

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA**

LAND CASE NO. 21 OF 2022

**SHEILA HAIDARI KAVIRA1ST PLAINTIFF
YUSUF NASSORO KAVIRA.....2ND PLAINTIFF**

Versus

**HAMISI NASORO KAVIRA.....1ST DEFENDANT
SHABAN FARAJIMUNISI.....2ND DEFENDANT**

RULING

Last Order: 17th August 2023.
Date of Ruling: 22nd September 2023.

MASABO, J:-

The parties herein contend over a landed property identified as Plot No. 8 Block 11 Mjimpya Dodoma with certificate of title No. 82992-DLR originally owned by Nasoro Kavira, now deceased. The plaintiffs have moved this court for an injunctive order restraining the first defendant from transferring its right of occupancy with certificate of title No. 82992-DLR to the second defendant pending final determination of the fate of the administration of estates of the late Nasoro Kavira by the Court of Appeal of Tanzania. After being served, the first defendant filed a written statement of defence accompanied by a preliminary objection that, the plaintiffs have no *locus* to pursue the matter. The second defendant also raised a preliminary objection that in view of section 102(1) of the Land Registration Act, Cap. 334, the suit is incompetent.

Hearing of preliminary objection was done by way of written submissions in the course of which, the defendants who were jointly represented by

Hearing of preliminary objection was done by way of written submissions in the course of which, the defendants who were jointly represented by Mr. Nafikile Elly Mwambona, raised two points on jurisdiction, to wit; one, this court has no jurisdiction to entertaining the suit as it is pending before the Court of Appeal and, two, the first defendant has been wrongly sued in personal capacity. Hence, a total of four points. Mr. Leonard M. Haule, learned counsel, represented the plaintiff and in his reply submission, he responded to all the four points.

Before I provide a summary of the submissions, for a better appreciation of the arguments raised, I find it apposite to briefly state the background facts to the case. From the record, it is deciphered that, the suit property, plot No. 8 Block 11 Mjimpya Dodoma was originally owned by one Nassoro Kavira who died interstate on 04th March 1979. Upon his death, one Haidary Nassoro Kavira was appointed as administrator of this estates in Probate Cause No. 37 of 1998. The administrator died on 19th January 2008 having, allegedly, distributed the deceased's estate whereby the suit property was purportedly given to one Mwajuma Binti Nassoro Kavira (now deceased), Haidary Nassoro Kavira (also deceased) and Yusufu Nassoro Kavira and Plot No. 20 Block FF Kilosa (not subject to this case) went to Hamisi Nassoro Kavira (the first defendant) and Bakari Nassoro Kavira.

It has been further avered that, when Haidary Nassoro Kavira (the administrator) died, Sheila Haidari Kavira (the first plaintiff herein) was appointed administrator of his estate. After his appointment as administrator of the estate of Haidary Nassoro Kavira, the first plaintiff

filed a caveat with Folio No. 177 serial No. 1259/19 to protect Plot No. 8 Block 11 Mjimwema Dodoma from being disposed of. Meanwhile, the first defendant, secretly and without the consent of other beneficiaries caused the transfer of the right of occupancy and its registration into his name. The plaintiffs believe that the transfer and registration of the suit land in the first defendant's name is an abuse of court process because it was done in disregard of the fact that, contentions over the status of the administration of the estates of the late Nasoro Kavira whose properties included Plot No. 8 of Block 11 Mji Mpya Dodoma is still pending determination by the Court of Appeal. It has been pleaded further that, although the pendency of this appeal which emanated from the decision of this court in Probate Cause No. 5 of 2021 is well known to the first defendant, he disregarded it and moved the Registrar of Titles for transfer of the right of occupancy into the second defendant's name. Hence, the present application seeking to halt the intended transfer and registration of the certificate of title into the 2nd defendant's name. The plaintiffs' prayer to this court is that, it be pleased to issue a restraint order against the Registrar of Titles halting the intended transfer and registration.

Back to the submission, in support of the first limb of the objection Mr. Mwamboma relied in the provision of section 71 of the Probate and Administration of Estate Act, Cap 352 to bolster his argument that the plaintiffs have no *locus standi* as none of them is an administrator of the estate of Nassoro Kavira. As per this provision, the right to prosecute a suit as representative of the deceased is exclusively available to a grantee of the letters of administration. In fortification, he cited the cases of **Malietha Gabo vs. Adam Mtengu** Civil Appeal No. 485 of 2022 [2023]

TZCA 17318 TanzLII. In further reinforcement, he argued that *locus standi* is a jurisdictional issue as held in the case of **The Registered Trustee of SOS Children's Villages Tanzania vs. Igenge Charles and 09 Others**, Civil Application No. 426 of 2018 [2022] TZCA 428 (Tanzlii). Therefore, this court lacks jurisdiction of over the suit for want of *locus standi*.

