisdiction, much as the same seems to have been raised, considered, and overruled by the District Land

Housing Tribunal after the matter had been referred to it by the Magugu Ward Tribunal. I am alive to the fact that the question of jurisdiction can be raised at any time as long as it is relevant to the particular situation. But in this matter I am of the view that it is misconceived.

Having looked at the proceedings of the Ward Tribunal, there is no any evidence on record that the land had a specified pecuniary value or had a value of over 3 million. The Applicant herein could not point this court to any either. More still, the claim on the jurisdiction was not at issue having been so settled, and even if it was since the issue was considered and determined, the Applicant would have had to appeal the same if the decision on the suit land at the Ward Tribunal was based and deliberated on the said jurisdiction issue. In the case of **Andrew Kimonga Mwakapola vs Hamoud Said and 2 others,** Civil Appeal No. 8 of 2019 where the Court observed:

> "The jurisdiction of the court was not at issue at the District Court, and the deliberation was not determined based on the court's jurisdiction."

I must state that pecuniary jurisdiction should be established either through pleadings or evidence. But then again, the procedures in the Ward Tribunal would only bring about the issue of pecuniary value at the evidence stage. I say so because the procedures at the Ward Tribunal when they were exercising trial functions were different in the sense that they are based on orality, simplicity, and informality, which means to say there are no pleadings in the Ward Tribunal or pre-trial conferences. So the

time that any pecuniary value of the matter would come to the fore is during the taking of evidence.

Thus, in the absence of clear evidence on the value of the land in dispute, it would be improper to speculate that the subject matter has a value exceeding three million shillings. In the submissions for this Revision, the applicant's counsel could not tell this court the value of the land in dispute and my own scrutiny of the record could not find any. Thus, mere contentions from the bar do not oust the Tribunal's jurisdiction unless the applicant had put in evidence during trial to the effect that the value of the land in dispute was well beyond three million shillings. See **Sospeter Kahindi vs Mbeshi Mashini,** Civil Appeal No. 56 of 2017 CAT at Mwanza.

In view thereof, non-disclosure of the land value in the Ward Tribunal is not fatal nor would it attract revisional powers of this court unless there is clear evidence from either party that the value is above the pecuniary jurisdiction of the Ward Tribunal. Also see **Kubili Sululu vs Mhindi Shija** (Misc. Land Case Appeal No. 15 of 2020) [2022] TZHC 15192 (12 December 2022)

In the event, I find this ground of revision in respect of the jurisdiction of the Ward Tribunal to entertain the matter without any merit.

The other ground raised by the Applicant is based on the locus standi of the respondent. The applicant claims that evidence adduced by the Respondent at Magugu Ward Tribunal reveals that the owner of the land in dispute was her grandmother, who had passed away, but she claims ownership of the land without following proper procedures of the law which

includes instituting a probate case for matters of administration of the estate, and in case the estate was already administered then inventory forms which show the distribution of the land in dispute to the Respondent.

Without proof that the Respondent was appointed as the administratrix of the estate of her grandmother then she had no locus to file a complaint before Magugu ward Tribunal defending the suit land as part of the estate of the deceased and without any inventory.

As a rule, an administrator of the deceased estate is the right person who can come to its defense to sue and recover the property of the deceased whether it is land, shares, or any other proprietary interest that a deceased person might have. This person can also be sued as the legal representative of the deceased estate. The said administrator is obtained through an appointment by a competent court upon application.

It is a trite position of our laws that to every general rule, there is an exception. In the case of **Edward Ntinkule vs Evarist Ntafato,** Misc. Land Appeal No. 11 of 2022, this Court sitting in Kigoma held through Mlacha, J "..... if the property, and land in particular, has already been distributed to heirs under customary law and there has never been a resistance from any member of the clan/family for a considerable period of time, the one who is holding the land can sue or be sued without following the probate procedure because the land does not belong to the deceased any more...."

The learned Judge explained further (a view to which I wholly subscribe) that the rules allow the distribution of the deceased estate customarily

after payment of debts. They allow heirs to inherit through the clan. This means that a person can inherit land under customary law and become an owner without necessarily passing through the process of probate court.

Mruma, J. also shared this same view in **Asnawi Ramadhani vs Hamisi Ally**, Miscellaneous Land Case Appeal No. 24 of 2019 (High Court Tanga) where he explained:

> "It has been the practice of some District Land and Housing Tribunals to quash proceedings of Ward Tribunals on the ground that one of the parties (either the Applicant or the Respondent in the Ward Tribunal) is not the administrator of the estate of a deceased person to whom the suit land originally belonged. I think this is not correct In the first place there is no law that specifically requires a person who is suing over an estate of a deceased person to obtain letters of administration before he/she can institute a claim in the Ward Tribunal, and given the simplicity obtaining and intended in practice and procedure of ward tribunals. No wonder section 15 (1) and (2) of (the Ward Tribunals Act) provided that the Tribunal shall not be bound by rules of evidence and procedure applicable to any court and that it shall regulate its own procedure..... This essentially means that there was evidence to the effect that originally the suit land belonged to the Applicant's father and he inherited it upon his death. The term inheritance is not defined under the Ward Tribunals Act, but Black Law Dictionary, 5th Edition by Bryan and Garner, pg. 83 defines it as 'To receive (property) from an ancestor under the laws of intestate succession upon the ancestor's death.' Thus on the law

applicable and the evidence on record, the suit belonged to the applicant's father, and upon his demise, the applicant inherited it."

