

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 96 OF 2022

(Originated from Application No. 18 of 2020 at the District Land and Housing
Tribunal of Arusha at Arusha)

BETWEEN

PASTORY DAUDI KIWALE.....1ST APPELLANT

MEMIRIEKI MEDIRI.....2ND APPELLANT

VERSUS

MESHILIEKI MEDIRI.....1ST RESPONENT

LENGAI MEDIRI.....2ND RESPONENT

LIOMOM MEDIRI.....3RD RESPONENT

JUDGMENT

15 & 30/08/2023

MWASEBA, J.

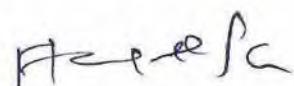
The dispute between the parties herein is based on a piece of land measuring $\frac{3}{4}$ acres located at Kibore hamlet, Kiranyi Ward, within Arumeru District in Arusha Region.

The respondents herein filed a suit against the appellants at Arusha District Land and Housing Tribunal (herein DLHT), claiming that a piece



of land measuring $\frac{3}{4}$ acres which is their family property was sold by the 2nd appellant to the 1st appellant unlawfully. Having heard the parties and their supporting documents, the trial tribunal found that the respondents proved their claim on the balance of probabilities hence the application was allowed with costs. Being aggrieved by the trial Tribunal's decision, the appellant lodged the present appeal stating four (4) grounds of appeal; -

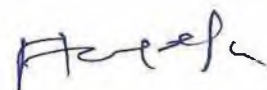
- 1. That the Honourable Tribunal erred in law and in fact when it failed to hold that; the respondents had no locus standi to sue the appellants.*
- 2. That the Honourable Tribunal erred in law and fact when it held that, respondents had right to sell the disputed property while at the time when they sold it; they had no title over the said land.*
- 3. That the Honourable Tribunal erred in law and in fact when it held that; minutes of some family members of late Mzee Mediri allegedly appointing the Respondents to supervise the deceased farms constituted letters of administration of Mediri estates.*
- 4. That the Honourable Tribunal erred in law and in fact when it failed to make proper evaluation of evidence thus arriving to erroneous decision.*



At the hearing of the appeal, which was done orally, the appellants were represented by Mr. John Mseu, learned advocate, while the respondents were represented by Mr. Samwel Madulanga, learned counsel.

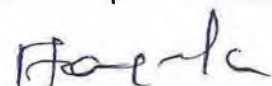
Submitting in support of the appeal, on the 1st, 2nd and 3rd grounds of appeal, Mr. Mseu argued that the respondents had no *locus standi* to sue them as they were not the administrators of the estate of their late father who died in 1996. He argued further that all respondents admitted that they were only appointed by the clan as administrators of the estates of their late father, but they were not yet appointed by the court. Further to that, in their application they claimed to be the lawful owner of the disputed land while they were not yet appointed as administrators by the court.

It was his further submission that when the respondents filed an application at the tribunal, they had already sold the disputed land to Mr. Msangi who is not party to the case while they had no capacity to do so. He supported his arguments with the case of **Projest Energy v. Evalina George**, Land Appeal No. 65 of 2021 (HC at Bukoba, Reported at Tanzlii) where the High Court held that, no person has a locus to sue over the properties of the deceased unless he has been appointed as administrator of his/her estates.



Coming to the 4th ground of appeal, Mr. Mseu stated that, the trial tribunal did not properly evaluate the evidence. He stated further that as the respondents submitted that the disputed land belongs to their late father and they were not appointed by the court to be administrators then they have no locus to sue the appellants. At the tribunal, the 2nd appellant alleged he was given the disputed land by his father prior to his death but the Chairman did not consider his evidence. Therefore, they prayed for the appeal to be allowed.