On the second limb of the objection, it was submitted that the suit has been filed in contravention of section 102(1) of the Land Registration Act, Cap. 334, hence incompetent. As per this provision, any person aggrieved by a decision, order or act of the Registrar of Titles may appeal to the High Court within three months from the date of such decision, order or act. In view of this, it has been argued that, since the plaintiffs have pleaded in paragraph 4 and 5 of the plaint that they have received a notice from the Registrar of Titles expression his intention to effect transfer of the suit land, the remedy available to them was to appeal to this court.

Regarding the third point, he argued that, this court has no jurisdiction to entertain the present suit as there is a matter pending before the Court of Appeal of Tanzania as pleaded in 13 of the plaint in which the plaintiff has stated that the administrator of the estates of the late Nassoro Kavira which include the suit property is pending determination by the Court of Appeal. This fact, he argued, was repeated in the prayers. The injunctive order is sought to restrain the first defendant from transferring the suit property to the second defendant until the fate of the administration of the estates of the late Nassoro Kavira is finally determined by the Court of Appeal of Tanzania. In view of this fact, it was argued that, as the law

is well settled that once the notice of appeal or an appeal is lodged in the Court of Appeal, the High Court and all subordinate courts cease to have jurisdiction on the particular matter, the present suit cannot be sustained for incompetence. He fortified his submission by citing the cases of **Exhaud Gabriel Mmari (As Legal and Personal Representative of the Estate of the Late Gabriel Barnabas Mmmari) vs. Yona Seti Akyo and 9 Others)** Civil Appeal No. 91 of 2019 [2021] TZCA 726 TanzLII **Paul David Kubingwa vs. Tanga City Council and Another,** Miscellaneous Land Application No. 65 of 2022(unreported), **Serenity on the Lake Ltd vs. Dorcus Martin Nyanda,** Civil Revision No. 1 of 2019 [2019] TZCA TanzLII. Moreover, he submitted that although this matter is a suit, the prayers advanced in the application are for temporary injunction halting the transfer and registration pending determination of the appeal before the Court of Appeal. Hence, procedurally wrong. If the plaintiffs' wanted to stay the registration, they ought to have applied for stay and not filing a suit.

On the last point, it was submitted that since the plaintiff's has pleaded in their plaint that the suit property is of the estate of the late Nassor Kavira and since the said estate is currently being administered by the first defendant after his appointment was confirmed by this court in **Sheila Haidary Nassoro Kavira vs. Hamisi Nassoro Kavira** [2021] TZHC 10741 Tanzlii, they ought to have not sued the 1st defendant in his personal capacity but in the capacity of an administrator of estate. In conclusion, it was argued that suing the first defendant in his personal capacity has rendered the suit incompetent as held in the case of **Malietha Gabo vs. Adam Mtengu** (supra).

In reply, the defendant's counsel while submitting in respect of the first limb averred that the objection is misconceived as the plaintiffs have not claimed anywhere in their plaint that they are the administrators of the estates of the late Nassoro Kavira. They have brought this suit as beneficiaries of the late Nassoro Kavira's estate and all what they are seeking for, is the assistance of this court to issue an injunctive order to the Registrar of Titles to halt the impending transfer of the right of occupancy pending the determination of their appeal before the Court of Appeal. The decision of the Court of Appeal is expected to finally determine the contentions regarding the status of the first defendant as an administrator of the estate of the late Nassoro Kavira.

On the second limb, it was submitted that the Registrar of Titles has issued no decision worthy of being appealed against. All he has issued is a notice of the impending registration. The said notice was on a caveat which is governed by section 78 (6) of the Land Registration Act Cap. 334 R.E 2019 which does not impose a requirement of appeal to the High Court. It was his submission that, the plaintiffs took a right course to file this matter.

Consolidating the third and fourth limbs of the preliminary objection, Mr. Haule submitted that they do not fall in the scope of preliminary objection as they are not on pure points of law. The ascertainment of both calls for evidence hence offensive of the principle in **NIC Bank Tanzania Limited vs. Hirji Abdallah Kapikulila**, Civil Application No. 561/16 of 2018. He argued that, the appeal which is pending before the Court of Appeal of Tanzania seeks to question the legal status of the administrator

of the estates of the late Nassoro Kavira, while the present suit is seeking injunctive order to restrain the intended transfer. He added that the jurisdiction of this court could have been ousted had this suit emanated from the decision of this court in **Sheila Haidary Nassoro Kavira vs. Hamisi Nassoro Kavira** (supra) which is not the case. He concluded that, all the authorities cited by the defendants to back up the issue of jurisdiction are irrelevant and distinguishable. In conclusion he prayed that the preliminary objection be dismissed with costs for want of merit.