I understand as of now, the Ward Tribunal had been stripped of its powers to hear Land complaints, but this was a properly existing law then when this matter was heard and determined by the Magugu Ward Tribunal. Looking at the record of both the Matufa Ward Tribunal as well as Magugu Ward Tribunal, the Respondent who was the Applicant then had locus standi since she sued as a beneficiary of the estate of her late grandmother. This fact could not have escaped the Applicant herein because the record further states that the Applicant is related by marriage to the Respondent's uncle. This holding is also not novel further afield as we share more or less the same circumstances in our communities, where the Supreme Court of Uganda held in persuasion in **Israel Kabwa vs Martin Banobwa,** S.C of Uganda No. 52 of 1997 holding that a beneficiary of an intestate based on customary inheritance does not need letters of administration to have the capacity to sue.

My further views are that the issue of locus standi is a pure point of law that can properly be raised as a preliminary objection. In determining such a point, the court is perfectly entitled to look at the pleadings and other relevant matters in its records (see **Mukisa Biscuit vs West End Distributors** [1969] EA 696. The term locus standi literally means a place of standing. It means a right to appear in court, and, conversely, to say that a person has no locus standi means that she has no right to appear or be heard in a specified proceeding. To say that a person has no locus

standi means the person cannot be heard, even on whether she has a case worth listening to.

In fact, in reality, the majority of people in this country own their land through inheritance under customary law. It will be contrary to the law and principles of natural justice to say that all the people who own their land through customary rules of inheritance either have no locus to stand and defend their interests in court or own the land illegally because they did not pass through the probate court.

The Applicant herein is inviting this Court to adopt very narrow conscripts of ownership and inheritance that stand in stark contrast to the patterns of descent-based succession and family property arrangements in our rural communities. I respectfully refuse this invitation. I understand it might be appropriate for the Court to adopt a narrow, restrictive interpretation that limits the application of customary laws to disputes involving the distribution of an estate of a deceased person among persons claiming entitlement thereto, where the dispute is over who the beneficiaries are, and their shares; rather than in resolving disputes involving third parties to the estate of the deceased where a less restrictive definition is more appropriate if the ideal of justice administered in conformity with the law and with the values, norms, and aspirations of the people is to be realized.

The respondent had always maintained that the land had come to her through inheritance from her grandmother who had undisputed ownership of the land in dispute through customary allocation at the Village. There have been several witnesses testifying to this fact as per the records of the

Ward Tribunal, and the said inheritance has not been controverted until now.

On the other hand, the dispute is a trespass to land. I have noted the submission by the counsel for the Applicant feigning surprise as to how the matter ended up in Matufa Ward Tribunal, but the record evidenced that the Applicant is the one who had said that he was given the land through allocation by the Matufa Village when the dispute had previously started, and upon the respondent following up on this allegation, she found out that it was a fabricated fact as the village leadership refuted the said allocation and were resolved to amicably diffuse the dispute by letting the Applicant herein return and release the land he had trespassed to back to the Respondent. But when the Respondent left and came back to Magugu, she found the Applicant had built a permanent dwelling on the landed property, which had then culminated into the land complaint filed at Magugu.

Now to resolve their dispute by reference to the fact that the Respondent has never taken out letters of administration as required by the Probate & Administration Act and applying the narrow restrictive interpretation of that law would inevitably lead to a decision based on a technicality, which in the circumstances of this case in my view, would be a complete failure on the part of the court to deliver and administer substantive justice.

The majority of people in the rural areas in this country own their lands under customary rules of inheritance both patrilineal and matrilineal and there has never been a problem, unless the same is contested by the

person who shares interests under the said inheritance. And as a matter of law, this has its entrenchment into the law through section 11 (1) (a) of the Judicature and Applications of Laws Act, Cap 258 RE, 2019 which recognizes and allows customary laws and their application in our country, which means the same can be enforced by our courts, that:

> "Customary Law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith, in matters of civil nature."

In the final analysis, I find this Revision Application without any merits and

It thus stands dismissed with costs to the Applicant.

It is so ordered.

DATED at **ARUSHA** this **28th** day of **July 2023**

A. Z. BADE
JUDGE
28/07/2023

Judgment delivered in the presence of parties / their representatives in chambers /virtually on the **28th** day of **July 2023**

HIGH COURT OF TANZANIA

A. Z. BADE
JUDGE

28/07/2023