

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

CIVIL APPLICATION NO. 17 OF 2023

(Arising from Probate Appeal No. 8 of 2022 High Court of Tanzania at Bukoba and Probate Appeal No. 10 of 2021 District Court of Bukoba and Originating from Probate Cause No. 4 of 2021 at Katerero Primary Court)

RAUFU HAMDAN SELEMANI..... 1ST APPLICANT

MNAWARU HAMDAN SELEMANI..... 2ND APPLICANT

VERSUS

YAZID YUSUPH AMRI..... RESPONDENT

RULING

3rd and 11th August, 2023

BANZI, J.:

The applicants have filed this application seeking a certificate on a point of law in order to appeal to the Court of Appeal against the judgment of this Court in Probate Appeal No. 8 of 2022 where it was held that; they had no *locus standi* to appeal before the District Court against the decision of Katerero Primary Court (the trial court) which appointed the respondent to execute the will and administer the estate of Hamdani Kajuna Selemani who died on 23rd June, 2021.

Briefly, the matter at hand emanates from Probate Cause No. 4 of 2021 before the trial court where the respondent petitioned for execution of will of the deceased who was survived with fifteen children and five wives. In the course of hearing of the petition, the first applicant objected the

respondent contending that, the alleged will has no qualities of being termed as a will, hence, invalid. The trial court in its ruling dated 10/09/2021, overruled the objection and declared the will as valid. Also, after being satisfied that the second applicant had interest in that probate, it allowed him to join the respondent and appear on the next date so that, they can be heard and be appointed but under different roles that; the respondent to be executor of the will and the second respondent to be administrator of the estate for the properties that were not bequeathed in the will. Thereafter, the trial court proceeded with hearing by receiving the testimony of the respondent and Hawa Adamu (the youngest wife of the deceased). However, when it turned to the second applicant, he informed the court that, he was not there to be appointed because he was satisfied with the decision. On 22/09/2021, the respondent was appointed as executor of the will and administrator of the estate for the properties which were not listed in the said will.

The final decision of the trial court did not please the applicants who appealed to the District Court of Bukoba (the first appellate court) faulting the decision of the trial court to appoint the respondent. The court partly allowed the appeal by declaring that the will presented before the trial court was invalid and revoked the appointment of the respondent. It ordered the

deceased's estate to be administered intestate and the procedures for administration of the deceased's estate to start afresh.

Aggrieved with that decision, the respondent appealed to this Court. The appeal was heard by way of written submissions and at the end, this Court delivered its judgment stating that, the applicants had no *locus standi* to appeal to the District Court against the decision of the trial court dated 22/09/2021, because they were not parties to Probate Cause No. 4 of 2021 after the second applicant had refused to be made a party and as far as the first applicant is concerned, his right of appeal accrued from the ruling delivered on 10/09/2021. Likewise, they had never applied for revocation of the respondent thereafter. Eventually, this Court nullified the proceedings, quashed the judgment and set aside the orders of the first appellate court. The applicants were dissatisfied with the outcome of the appeal, whereby, they lodged the notice of appeal to the Court of Appeal. Also, as required by law, they brought this application for this Court to certify that, there is a point of law to be determined by the Court of Appeal taking into account that, the matter originated in primary court.

At the hearing, the applicants appeared in person, unrepresented whereas, the respondent had legal services of Mr. Dunstan Mutagahywa, learned advocate. The second applicant took the floor and submitted for and on behalf of the first applicant. It was his contention that, they were denied

with the right to be heard because this Court reached its decision on technicalities that they had no *locus standi* to appeal to the District Court against the decision of the trial court which is contrary to the directives of the Court of Appeal thus, in probate and administration cases, the beneficiary who has a right to object becomes party to that case and cannot be excluded from that case because by doing so, it takes away his right. He supported his submission with the case of **Monica Nyamakare Jigamba v. Mugeta Bwire Bhakome (as administrator of the estate of Musiba Reni Jigabha) and Another**, Civil Application No. 199/01 of 2019 CAT (unreported). In addition, failure of the high court to determine the validity of the will and validity of the respondent as the administrator of estate denied their right to be heard. Hence the decision of the second appellate court was a nullity as it was stated in the case of **Arcopar (O.M.) S.A. v. Harbert Marwa and Family Investment Co. Ltd and Three Others**, Civil Application No. 94 of 2013 CAT (unreported).

