

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)
AT MWANZA**

LAND APPEAL NO. 35 OF 2023

(Arising from Land Application No 314 of 2015 at the District Land and Housing Tribunal of Mwanza at Mwanza)

**SABINA BALA DAHA (The Administratrix of the
Estate of the Late Holo Lumija who was the
Administratrix of the Late) BALA DAHA-----APPELANT**

VERSUS

**MASUBI SELEMANI@LUHUMBIKA (The Administratrix
of the Estate of the Late) KUHELA DAHA NGO'HOLE-----1st RESPONDENT
UMOJA MANGOMBE-----2nd RESPONDENT**

JUDGMENT

24th November & 1st December, 2023.

ITEMBA, J.

This is the appeal against the decision of the District Land and Housing Tribunal for Mwanza herein referred to as DLHT. The brief facts which ignited this appeal were that, Holo Lumija as an administrator of the Estate of the Late Bala Dala filed a Land Application No. 314 of 2015 before DLHT for Mwanza at Mwanza. Before the matter was determined to its finality, Holo Lumija passed. Sabina Bala Dala, the deceased's daughter, stepped in the shoes of the applicant as her administratrix and took over the case which was determined by the DLHT in favor of the respondents. Dissatisfied, the appellant filed this instant appeal before this court with five grounds of appeal. The appeal was heard by the way

of written submissions. Parties' submissions were drawn gratis by Mr. Mlyambelele Abedinego Levi Ngweli learned advocate for the appellant and Sosthenes Kulola for the respondent.

At the stage of composing the judgment the court noted anomalies such that the parties to the case were not in order. Parties were invited to address the court on the issue whether in the absence of the administrator of estate of the deceased's estate, the appellant is the proper party.

On the part of the appellant, Mr. Ngweli on his submissions acknowledged the anomalies that the appellant was improperly joined by the trial tribunal. Referring to the case of **Malietha Gabo vs Adam Mtengu** Civil Appeal No. 485 of 2022, he insisted that the remedy is to nullify the entire proceedings, judgment and decree of the trial tribunal and remit the matter to the trial tribunal with the effect of joining the proper administration of the estate.

On the part of the respondent submissions, Mr. Kulola hold that the appellant is not the Administratrix of late Bala Daha but the Administratrix of Halo Lumija whose land is not disputed in this suit. Thus, the appellant was supposed to apply to the Court to be the Administratrix of late Bala Daha in order to have legal power or the right or capacity to bring an

action or to appear in court representing the late Bala Daha. He cited Section 71 of the Probate and Administration of Estates Act Cap 352 R: E 2019. Lastly, as for the way forward, he insisted that the ignorance of the appellant should burden this court to rectify her mistake, therefore, the suit be dismissed.

The issue of competency of parties goes to the jurisdiction of the court for it affects execution of the decree and any order subsequent to the decision of the court. In the case of **Lujuna Shubi Balonzi V Registered Trustees of Chama cha Mapinduzi** [1996] TLR, 203, 208 it was stated that:-

"A Principle governed by common law whereby in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court".

Further, under section 71 of the Probate and Administration of Estates Act Cap 352 R: E 2019 provides that:

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

In this appeal the appellant petitioned for the latter of administration and was granted administratrix of the late Holo Lumija who was also an administratrix and prosecuting the case on behalf of Bala Dala the deceased. For the reason that the cause of action was accrued from the estate of the Late Bala Dala, the appellant was required to petition for letters of administration of the estate of Bala Dala and not Holo Lumija whose estate was not related to the case before the tribunal. She therefore in terms of section 71 of the Probate and Administration of Estates Act Cap 352 R: E 2019, lacks the capacity. See also **Godbless Jonathan Lema vs Mussa Hamis Mkanga and two Others**, Civil Appeal No. 47 of 2012 and **Chama Cha Wafanyakazi Mahoteli Na Mikahawa Zanzibar (Horau) vs Kaimu Mrajis Wa Vyama Vya Wafanyakazi Na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019.

In the circumstance, I take the stance in the cited case of **Malietha Gabo vs Adam Mtengu** (supra) and proceed to nullify the entire proceedings from 09.05.2022 when the appellant was wrongly joined. Consequently, the judgment and decree of the trial tribunal are declared nullity. I proceed to remit the matter to the trial tribunal with the effect of joining the proper administration of the estate. The same should be expedited as this is an old case of 2015. Since the matter disposing this appeal was raised by the court *suo motu*, I give no orders to costs.

It is so ordered.

DATED at **MWANZA** this 01st Day of December, 2023.




L. J. ITEMBA
JUDGE

Ruling delivered in chambers this 01 Day of December 2023, and sealed my hands with the seal of this court via audio, in the presence of Mlyambebele Ngweri counsel for the appellant, the 1st respondent in person and Ms. Gladys Mnjari RMA.



L. J. ITEMBA
JUDGE