

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE SUB- REGISTRY OF MANYARA
AT BABATI
LAND APPEAL NO. 27 OF 2023**

(Appeal from the judgment and decree in Land Application No. 63 of 2018 before District Land and Housing Tribunal for Babati at Babati)

UDASQWARE JOKU GIDAFRAYODA..... APPELLANT

VERSUS

UDAHAMITI GWATARODA HAGUINE.....RESPONDENT

RULING

24/8/2023 & 31/8/2023

BARTHY, J.

The appellant and the respondent herein are co-wives. They were married to Gidabarda Sinyau who passed away interstate sometimes in the year 2002. The center of dispute is a piece of land measuring about 20 acres situated at Gaulolo village in Hanang' district, Manyara region (hereinafter referred to as the suit land).

The respondent herein claimed she was the sole owner of the suit land after her husband had passed away. Also, the appellant trespassed on the suit land claiming it belonged to hers.



On the other hand, the appellant claimed she owned the suit land jointly with her deceased husband. Therefore, after her husband had passed away, she became the sole owner of the suit land.

The respondent herein therefore sued the appellant for trespass over the suit land before District Land and Housing Tribunal for Manyara sitting at Babati (hereinafter referred to as the trial tribunal). After hearing the parties, the trial tribunal decided in favour of the respondent and declared her the lawful owner of the suit land.

Aggrieved with the decision of the trial tribunal, the appellant preferred the instant appeal with five grounds of appeal.

In this appeal the appellant appeared in person, while the respondent was represented by Mr. Abdallah Kilobwa learned advocate. The appeal was disposed of orally. However, before composing the judgment, upon going through the records of the trial court, I found there was a pertinent issue that was necessary for the parties to address on issue of *locus standi* since the matter at hand touches on the issues of inheritance and succession.

Hence, the proceeding of this matter was re-opened and the parties were invited to address the court on the issue raised by this court *suo mottu*.



The appellant stated, their husband owned a piece of land and herd of cattle. She added that, after their husband had passed away, no probate matter was instituted.

Mr. Kilobwa on his argument he stated that, after the husband of these parties had passed away, no probate matter was lodged before the court. The respondent instituted the matter in her personal capacity, claiming the suit land did not form part of the deceased's estate.

He went on arguing that, the respondent was co-occupier of the suit land which they acquired jointly with the deceased. He further argued that, after their husband had passed away the suit land, the respondent automatically became the sole owner property of the suit land.

Mr. Kilobwa went on stating there was no will left behind, thus the respondent continued to remain the owner of the suit land. He further contended that the parties preferred the matter in their individual capacities as stated in their pleading which the parties are bound with. To reinforce his argument, he cited the case of **Makuri Vasanga v. Joseph Mwaikambo** [1988] TLR 88.

He argued succession matter has no relevancy to this matter. He further stated that, should the court decide the dispute relates to letter of



administration matter, it will create more problems. Taking into account that, the appellant had acquired a title over the suit land and she will not be willing to have it included in the probate matter.

He urged to this court not to dwell on technicality, but do justice. He then pointed a reference to the case of **Nimrod Mkono v. State Travel Service & another** [1992] TLR 24 and **Essaji v. Solank** [1969] E.A 220, where the emphasis was made not to dwell on technicalities.

Having gone through the arguments of both sides and records of this matter in respect to the issue raised by court, going through the pleadings filed before the trial tribunal, each party claimed that she owned the suit land jointly with their deceased husband.

Particularly paragraph 6 (i) of the application which reads thus;

That prior to the death of the applicant's husband the applicant and her husband were the co-owners of the suit land.

The respondent who was the applicant, in her testimony before the tribunal she was quoted to have stated;

Hili eneo lilikuwa la mme wangu



She further said

*"shamba lilikuwa la mume wangu lakini amefariki miaka
ishirini iliyopita.*

From the pleadings and the evidence on the record from both parties, it clearly indicates that, the suit land was previously owned by the late Gidabarda Sinyau.

The records of the tribunal also show the respondent herein had stated before the trial tribunal there is an administrator of the deceased's estate by the name of Gilageda Gidabarda.

From the arguments and records of the trial tribunal, it is clear there are contending claims between the applicant and the respondent, over the ownership of deceased person's estate. As each claimed to have owned the suit land with the deceased before he passed away interstate.

Each party claims exclusive ownership from the right of inheritance or as the rightful successor of the deceased estate. As it was decided in the case of **Mgeni Seif v. Mohamed Yahaya Khalfani** (Civil Application No. 1 of 2009) [2017] TZCA 25 where the Court of Appeal lucidly held that;

*...a person claiming **any interest in the estate of the deceased must trace the root of title back to a***

letters of administration, where the deceased died intestate or probate, where the deceased passed away testate. [Emphasis is supplied]

The respondent herein has instituted the land matter before the tribunal on her own capacity against the appellant in her own capacity.

It is a settled principle of law that, for a person to institute a suit he/she must have *locus standi*. This was emphasized by this court in the case of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 in which it was observed thus:

"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"

The matter at hand involved interest in the deceased estate, then administrator of the deceased's estate was the necessary party. As his absence no effective decree could be passed by the court or tribunal.

A similar position was stated by this court in the case of **Karimu Shaibu v. Mussa Halfan Bahatisha**, Misc. Land Application No. 17 of 2015



(unreported) which was quoted in the case of **Mashishanga Maganga & 3 others v. Alex Maganga & another**, Land Application No. 253 of 2023 this court pointed out that;

"...the law as it now stands is that a claim for and on behalf of the deceased may only be instituted by the administrator of the estate..."

Therefore, it is clear that the respondent had no *locus standi* to sue on that matter. Hence, the irregularity has the effect of vitiating the proceedings of the trial tribunal.

Mr. Kilobwa had contended that, the court should not dwell much on the technicalities, but only consider justice. As any decision to associate the matter with letters of administration of the deceased estate probate will create more problems.

The respondent suing the appellant in her own capacity is the serious irregularity that cannot be left untouched for the interest of the parties. This is due to the fact that the anomaly has the effect of leading to the miscarriage of justice. The Court of Appeal emphasized in its decision made in the case of **Malietha Gabo v. Adam Mtenqu**, (civil Appeal No.485 of 2022) [2023] TZCA 17318 where among other things it was held that;



section 45 plainly sets out the curable irregularities on improper admission or rejection of any evidence which do not have the effect of occasioning a failure of justice. The legislature did not intend any stretch to cover omissions or irregularities vitiating the trial proceedings such as, instituting a claim against a wrong party like it is the case at hand.

In upshot, I find that the matter before the trial tribunal was filed by respondent who had no *locus standi* to institute the matter. Hence, I proceed to nullify the proceedings and the judgment of the trial tribunal. As the issue was raised out by this court *suo mottu*, I make no order as to costs.

It is so ordered.

Dated at Babati this 31st August 2023




G. N. BARTHY,

JUDGE

Delivered in the presence of the appellant and the respondent in person and absence of the respondent's advocate.