On his side, Mr. Madulanga strongly opposed the appeal. Submitting in respect of the 1st to 3rd grounds of appeal, he stated that the records of the tribunal shows that the respondents were appointed by the clan meeting to administer the properties of their deceased father. The clan also allowed them to sell the disputed land and to divide the money between 10 wives of the deceased that's why the land was sold to Mr. Msangi. He submitted further that it was Mr. Laison Mediri who was appointed as an administrator of the deceased's estate by the primary court, however there was a series of objection. And when this matter was filed the administrator was in court corridors due to objections raised by other children of the deceased including Kipara. Thus, as the respondents were appointed by clan meeting, they had a locus to represented their



late father. He supported his argument with the case of **Rev. Innocent Muzindaki and Another v. Amelia Masudi**, Land Appeal No. 8 of 2020 (HC at Bukoba, reported at Tanzlii) where the court held that any party who is interested in the property of the deceased can file a suit to protect the family land.

He stated further that the respondents had all the blessings from the family to sell the disputed land, therefore they had *locus stand* to sue in this case.

Coming to the fourth ground of appeal, Mr. Madulanga replied that at the tribunal the respondents proved their case through exhibit P1, P2 and P3 which proved that the respondents were allowed by the clan to sell the disputed land. Further, there was no evidence supporting the argument that the 2nd appellant was given the disputed land by his late father and later on he sold it to the 1st appellant. Responding to the allegation that Mr. Msangi was not joined as a party to the case, he stated that this case was filed after Mr. Msangi complaining to them. He said that they agreed with him that in case there will happen a dispute, the respondents will solve by themselves. So, he prayed for the appeal to be dismissed for want of merit and the decision of DLHT be upheld with costs.

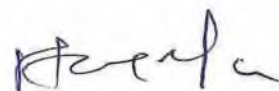


In brief rejoinder Mr. Mseu reiterated what had already been submitted in their submission in chief.

Having given a keen deliberation to the arguments for and against the instant appeal from the learned counsels of both sides, the issue for determination is Whether the appeal has merit or not.

Starting with the 1st, 2nd and 3rd grounds of appeal, Mr. Mseu complained that the respondents had no *locus stand* to sue the appellants at the DLHT of Arusha. He submitted so for the reasons that all the respondents admitted that the disputed land belongs to their deceased father and they were not appointed by the court to be administrators of the deceased estate but they were only appointed by the clan, hence they had no locus to sue. On the other hand, Mr. Madulanga admitted that there was an administrator of the estate however, he was very busy with the objections raised against his appointment that's why the clan appointed other persons to administer the estates of their late father and allowed them to sell land.

It is trite law that, for one to have capacity to bring suits under the estate of the deceased person, must be an Administrator/Administratrix or executor/executrix of the said estate. If one fails to demonstrate such



capacity, the suit or application thereto shall be rendered to be incompetent.

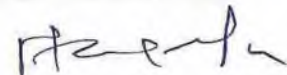
Regarding the representation of administrator of estates before the court or tribunal, **Order XXX Rule 1 of the Civil Procedure Code**, Cap 33 R.E 2019 provides that:

"In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties."

As per the cited provision, the Administrator of the estate was the one administering the estate of the deceased, and he is the one with all rights and *locus stand* to sue and be sued on the estate.

The same was held in the case of a **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi**, [1996] TLR 203 (HC); where it was held that: -

"...in this country, locus standi is governed by common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not



only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court". (Emphasis is mine).

Guided by the cited authority, since there was an administrator who was lawfully appointed by the court, I concur with Mr. Mseu that the respondents had no *locus stand* to sue on behalf of the deceased. The argument that the administrator was busy in court corridors with objection cases cannot defeat the provisions of the law by allowing other persons to enter into the shoes of the administrator without being lawfully appointed by the court. Therefore, this court finds merit on the 1st, 2nd, and 3rd grounds of appeal.

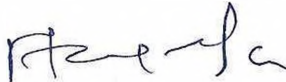
As the 1st, 2nd and 3rd grounds dispose of the appeal, this court will not determine the 4th ground of appeal.

In the upshot, the appeal is allowed, and I hereby quash and set aside the judgment and decree of Application No. 18 of 2020 for being incompetent. Due to the nature of this case, I give no order as to costs.

It is so ordered.

DATED at ARUSHA this 30th day of August, 2023.





N.R. MWASEBA

JUDGE