IN THE HIGH COURT OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 02 OF 2023

(Arising from the District Land and Housing Tribunal for Rukwa at Sumbawanga in Land Appeal No. 51 of 2021 and Originated from Ikozi Ward Tribunal in Land Case No. 04 of 2021)

MAIKO BERNARD LYAPINDA.....APPELLANT

VERSUS

FESTUS PAUL KIPANTA.....RESPONDENT

JUDGMENT

2nd August, 2023 & 22nd September, 2023

MRISHA, J.

The genesis of the land dispute leading to the present appeal between the appellant, **Maiko Bernard Lyapinda** and the respondent, **Festus Paul Kipanta** herein, can be traced from the decision of the Ward Tribunal of Ikozi (the trial WT) in Land Case No. 4 of 2021, which is within Sumbawanga District, ni Rukwa region.

In that suit the appellant unsuccessfully sued the respondent for allegedly trespassing into a piece of land approximated to be thirty acres (the suit land),

which the appellant claimed to be his late father's estate, although he had not measured the same.

Through his testimony the appellant told the trial WT that he stood in front of the said tribunal on behalf of his late father's family in order to claim that piece of land from the respondent whom he and his fellow family members did not know how and why the said respondent obtained that land. He mentioned his late father's name as one Leo Lyapinda.

During cross examination the appellant responded that he is one of the children of the late Leo Lyapinda and when examined by the trial WT members, he said the said suit land has more than thirty acres by approximation and he knows it boundaries. He also said that the respondent invaded into that land since 2009 and has been doing farm activities therein.

Upon being asked where was he since 2009 up to 2021 when he decided to sue the respondent, the appellant said he and his fellow family members were looking for some money to enable them file and prosecute that case. He also said that at first, he thought the respondent had been lended the suit land by his relatives. He also said that he wanted the respondent to vacate from that land.

On his side, the respondent testified that he obtained the suit land after purchasing it from the appellant's father in 2000 and had been cultivating that

land since then, until 2021 when the appellant decided to sue him. He also claimed before the trial WT that in the years ahead he purchased some other pieces of land from the appellant late father's relatives whom he mentioned as Richard Lyapinda and Claver Lyapinda.

During cross examination the respondent said he did not involve the appellant's father and his relatives because each of them were selling land to him separately. He trusted them as he used to see them cultivating the said pieces of land. The sale agreement did not involve the neighbours. The trial WT would believe him because he had documents with him.

Based on the above summarised evidence, and after paying visit to the locus in quo, the trial WT found that the suit land belonged to the respondent who had been owning the suit land undisturbed for more than ten years, although it warned him not to exceed the boundaries of the suit land in order to avoid unnecessary disputes with his neighbours, as it is shown at page 4 of the typed WT judgment.

The appellant was not happy with the said trial WT decision. He thus, lodged his appeal to the District Land and Housing Tribunal for Rukwa at Sumbawanga (the appellate tribunal) where he also loosed, as the said tribunal concurred with the findings and decision of the said trial WT.

It is important at this point to note that in dismissing the appellant's appeal with costs, the appellate tribunal observed that the appellant was time barred when he decided to sue the respondent in respect of the suit land. This can be inferred from page 3 of the appellate tribunal typed judgment where the honourable chairman wrote that:

> *"...Mrufani alitakiwa kufungua shauri la kudai eneo gombewa kabla ya miaka 12 kuisha. Kwa sababu hiyo sioni sababu ya kuingilia matumizi ya muda mrefu wa eneo gombewa na Mrufaniwa.Na hii ni kwa mujibu wa maelekezo katika shauri la* ***Shabani Nassoro v Rajab Simba*** *[1967] HCD 233 ambapo ilitamkwa na mahakama kwamba, ninanukuu;*
>
> *The court is reluctant to disturb persons who have been in occupation of the land for a long period, and having said that, he refused to give remedy where the party seeking such remedy delayed to bring the action for 18 years."*

Still not being amused by the said decision which appears to have been decided in his counterpart's favour, the appellant filed the instant appeal in order to challenge the same. His petition of appeal is composed of three grounds to wit:

1.That, the learned chairperson failed to see that Respondent herein had not established that he occupied the land in dispute lawfully. This proves that the justice was not done.

2.That, the learned chairperson erred in law and in fact in relying on weak evidence adduced by the Respondent side in failing to see that the mode of occupation of the disputed land as alleged by the Respondent was unlawful.

