

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF SHINYANGA
AT SHINYANGA
LAND APPEAL NO. 67 OF 2022

[From Application No. 81/021 of the District Land and Housing Tribunal for Maswa]

MHOJA MALONGO.....1ST APPELLANT

KABULA MALONGO.....2ND APPELLANT

VERSUS

PHILIP ENOS.....1ST RESPONDENT

JACKSON ZAKARIA2ND RESPONDENT

YONA ZAKARIA.....3RD RESPONDENT

MALAGILA ZAKARIA.....4TH RESPONDENT

JUDGEMENT

Oct. 24th & Nov. 10th, 2023

Morris, J

The two appellants above, dissatisfied with the judgement of the District Land and Housing Tribunal of Maswa (*DLHT/trial tribunal*) in Application No. 81 of 2021 have preferred this appeal. Six grounds are fronted thereof. They allege that the trial tribunal erred by: **one**, not pronouncing the right of appeal; **two**, not realizing that the parties had no *locus standi* to sue and to be sued; **three**, not indicating opinion of assessors; **four**, giving a judgement which lacks legal clarity and

arguments; **five**, failing to analyze properly the evidence adduced by appellants' witnesses; and **six**, relying on evidence of John Lunemhya which had no weight compared to the appellants' witnesses.

In brief, the parties' dispute is over a farm measuring 25 acres located at Manala Village, Budugu Ward, Busega District within Simiyu Region (*the suit farm*). Both appellants, claim against the respondents 12.5 acres each. It was alleged that the appellants acquired the suit farm from administration of the estates of their father **Malongo Mbeke**. The 1st respondent, however, claims that the subject land belonged to his late father, **Enos Malongo** and now to his surviving mother. The 2nd to 4th respondents, allege that previously the farm belonged to their late father one, **Zakaria Malongo**, but its ownership later passed to their mother. The trial DLHT held that the suit farm does not belong to the estates of late **Malongo Mbeke**. Hence, this appeal.

I ordered this appeal to be disposed of by way of written submissions. The filing schedule was complied with accordingly. The appellants were represented by Advocate Chrisantus Chengula while the respondents had Advocate M.K.D. Mhingo retained for drawing their submissions. In the



course of submitting, counsel for the appellants abandoned the 1st and 4th grounds of appeal. The respective submissions of parties will be considered in line with the remaining grounds of appeal.

However, I will start with the 2nd ground which relates to *locus standi*. I have the justification for this prioritization. *Locus standi* is a point of law rooted into court's jurisdiction. See, for example, the cases of ***Registered Trustees of SOS Children's Village(T) v Igenge Charles & 9 Others***, Civil Application No 426/08 of 2018; and ***Peter Mpalanzi v Christina Mbaruka***, Civil Appeal No. 153 of 2019 (both unreported).

In favour of the appeal, it was submitted that the appellants claim that the suit farm belongs to their deceased father. Therefore, the person with *locus standi* to sue is administrator of the estates of the deceased. Likewise, the respondents were not proper persons to be sued as they are claiming to use the land left behind by their fathers. I was referred to the case of ***Projest Enery v Evelina George***, Land Appeal No. 65 of 2021 (unreported). In reply it was submitted that the respondents have *locus standi* as the land in dispute is still in the hands of their late mothers (wives

of Enos and Zakaria Malongo). Therefore, the question as to administration does not arise to the respondents.

I have dispassionately considered the submissions of both parties hereof. The critical interrogation at this stage is if the appellants have the requisite *locus standi*. According to them, the *locus standi* to sue was in the administrator of the estates one, **Makungu Msikula (PW3)**. I have taken time read the pleadings filed at the DLHT. The appellants claim ownership after division made by PW3 in Probate and Administration Cause No. 2 of 2021. Further, they attached thereto, form No IV (appointment of administer -admitted as exhibit P1) and Form No VI (accounts-admitted as exhibit P2). In addition, PW5 testified (page 10 of the proceedings) that after completing his duty, the probate and administration file was closed. Therefore, in the appellants' view, the said administrator, by law, was discharged from the role of administration. Hence, it was correct for the appellants to sue under their capacities and names after division.

For the respondents, it was submitted by the appellants lack *locus standi* to be sued. However, the respondents argue that they were properly sued because issue of administration does not arise for the suit farm now

belongs to their mother. In their written statement of defence, the respondents evasively denied all allegations. They merely put the applicants (appellants) into strict proof. Further, at page 21 of the proceedings, the 1st respondent (DW1) partly testified that, *"...mimi ni mnufaika wa mali ya Enos Malongo pamoja na watoto wenzangu tunalima kupitia kwa mama yetu ambaye ni Kikongwe..."* Further, at page 22 when answering questions of Mrs. Mageuza (assessor) DW1 said; *"...mimi niliwahi kuwa msimamizi wa mirathi eneo sijagawa sababu ni la mama na yeye bado yupo"*. Literally rendered, the subject witness averred that the 1st respondent was the administrator of the estates of the deceased but he did not distribute the suit farm to heirs because the title thereof passed to his mother who was still alive.

In respect of the 2nd, 3rd and 4th respondents; they are all sons of Zakaria Malongo. Also, DW2 - the 2nd respondent testified (page 23) and recorded his dissatisfaction with only three of them being sued while Zakaria Malongo left 10 children. He further testified that respondents were using the farms of their father and their mother who is still alive. In addition, DW3 (3rd respondent) testified at page 25 that after the death of their father on

26/06/2021, the suit farms now belong to their mother. That is, none of them can claim ownership of the same while their mother is still alive. To him, the proper person to be sued herein is their mother.

Evidently, in respect of the farm alleged owned by the late Enos, the person with *locus standi* to be sued is the 1st respondent under his administration capacity. For the late Zakaria, the proper person to be sued is an administrator/administratrix of his estate (if any). Hereof, I make reference to ***Projest Enery v Evelina George*** (*supra*); ***Tatu Adui v Malawa Salum and Another***, Misc. Civil Application No. 8 of 1990; and ***Felix Costantine v Jofrey Modesti***, Land Appeal No. 9/2010 (all unreported).

Allowing the respective heirs/beneficiaries to the two estates herein to be sued in their personal capacities amounts to nurturing illegalities and chaos to administration of justice. For this reason, the respondents were not proper parties to be sued. The 2nd ground of appeal is, therefore, found with satisfactory merit. Thus, the trial tribunal proceedings were a nullity for being against persons with no *locus standi* to be sued. For that reason, I am stripped off the justification to determine the remaining grounds of appeal.



The upshot of all that is discussed above is that the appeal succeeds on the 2nd ground. Accordingly, the proceedings and judgement of the DLHT in application No 81 of 2021 are hereby quashed and set aside. No order as to costs. It is so ordered and right of appeal is fully explained to the parties.



C.K.K. Morris

Judge

November 10th, 2023

Judgement is delivered this 10th day of November 2023 in the presence of Advocate Chrisantus Chengula for the appellants and Messrs. Philip Enos and Malagila Zakaria, the 1st and 4th respondents respectively.



C.K.K. Morris

Judge

November 10th, 2023

