

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND CASE NO. 6 OF 2023

SALUM MUSTAPHA KILUMBU (Administrator of the estate of

the late HALID HASSAN KILUMBI) PLAINTIFF

VERSUS

KIYONGWILE PRIMARY SCHOOL 1ST DEFENDANT

IFAKARA TOWN COUNCIL 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

Date of last Order: 03/10/2023

Date of ruling: 20/10/2023

BEFORE: G. P. MALATA, J

The plaintiff **Salum Mustapha Kilumbu** (Administrator of the estate of the late **Halid Hassan Kilumbu**, who passed away 23/04/1983 filed the present suit against the Defendants for trespass over one and half acre (1.5)

of land which was customarily owned by the deceased and inherited by his surviving family. In other words, the land is being owned by the deceased's family.

The plaintiff was appointed administrator of the deceased estate in 2021 just for the purposes of claiming for the land alleged to have been trespassed by the defendants herein.

Upon being served with copy of plaint, the defendants filed Written Statement of Defence together with two preliminary objections.

On 03/10/2023 the matter came for hearing of preliminary objections, however, the defendants withdrew one preliminary objection and proceeded with one which provides that;

That, the plaintiff being an administrator of the estate of the late Halid Hassan Kilumbu has no locus standi to sue.

The parties appeared represented. The plaintiffs appeared through Ms. Stumai Moshi learned counsel whereas the defendants appeared through Ms. Lightness Tarimo and Ms. Emma Ambonisye learned State Attorneys.

Advancing arguments in support of the preliminary objection, Ms. Lightness Tarimo submitted that, the plaintiff was appointed administrator of the late

Halid Hassan Kilumbu by Ifakara Primary Court on 30/4/2021. The suit was filed on 30/5/2023. The time within which to discharge his role as administrator has passed since he was required to accomplish the task within 4 months. She made her reliance on Rule 10 of the Primary Court (Administration of Estate) Rules, GN 49/1971.

Further, Ms. Lightness cemented her submission in the case of **Mazigo Biseko Vs Wegoro Timbira** (Msimamizi wa Mirathi ya marehemu Matai Matete), Land appeal No. 8/2022, High court Musoma at page 7 – 8 of the judgement where the court stated settled that, *administration of estate is not a life time but limited by law.*

She also cited the case **Beatrice Brighton Kamanga and Amanda Brighton Kamanga Vs Ziada William Kamanga**, Civil Revision No. 13/2020 at page 23 line II.

"There is no endless administration or life administrator in our laws"

Finally, she prayed that, the suit be dismissed with costs.

In reply thereof, Ms Moshi learned counsel submitted that, paragraph 11 the plaint indicates that, the plaintiff was granted letter of administration on

30/4/2021. The plaintiff was appointed for the purposes of pursuing the Estate of the late Halid Hassani Kilumbu.

The Defendants made reliance on Rule 10 of the Primary Court Rules in that since he was appointed two years ago and decided to institute the present after two years, that is to say in May, 2023.

Ms. Moshi submitted that, the cited Rule 10 does not limit that every function must be done and accomplished within four (4) months. The plaintiff applied for extension of time within which pursue for the rights in the existing dispute.

She finally prayed for dismissal of the preliminary objection with costs for want of merits.

By way of rejoinder Ms. Emma, State Attorney submitted that, the cited Rule 10 it covers all situations, including the one at hand. If the administrator fails to accomplish the task within time, then he has to apply for extension of time. It is true that he was granted extension 9/10/2021. Extension administration duties not for this case. She thus pressed for dismissal of suit for want locus standi.

To start with, I shall quote paragraphs of the plaint to assist me in the deliberation of the matter at hand

Paragraphs 6, 7, 8, 9 and 10 of the plaint which that;

6. *"That, the owner of the suit land is the late Halid Hassani Kilumbu (herein after referred as the deceased) who died intestate on 24th April, 1983 and left behind his 1 ½ acres which was customary inherited to his survived family."*
7. *That, the suit land is the clan land which was found and developed by the late grandfather of the deceased one ATHUMAN KILUMBU MATIPUKA, the same be pass down to generation to generation*
8. *That, since the deceased passed away his family has being in possession of the suit land and used the same for agriculture uninterrupted until 2016 when the head teacher of the 1st Defendant on RICHARD FIMBO used the deceased's family to Ifakara Ward Tribunal for Trespass in a suit land through land case No. 6 of 2016 where he claimed the same to be a school property*