3. That, the learned chairperson erred in law and in fact in failing to appreciate that the Respondent had obtained the disputed land illegally.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented, whereas on the other side apart from not being represented, the respondent did not appear despite being informed on the existence of a summons requiring him to appear in court, as indicated in the affidavit of Mr. Mark Xavier Msilu, the process server dated 29th day of April. 2023. In the circumstances, the appeal was heard ex parte as per Order XXXIX, Rule 17(2) of the Civil Procedure Code, Cap 33 R.E. 2019. Hence, this judgment.

The appellant informed the court that he had filed his petition of appeal which contain three grounds of appeal. He therefore, urged this court to adapt them so that they form part of his submission in chief. He submitted further that the learned chairperson of the appellate tribunal erred in law and fact by relying

on the evidence of the respondent who failed to tender any exhibit to prove his case, nor did the respondent bring any witness to support his case.

Having so submitted, the appellant then implored me to allow his appeal and set aside the judgment of the appellate tribunal with costs. As indicated above, the respondent did not enter appearance without any notice. Therefore, nothing was submitted from his side.

However, as I was going through the typed records of the lower courts, I observed that the appellant sued the respondent in his personal capacity despite alleging that the suit land belonged to his late father, not as an administrator of his late grand father's estate. Therefore, I wanted him to address the court whether he had legal capacity to sue the respondent in absence of letters of administration and/or probate.

The appellant submitted that the disputed land was owned by his grandfather who was blessed with seven children. That on 2021, the family meeting was convened and he was appointed (sic) by his family to be an administrator of his late father then immediately after being so appointed, he filed a land case No. 4 of 2021 in the trial WT of Ikozi, Sumbawanga. He further submitted that he did not file a probate cause in order to obtain letters of administrations; hence he does not possess any document pertaining to his late father's estate.

I have read the records of the trial WT, those of the appellate tribunal as well as the submission in support of the present appeal. As I have intimated above, there are three grounds of appeal through which the appellant herein wishes this court consider, allow his appeal and set aside the judgments of the two courts below. However, for the reasons to be put apparent shortly, I will not deal with them.

It has been a settled law that normally the appellate court will not interfere with the concurrent findings of fact of the lower courts unless it is shown that there are misdirections or non directions. (See **Mustafa Darajani vs The Republic**, Criminal Appeal No. 277 of 2008 and **Lim Han Yung & Another vs Lucy Treseas Krinstensen**, Civil Appeal No. 219 of 2019(both unreported).

The appellant while making his submission in chief before this court, disclosed the fact that he instituted a Land case No. 4 of 2021 in the trial WT against the respondent immediately after being appointed (sic) by his family members to administer his father's estate. However, he informed the court that he had not filed any probate cause in a court of law; hence he does not possess any document from the probate court.

The above submission by the appellant entails, that he sued the respondent in a land court in his personal capacity and not as the administrator of his late

father's and/ or grand father's estate. In the circumstance, the issue here is whether the lower courts were justified to entertain the appellant's case against the respondent.

It is a trite law that in the absence of letters of administration where the deceased person died intestate, and/ or probate, where the deceased died testate, the land court lacks jurisdiction to entertain and determine a land case involving a claim of any interest in the deceased's estate.

The exception to the above principle is where, for example a spouse files a land case in order to protect a piece of land of which it is proved that he/she is a co-owner of the property left behind by his/or her late husband/wife. (See **Paul Bwishaku vs Magdalena Bwishaku, Misc. Land Appeal No. 33 of 2013 HC Bukoba** (unreported).

In other words, it is only the probate and administration court seized of the matter can decide on the ownership. (See **Mgeni Seif v Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009, Court of Appeal of Tanzania at Dar es Salaam (unreported).

In that case it was further held that:

> *"...a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the*

deceased died interstate or probate, where the deceased passed away testate."

Also, in the case of **David Mbunda vs Stanley Joachim Mmanyi Misc. Land Appeal No. 80 of 2013**(unreported) which has been cited in a number of cases including the case of **Kalunde Hussein Maganga vs Fatuma S. Muhogo**, Land Appeal No. 6 of 2022(also unreported), this court through Mansoor, J ruled out that:

"That the deceased property can only claimed through administration of his property..."

The logic behind the above principle is that the issue of locus standi has the effect of determining jurisdiction of the court like in this case, the land court. Therefore, in order to put things in their proper place, the probate court has to resolve first all issues pertaining to ownership of the assets left behind by the deceased person for the benefit of his/her heirs and beneficiaries, if any. The process includes, intel alia, the appointment of an administrator/ administratix of the deceased's estate, or grant of probate to the one appointed by the deceased persons through the deceased's will to be his/her executor/ executrix who will step into the shoes of the deceased person and defend the deceased's estate in case any dispute in respect of that estate arise.

