

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

LAND REVISION NO. 3 OF 2022

*(C/F Appeal No. 49 of 2020 at the District Land and Housing Tribunal for Arusha,
Originating from Land Complaint No. 2 of 2020 at Mwandet Ward Tribunal)*

STELLA LEMOMO _____ 1ST APPLICANT

JULIANA LEMOMO _____ 2ND APPLICANT

SIYAMA LEMOMO _____ 3RD APPLICANT

ISAYA LEMOMO _____ 4TH APPLICANT

VERSUS

ELIZABETH LEMOMO _____ RESPONDENT

RULING

15/08/2023 & 20/10/2023

BADE, J.

The applicants herein filed this application under the provision of **Section 43 (1) (a), (b) and (2) of the Land Disputes Courts Act** Cap 216 RE 2019 seeking an order for revision of the records and proceedings in Appeal No. 49 of 2020 from the District Land and Housing Tribunal for Arusha (herein DLHT) and inspect the same for purposes of satisfying its correctness, legality and procedural propriety.

The application is supported by the affidavit sworn by their counsel Mr. Richard Manyota where he alleges that the trial ward tribunal and the 1st appellate court wrongly declared the disputed land to belong to the respondent while there was a valid will where the parties' deceased father distributed the land to all his children. On the other hand, the respondent opposed the application by stating that the land in dispute was never divided among them and the Will attached is a forged document that was never been tendered in previous cases.

At the hearing, the learned counsel Mr. Richard Manyota represented the applicants, whereas the respondent defended for themselves, unrepresented. The application was disposed of by way of written submission.

Submitting in support of the application and arguing the ground on illegality, Mr. Manyota submitted that the 1st applicant and the respondent had no *locus standi* to file an application at Mwandet Ward Tribunal as they were not the administrator of the estate of the late Lemomo Loimunwa. He submitted further that it was the 4th Applicant (Isaya Lemomo) who was the administrator of the estate of their late father. As the land in dispute once belonged to the late Lemomo Loimunwa, both the lower courts below had no jurisdiction to entertain the matter. He

referred this court to the case of **Zuhura Bakari Mnutu vs Ali Athumani** (Misc. Land Case Appeal No. 9 of 2015) [2015] TZHC (1 December 2015) where the court insisted in locus standi as a crucial issue in every proceeding and the person suing has to show that he has locus standi.

Further, on the ground of illegality, the counsel for the applicants argued cementing on 1st ground as argued above, that it is only the administrator/executor who had the locus to represent the deceased as per **Section 99 of the Probate and Administration of Estates Act**, Cap 352 RE 2019. He argued further that the dispute at Mwandet commenced before the appointment of the administrator of the estate of the late Lemomo Loimunwa and after he had been appointed and finalized the matter the land was divided to all children according to the will of the deceased.

Regarding the 3rd ground of illegality, Mr. Manyota submitted that there was inconsistencies and contradictions on the evidence of the respondent's witnesses. He submitted so for the fact that the 1st witness stated that the distribution of the properties of the late Lemomo Loimunwa was drafted by the person named Wilfred Ndiyogi who was never called to testify. Meanwhile, the 2nd witness stated the late Lemomo Loimunwa called one Sapiyo and Lesikar Sailepu Jackson together with

Mama Seita Lendimi for the purpose of giving part of the inheritance to the respondent alone. He prayed for the court to revise the proceedings of both Complaint No. 2 of 2020 and Land Appeal No. 49 of 2020 to satisfy the correctness, legality, and the propriety of procedure of both proceedings.

Opposing the application, the respondent submitted on the 1st and 3rd ground for revision that the respondent indeed had locus standi to sue against the appellants as she was able to prove the acquisition of the land from his late father, and her witnesses at the lower tribunals proved the same. She is incredulous at the fact that the counsel for the appellants represented them during the proceedings at the 1st appellate court, but the issue of jurisdiction was never raised there, thus the same cannot be raised at this stage. She supported her arguments with the case of **Dalmas Jonyo vs Grace Charles**, Misc. Land Appeal No. 144 of 2020 (reported at TANZLII).

It was her further submission that the 2nd to 4th appellants were not a party to the case at the lower tribunals, and thus she is surprised at how they became a party to the case at the revision stage.

Replying to the 2nd ground for revision, the respondent submitted that this ground has no merit, maintaining that even though the deceased died

testate, the probate court had no jurisdiction to determine ownership of the land but rather it should have guided parties to institute the case at a proper court which has jurisdiction to decide the dispute. Thus, the issue of the validity of the will was supposed to be determined at the Probate court and not in the appellate tribunal as it was decided by the 1st appellate tribunal holding that the will was not part of the proceedings at the lower court, hence, cannot be determined at the appellate stage. She prayed for the application to be dismissed with costs.

