

IN THE HIGH COURT OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

MISCELLANEOUS LAND APPEAL NO.25 OF 2023

FORTUNATUS KASANZO.....APPELLANT

VERSUS

PAULINE MAHENDEKA.....RESPONDENT

RULING

22/09/2023

Kamana, J:

When the appeal was set for a hearing, Mr. Kassim Gila, learned counsel for the respondent, drew the attention of the Court that the appeal at hand was defective as the appellant prosecuted the matter from the Ward Tribunal without the *locus standi*. Amplifying the argument, the learned counsel contended that the land in dispute which is a subject of the appeal is allegedly by the appellant to have been owned by his late father.

In that context, he argued that the appellant was not supposed to sue in a personal capacity but as an administrator of the estate of his late father. Given that, Mr. Gila contended that the appeal was incompetent before the Court. In the same vein, he argued that the proceedings and orders of the Ward and District Land and Housing Tribunals were null as

they stemmed from a defective suit. Based on that, he beseeched the Court to dismiss the appeal, quash and set aside the lower tribunals proceedings and orders with costs.

Responding, the appellant, a lay person, admitted that when he moved the Ward Tribunal that led to this appeal, he was not the administrator of the estate of his late father. He asserted that he was appointed to be the administrator in May, 2023. He contended that he did so as the son of his late father with interest in the said disputed land. In that case, he implored the Court to determine the appeal on merits.

Having heard the parties, I had time to peruse the records. From them, it is crystal clear that the appellant instituted the complaint against the respondent at Bwiro Ward Tribunal at Ukerewe on 18th November, 2015. Aggrieved by the decision of the tribunal, the appellant filed an application at the District Land and Housing Tribunal for Ukerewe. That was sometime in 2015. Thereat, the tribunal entered judgment in favour of the appellant and ordered that the respondent is entitled to a refund of the purchase price of the land in question.

Following the verdict, both parties filed an application for execution in Miscellaneous Land Application No.38 of 2021 in the tribunal. Deciding on the application, the tribunal found that the appellant had failed to refund the purchased price to the respondent and held that the

respondent was entitled to the land. That was what aggrieved the appellant, hence this appeal.

Having considered the records, it is my opinion that the application for execution stemmed from the incompetent suit as the appellant had no *locus standi* to sue over her late father's interests. Trite law is that the interests of the deceased person when there is a suit or action are protected by the administrator of his estate. **See: William Sulus v. Samson Wajanga**, Civil Appeal No.193 of 2019; and **Malieta Gabo v. Adam Mtengu**, Civil Appeal No. 485 of 2022.

Invoking revisionary powers of the Court, I quash the proceedings and orders of the Tribunal in Miscellaneous Land Application No. 38 of 2021. I further do the same in respect of the lower tribunals in Land Case No.10 of 2015 and Land Application No.57 of 2016. The appellant when clothed with *locus standi* is at liberty to file a suit in a competent court.

Order accordingly. Given the circumstances of this case, I order no costs. Right To Appeal Explained.

DATED at MWANZA this 22nd day of September, 2023.



KS KAMANA

JUDGE