9. *That, in the said Ward Tribunal's case the deceased's family appointed the plaintiff to be their representative though he was not yet an administrator of the estates of the deceased, and so the case went off favoured the 1st Defendant. The plaintiff being aggrieved with the decision he filed land appeal No. 136 of 2016 to Kilombero District Land and Housing Tribunal which resulted to quashing and setting aside the Ward Tribunal's decision for lack of locus stand of the 1st Defendant's head teacher. (Copy of the Judgment of Land Case No. 136 of 2016 dated 4th July, 2018 is hereto annexed and marked as Annexure SA2 forming part this plaint).*

10. *That, after the decision of Kilombero District Land and Housing Tribunal, the deceased's family proceed with the use of the suit land peaceful until 2020 where the 1st Defendant trespassed to the suit land and cultivate paddy.*

Reading the above paragraphs, it is evident that; **one**, the late Halid Hassani Kilumbu passed away in 1983, paragraph 6 depicts, **two**, left behind 1 ½ acres was customarily inherited by his survived family, paragraph 6

elucidates, **three**, the land in dispute remained under ownership and peaceful use of the surviving family of the late Halid Hassani Kilumbu until 2016 when the head teacher of the 1st Defendant Trespass in a suit, paragraph 8 describes, **four**, that plaintiff herein instituted land dispute no 6 of 2016 before Ifakara Ward Tribunal and later land appeal No.136 of 2016 in the District Land and Housing Tribunal for Kilombero which was quashed for lack of locus standi of the plaintiff, **five**, the plaintiff went to Ifakara Primary Court applied for letter of administration and on 30/4/2021 he was accordingly granted and became the administrator of the estate of the late Halid Hassani Kilumbu and **six**, having been granted letter of administration which gave him locus standi in May, 2023 he filed the present suit against the defendants. That is the story in nutshell.

The parties did lock horns on the fact that the plaintiff's period for discharging administration matters has expired as the time to accomplish the same is four months unless extended by court upon request, thence the preliminary objection.

On the other hand the plaintiff submitted that, the administration will be complete on completion of the case and that the four months within which

to accomplish the task of administration does not apply to the incidence at hand.

Upon reading the plaint and submission for and against the preliminary objection, this court did ask two pertinent questions, **one**, whether there was estate of the late Halid Hassani Kilumbu capable of being administered, thus grant of letter of administration to the plaintiff and **two**, whether the plaintiff is still within time limit to discharge administration function of the late Halid Hassani Kilumbu by virtue of Rule 10 of the Primary Courts (Administration of Estates) Rules, G.N.49/1971

In addressing the first question, for a letter of administration to be issued there must be; **first**, proof of death, **second**, statement of that, the deceased passed intestate, **third**, proof that there properties which need to be administered for the interest of heirs, **forth**, there are debts or properties which need to recovered and paid, **fifth**, statement that the deceased's properties are not yet inherited or distributed to the heirs/beneficiaries, and **sixth**, minutes of family meeting nominating the applicant to be granted letter of administration.

In the present case, the plaintiff has unequivocally confirmed, through paragraphs 6 and 8 of the plaint that,

"...the owner of the suit land is the late Halid Hassani Kilumbu (herein after referred as the deceased) who died intestate on 24th April, 1983 and left behind his 1 ½ acres which was customary inherited to his survived family."

Reading the above quotation from paragraph 6 of the plaint, it is evident that, there is nothing to be administered as the deceased's properties including land in dispute were inherited by the deceased's survived family.

In that regard therefore, since there is nothing to administer then the heir/heirs can pursue for their encroached rights by explaining to the court how they became into ownership of the land in dispute. There is no need to appoint administrator where there is nothing to administer as deceased's estate.

This court therefore is of the settled view that, since there was nothing to be administered then the appointment of the plaintiff is nullity as he serves no administration functions rather a person granted power of attorney to

institute a case on behalf of the interested party, the inherited deceased's surviving family.

Further, reading paragraphs 6, 7, 8, 9 and 10 of the plaint just to cite a few, it is clear that, the plaintiff granted letter of administration was only for purposes of getting locus standi after land appeal No. 136 of 2016 of the District Land and Housing for Kilombero being quashed for same reason.

All said and done, the appointment of the plaintiff as administrator of the estate of the late Halid Hassani Kilumbu is out of context and ineffectual in law as there was nothing to administer. Essentially, the disposes the whole matter at hand, however for future reference, I shall attempt to deal with the remaining issue which tends to address the parties concern as well.

I am indebted to adopt the well settled by my elder brother Hon. L. M. Mlacha, J as then was when he presided over in the case of **Beatrice Brighton Kamanga and Amanda Brighton Kamanga Vs Ziada William Kamanga** supra and stated that,

"There is no endless administration or life administrator in our laws"

Also, my brother F.H. Mahimbali J in the case of **Mazigo Biseko Vs Wegoro Timbira** (Msimamizi wa Mirathi ya marehemu Matai Matete), supra,

"Administration of estate is not a life time but limited by law."