Such legal process is for purpose, because in a normal circumstance a dead person cannot defend his rights regarding the assets he/she has left behind where the same are involved in a civil dispute, as it appears in this case, that is why the law has established a legal process to have a special person who can stand on that behalf before the probate court (which, in the circumstances of this case, is the Primary Court) and defend the deceased's estate against any person who seems to claim interest over it.

The above Court's observation is fortified by the provisions of regulation 2(a) of the Powers of Primary Court in Administration Cases, 5th Schedule to the Magistrates Courts' Act, Cap 11 R.E. 2019(the MCA) which provides that:

"A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may:-

(a) either of its own motion or an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased to the administrator or administrators, thereof, and, in selecting any such administrator, shall, unless for any reason it considers in expedient so to do, have regard to any wishes which may have been expressed by the deceased;

(b) ,,, N/A"

The above provisions of the law are intertwined with the provisions of section 74 of the Probate and Administration of Estates Act, Cap 352 R.E. 2019 (the PAEA) which provides that:

> *"A district court may appoint as administrator one or more persons interested in the estate or in the due administration thereof and, in selecting an administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased."*

Also, when it comes to protection of the deceased's estate, regulation 6 of the 5th Schedule to the MCA, provides that:

> *"An administrator may bring and defend proceedings on behalf of the estate."*

Again, under section 71 of the PAEA it provided that:

> *"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."*

From the above provisions of the law, it can rightly be stated that before instituting a land case in the land court to claim any interest in the deceased's estate, one has to seek letters of administration and/or probate from the probate court by filing a probate cause therein.

In the present case, it is on record that before suing the respondent in the trial WT, the appellant did not prove to that land court that he had a legal capacity/locus standi to sue the respondent on behalf of his late father's estate. It is unfortunately that both courts below did not take trouble to satisfy themselves whether the appellant has a locus standi to sue the respondent. Had they done so, they would have advised him to trace the letters of administration from the Probate court.

The settled principle of law that for a person to institute a suit, he/she must have locus standi, cannot be left behind for it applies as a threshold to those who claim to have some interests over the properties alleged to have been left behind by the deceased person. (See **Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi**, [1990] T.L.R. 203.

In that case Samatta, J (as he then was) observed that:

> *"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with...."*

Again, it is well settled law that being an heir of the deceased, makes one to have interest in the deceased's estate, but that does not automatically cloth him with a locus standi to sue or be sued in respect of the same. The above court's position is fortified by the decision of this court in the case of **Felix Constantine vs Jofrey Modest**, Misc. Land Appeal No. 9 of 2010 which was also cited with approval in the case of **Asia Juma Nkondo vs Jafari Juma Nkondo**, Misc. Land Appeal No. 22 of 2021(unreported), it was stated that:

> *"...to be an heir of the estates of deceased person, creates an interest on part of the heir, but that does not give him an automatic locus standi to sue or being sued over the property of the deceased"*

I am persuaded by the above decision of this court and find the principle stated therein to apply in the case at hand where it is obvious that being an heir of his late father, the appellant is said to have an interest in his late father's estate, but that does not automatically cloth him with a locus standi to sue or being sued over the property of the said deceased.

In the present case, it is apparent that the suit land in which the appellant is contesting for, is alleged to be the property of his late father. Hence, basing on the above principles, I am of the settled view that the appellant had no locus standi to proceed against the respondent as he had yet been granted letters of administration by the probate court.

His submission clearly reveals that he did not finish the process of obtaining such legal documents in order to be able to show that his right or interest has been breached or interfered with. After being proposed by his family members to administer his late father's estate, the appellant ought to have filed a probate cause with the Primary court established within Sumbawanga District particularly the Primary Court of Mpui or Laela, depending on the place the suit land is located.

Since, the appellant did not prove before the trial WT that he had a legal capacity to sue the respondent thereat, both the trial WT and the appellate tribunal had no jurisdiction to entertain the appellant's civil claim. Thus, basing on the aforestasted reasons, the raised issue above is answered in the negative.

It follows therefore, that due to the foregoing reasons, the present appeal is incompetent before this court. It is thus, struck out. I therefore, nullify the proceedings before the trial WT and the appellate tribunal. Consequently, I also quash the judgments of the trial WT as well as the appellate tribunal and set aside any consequential orders thereto. The appellant, if still wishes, is at liberty to proceed against the respondent after complying with the above legal requirement. In the end, since the two courts below omitted to consider

whether the appellant had a locus standi to sue the respondent, I make no orders as to costs.

Order accordingly.

A.A. MRISHA
JUDGE
22.09.2023

DATED at **SUMBWANGA** this 22nd Day of September, 2023.

A.A. MRISHA
JUDGE
22.09.2023