He further challenged the reasoning of this Court to the effect that, the first applicant waved his right to appeal when he failed to appeal to the decision of the trial court delivered on 10/09/2021. According to him, the decision of 10/09/2021 and 22/09/2021 ought to be challenged jointly and not separately as ruled out by the second appellate court. Furthermore, he contended that, the respondent had no *locus standi* to petition for execution

of the will of the deceased due to variance on the name of the deceased on the will against the death certificate. The respondent did not comply with the law to verify the names of the deceased, because, he ought to have sworn an affidavit of names of the deceased before instituting the probate case as it was stated in the case of **Ally Ahmad Bauda (Administrator of the Estate of the Late Amina Hussein Senyange) v. Raza Hussein Ladha Damji and Two Others**, Civil Application No. 525/17 of 2016 CAT (unreported). It was his contention that, this Court erred in law by failing to address all grounds of appeal raised before it while the law requires the court to address and determine all grounds raised by parties. He cited the case of **Alisum Properties Ltd v. Salum Selenda Msangi (As administrator of the Estate of the late Selenda Ramadhani Msangi)**, Civil Appeal No. 39 of 2018 CAT (unreported) to bolster his point. Thus, he prayed for this Court to certify those points so that, they can go to the Court of Appeal.

In response, Mr. Mutagahywa, contended that, in application for certificate on point of law, there must be a correct question to be certified by the High Court to be placed before the Court of Appeal. However, the applicants have not posed that question to be certified by this Court as a point of law. He supported his argument with the case of **Agnes Severine v. Musa Mdoe** [1989] TLR 164. With regard to *locus standi*, Mr. Mutagahywa stated that, the second applicant was a witness before the trial

court and the only remedy he had was to file the revision and not to appeal. According to him, the issue of right of the applicants to appeal or file revision, is not a correct question to be placed before the Court of Appeal. With regard to the complaints that the High Court determined the 1st and 2nd grounds of appeal and ignored the rest of the grounds, Mr. Mutagahywa stated that, after the High Court had found that the applicants had no *locus standi* basing on the 1st and the 2nd grounds, the rest of grounds became redundant. He distinguished the cited case of **Alisum Properties Ltd** because it concerned determination of issues framed in original jurisdiction. Submitting on the complaint of the right to be heard, Mr. Mutagahywa argued that, the parties were heard on all grounds by filing written submissions. Therefore, the High Court determined everything and there was no unanswered question to be certified. He urged this Court to dismiss the application with costs.

In their rejoinder, the second applicant stated that, the Court of Appeal has jurisdiction of examining the judgments of all courts below it so as to satisfy itself if there are errors to be rectified and in the matter at hand, the errors are legality of the will and its executor. He insisted that, they had right of appeal against the decision of the trial court because they are beneficiaries and they raised objection against the appointment of the respondent.

Having heard the submissions of both parties and having scrutinized the records of this Court and the courts below, the issue for determination

is whether there is point of law to be certified by this Court for determination by the Court of Appeal.

It is common knowledge that, according to section 5 (2) (c) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019], appeals to the Court of Appeal for matters originating in primary courts must be preceded by certificate issued by the High Court certifying that, there is point of law to be determined by the Court of Appeal. In that regard, the aggrieved party has no room to appeal on factual matters. This position was underscored in the case of **Ali Vuai Ali v. Suwedi Mzee Suwedi** [2004] TLR 110 where it was held that:

"According to section 5(2)(c) of the Appellate Jurisdiction Act 1979, a certificate on a point of law is required in matters originating in Primary Courts; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not lie unless the High Court certifies that a point of law is involved in the decision or order;"

Reverting to the case at hand, Mr. Mutagahywa contended that, there is no unanswered question to be taken to the Court of Appeal for determination. However, on their side, the applicants alleged that, the holding of the High Court that they had no *locus standi* to appeal to the

District Court and failure of the High Court to determine all grounds raised points of law to be certified for determination by the Court of Appeal.

Although Mr. Mutagahywa contended that there is nothing to be certified as a point of law, upon examining the submission of the applicants and passing through the judgment of this Court, it is evident that, the applicants' main complaint is the holding of the High Court that they had no *locus standi* to appeal to District Court against findings of the trial court. The issue of *locus standi* formed the basis of the decision of this Court when it determined the appeal which is subject matter of this application. The issue of right to be heard has no basis because the parties were heard by filing written submissions although in its judgment, this Court determined the appeal on the issue of *locus standi* only and found it sufficed to determine the appeal. In the considered view of this Court, this issue does not require to be certified as point of law because, it has been long-established practice that, whenever there is point of law sufficing to dispose of the appeal, the court is not compelled to determine the rest of grounds. As correctly submitted by learned counsel for the respondent that, the case of **Alisum Properties Ltd** is distinguishable because it concerned determination of issues framed in a case with original jurisdiction whereby, all issues framed must be determined.

In the premises, I hereby certify one point of law to be placed before the Court of Appeal for determination, thus:

Whether the applicants had locus standi to appeal to the District Court against the decision of the trial court.

Consequently, the application is granted and owing to the nature of the matter, I make no order as to costs.



**I. K. BANZI
JUDGE
11/08/2023**

Delivered this 11th day of August, 2023 in the presence of the applicants in person and the respondent in person.



**I. K. BANZI
JUDGE
11/08/2023**