Having outlined what transpired in the lower tribunals and in this application, I will now determine one issue, notably, whether there was impropriety in both decisions of the lower court.

Starting with the first ground of illegality, Mr. Manyota argued that the 1st applicant had no jurisdiction to institute a case at the Wad Tribunal since she was not the administrator of the estate of their deceased father, making it wrong for the District Land and Housing tribunal to entertain the appeal as it was filed by a person who had no *locus standi*. On her side, the respondent submitted that the issue of locus standi was supposed to be raised at the 1st appellate tribunal as they were represented by the same counsel, hence the same cannot be raised at this stage.

Having perused the records of the Ward Tribunal, it is apparent to this Court that the 1st applicant filed an application at Mwandet Ward Tribunal on behalf of the others and based on the property left by their deceased father claiming it was left to all daughters of the deceased. Although the issue of *locus standi* was never raised at the 1st appellate tribunal, as it was decided in the two cases above as cited by the counsel for the Applicants, it can be raised at any stage and the counsel for the applicants is legally correct to raise it at this stage.

I am warm to the frustrations raised by the Respondent that the said matter on the want of locus standi has not been raised previously, as well as otherwise prevailing legal undertaking that courts are unlikely to consider issues that were not raised by the parties in the lower courts or in the appeal since the parties have the responsibility to raise all relevant issues and arguments in their initial filings or during the proceedings and failing to do so may result in waiver of those issues. However, it is a settled law that an issue raised on a point of law challenging the jurisdiction of the Court can be raised at any stage since the jurisdiction to determine any matter is a creature of statute and the said issue touches on the very root of the matter; and this has been the holding by this Court and the Court of Appeal times without number. See **Tanzania-China**

Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters

[2006] TLR 70.

Underscoring the point that the existence of legal rights is an indispensable prerequisite of initiating any proceedings in a court of law, the Court of Appeal held in **Omary Yusuph (Legal Representative of the late Yusuph Haji) vs Albert Munuo**, Civil Appeal No 12 of 2018 [TANZLII]

"We are aware that locus standi is all about directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted which is among the initial matter to be established in a litigation matter."

Having held as such, they quoted further in emphasis the case of **Lujuna Shubi Ballonzi Senior vs Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 (HC) that it is a settled principle of law that for a person to institute a suit he/she must have locus standi:

"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"

Subsequently, since the 1st applicant was not the appointed administrator of the estate of their late father, she had no mandate to file any suit against the respondents herein since matters of having locus standi are in essence jurisdictional, to the adjudicating court as well as the person pursuing their interest. In this regard, the law is prescriptive through the provisions of section 71 of the Probate and Administration Act [CAP 352 R.E.2002] directing as follows:

"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 the power to sue or prosecute any suit, or otherwise act as a representative of the deceased, until such probate or letters of administration shall have been revoked or annulled."

This, in essence, is also the basis for the holding by this court as it was held by his lordship Ismail, J. as he then was in the case of **Amit Dinesh Bhikha and Anor vs Leo Developers Ltd and 2 others**, Misc Civil Application No 620 of 2021 *".....the right of the heirs to sue is limited to and only arises where the administrator has wound up his duties and vacated the office It is simply that the applicants have no locus standi to sue on the estate of the deceased"*.



This court finds merit on the 1st ground for revision. In consequence, the proceedings of the Ward Tribunal and the judgment emanating therefrom cannot be sustained and are hereby nullified. As a result of that, the proceedings and judgment of the District Land and Housing Tribunal having stemmed from a nullity are equally without a mandated legal basis and are nullified.

As the 1st ground is sufficient to dispose of this revision, I find no pressing need to deliberate on the remaining grounds as they will serve nothing.

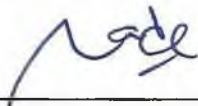
For the foregoing reasons, I allow the revision and set aside the judgment and decree of the Ward Tribunal and that of the District Land and Housing Tribunal. Parties are at liberty if interested, to institute a fresh suit before a Tribunal or a Court with competent jurisdiction, by the person who has *locus standi* to file a suit either for or against the estate of the deceased.

Since siblings are at the core of the dispute before this court, I make no order as to costs.

It is so ordered.

DATED at ARUSHA this 20th day of October 2023





A. Z. BADE
JUDGE
20/10/2023

Ruling delivered in the presence of the Parties and or their representatives
in chambers on the **20th** day of **October 2023**



A. Z. BADE
JUDGE
20/10/2023