Irrefutably, I share similar view with My brothers herein above. Having so said, I now turn the issue which placed the parties into irreconcilable arguments on whether there is time limit within which the administrator should discharge and complete the administration of the estate of deceased.

Notably, the administrator is granted, locus standi to administer the deceased estate by Court. Such, locus standi is granted to enable the administrator to discharge administration functions such as; **one**, to collect the properties of the deceased wherever they are, **two**, receive claims from whoever had against the deceased, **three**, ascertain and prove its existence, **four**, communicate to the heirs on the final verified debts and collected assets, **five**, pay the final verified debts, **six**, inform the heirs on the remaining assets and distribute to them accordingly and **seven**, ask the heirs on whether there is any concern on the distribution of the deceased' assets **eight**, prepare and file with court a final statement of account and return of letter of administration to the court, **nine**, court ordering closure of the administration of the respective deceased's estate and **ten**, upon return of the letter of administration and closure order the locus standi of the administrator ceases. Any claim thereafter will not be preferred against the

then administrator as sanction granted by the court to such administrator to stand for the deceased will have ceased.

All the above administration functions have to be performed within a specified time limit otherwise the deceased's estate will be subjected to vandalism. Further the estate is intended to support the surviving family of the deceased through the deceased assets, that is why it has to be done within a specific time.

Now coming to the crucial issue, this court had time to go through Rule 10 of the Primary Courts (Administration of Estates) Rules, G.N.49/1971 if at all provides for any answer. The Rule reads;

*(1) **Within four months of the grant of administration or within such further time as the liabilities court may allow, the administrator shall submit to the court a true and complete statement, in Form V, all the assets and liabilities of the deceased persons' estate and, at such intervals thereafter as the court may fix, he shall submit to the court a periodical account of the estate in Form VI showing therein all the moneys received, payments***

made, and property or other assets sold or otherwise transferred by him.

(2) The statement and accounts referred to in subrule (1) may, on application to the court, be inspected by any creditor, executor, heir or beneficiary of the estate.

By reading and interpreting the Rule, I am of the settled view that, the rule provides for two scenarios; **one**, it provides for what the administrator should do in discharging administration functions, **two**, provides for time limit within which to accomplish the assigned task as limited by the said Rule, that is "**within four months of the grant of administration**", **three**, the rule provides for extension of time in case the administrator fails to finish the task within the given time of four months, that is to say, "**within such further time as the liabilities court may allow**"

In nutshell, the administrator has to accomplish the administration task within four months or such further period as may have been extended by the court. Meaning that if there is no extension, then the time is four months as stated by Rule 10 of the Primary Courts (Administration of Estates) Rules, G. N. 49/1971.

Unhesitatingly, I hereby settle the matter that, the administration function whether under the Primary Courts (Administration of Estates) Rules, G. N. 49/1971 or Probate and Administration of Estate Act, have time limit within which to discharge the same. As such, I share similar attitude with Hon. L. M. Mlacha, J as he then was High Court Judge, and Hon. F. H. Mahimbali in the afore cited decision whether they stated that "*There is no endless administration or life administrator in our laws*" and that "*Administration of estate is not a life time but limited by law*" respectively.

Having said all what I wanted to say, I hereby uphold the preliminary objection and rule that, the plaintiff, one **SALUM MUSTAPHA KILUMBU** (the administrator) has no locus standi for the two grounds advanced herein above. In the event therefore, I dismiss the suit for want of locus standi. Cost to follow the event.

IT IS SO ORDERED

DATED at **MOROGORO** this 20th October, 2023



G. P. MALATA

JUDGE

20/10/2023

Court: RULING delivered at **MOROGORO** in Chambers this 20th October, 2023 in the presence of Plaintiff, her Advocate Ms. Stumai Mushi, learned Counsel holding brief for Ms. Emma Ambonisye, State Attorney for the Defendant.

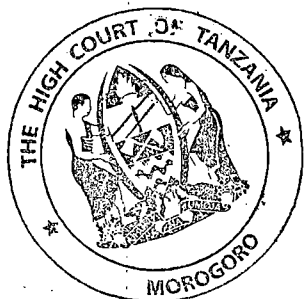


A. W. MMBANDO

DEPUTY REGISTRAR

20/10/2023

Court: Right to appeal to the Court of Appeal explained.



A. W. MMBANDO

DEPUTY REGISTRAR

20/10/2023