In rejoinder, Mr. Mwamboma reiterated his submission in chief in respect to the first and second limbs of preliminary objections. On the third and fourth point he argued that, the two are pure points of law. They are found from the pleadings and no further facts or evidence are required in determining the two preliminary objections. He further submitted that, the present suit and the appeal before the Court of Appeal are related and this is well demonstrated by the plaintiffs' prayer as they are seeking the injunctive order pending determination of the appeal by the Court of Appeal. Hence, the two cannot be detached as they well are connected. In the alternative, he reiterated his submission in chief that, the present suit is not a proper suit but an application for temporary injunction pending determination of the appeal by the Court of Appeal, a cause which is unknown by the law. He proceeded that, even if the present suit is considered to be separate from the appeal pending in the Court of Appeal, this court cannot grant injunctive orders pending determination of the matter in the Court of Appeal as the law on temporary injunction, is well settled that, it can only be granted pending determination of a suit

or a matter which is pending before the very same court and not before another court as the plaintiff herein purport.

Having considered the arguments for and against the preliminary objection, I will now proceed to determine it starting with the first limb of the preliminary objection. The issue for determination in this limb is whether the plaintiffs have *locus standi*. As correctly submitted by the defendant's counsel, *locus standi*, understood as a right to sue or to bring an action in court, is a vital requirement as it defines the competence of the matter before the court and the jurisdiction of the court to entertain it, hence a jurisdictional issue. Therefore, as a matter of law and principle, it has to be determined at the earliest possible stage of the matter so as to spare the court from proceeding with an incompetent matter and devoid of jurisdiction. In the case of **Godbless Lema vs. Mussa Hamis Mkanga and Two Others, Civil Appeal No. 47 of 2012** (unreported), the Court of Appeal of Tanzania while citing a persuasive authority of the Malawian Supreme Court decision in the case of **The Attorney General vs. The Malawi Congress Party and Another**, Civil Appeal No. 22 of 1996, it held that:

Locus standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say he stands in a sufficient close relation to it as to give a right which requires prosecution or infringement of which he brings the actions.

The Court had a similar view in **Peter Mpalanzi vs. Christina Mbaruka, Civil Appeal No. 153 of 2019** [2021] TCA 510, TanzLII where it stated thus:-

Locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a Court at the earliest opportunity or once it raised.

Also, in **Registered Trustee of Sos Children's Villages Tanzania vs Igenge Charles & Others** (supra), the Court of Appeal of Tanzania having cited the above authority with approval, it proceeded to hold that:

In addition, if a person who brings action has no locus standi this put to question the issue of the jurisdiction which must be considered at the earliest, be it by the parties or the court itself

Back to the question whether the plaintiffs herein have *locus standi*, it has been argued and it is indeed true that, the law is settled that, suits brought in enforcement of a right or an interest held by a deceased person, can only be brought in a representative capacity by a grantee of letters of administration. The Court of Appeal has held so in numerous cases, among them, the two cases cited by Mr. Mwamboma. In **Malietha Gabo vs Adam Mtengu** (supra), the respondent has sued to recover the deceased's landed property but instituted the suit in her personal name. Invited to determine the propriety of such proceedings, the Court of Appeal held thus:

On our part, in the event the appellant was the administratrix, it was irregular for the respondent to initiate a case against the appellant in her own capacity instead of pursuing action against her as the administratrix of the late Gabo Mtengu. We are fortified in that regard because the only person who can act as a representative of the deceased, is the grantee of the letters of administration as provided under the provisions of section 71 of the Probate and

Administration of Estate Act [CAP 352 R.E.2002] which stipulates as follows:

"71. After any grant of probate or letters of administration; no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled"

In **Registered Trustee of SoS Children's Villages Tanzania vs Igenge Charles & others** (supra), the suit land belonged to the deceased person. The respondent who was the applicant, instituted the suit for recovery of the land in his personal name. The Court of Appeal held that, he had no the capacity to commence litigation in his own name over the suit land which belonged to his late father and based on this finding it nullified the High Court proceedings for being predicated on incompetent proceedings lodged by a person who had no *locus to standi*.

In the present suit, it has pleaded as stated above that, the suit property belonged to a deceased person, one Nassoro Kavira, and allegedly, later on to Haidary Nassoro Kavira (also deceased) to whom it devolved by way of inheritance. Further, through paragraph 13 of the plaint, it has been stated that, the restraint order is sought pending final determination of the appeal concerning the administration of the estate of the late Nassoro Kaira, an estate which includes the suit property. The averments above and the whole of the plaint, provide no indication that the plaintiffs herein personally own the suit property. As admitted by their counsel in the reply submission, they have brought the present suit in the capacity of beneficiaries of the estate of Nassoro Kavira (the deceased), who was the

owner of the suit property. In the foregoing, since none of the plaintiffs is an administrator of the estate of the late Nassoro Kavira whose interest they purport to protect, it is obvious that they are devoid of *locus standi*. this court had consequently no jurisdiction to entertain the suit. The first limb of the preliminary objection is found to have merit and is upheld.

Having sustained the first limb of the preliminary objection, I see no justification to proceed to the remaining limbs as the finding above, sufficiently disposes of the suit.

Accordingly, this suit is struck with costs for want of locus standi.

DATED at DODOMA this 22th day of September, 2023.



A handwritten signature in blue ink, consisting of a stylized 'J' and 'M' with a horizontal line through them.

J. L. Masabo

JUDGE