

IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 19 OF 2023

(Originating from Land Case No. 05 of 2022 from the District Land and Housing Tribunal of Rukwa at Sumbawanga)

IMELDA MWANISAWA.....APPELLANT

VERSUS

FILBERT MWANISAWA.....RESPONDENT

JUDGMENT

30/11/2023 & 22/02/2024

MWENEMPAZI, J.

On the 19th day of May, 2023, the appellant named above filed her Memorandum of appeal to this court after being aggrieved by the decision of the District Land and Housing Tribunal of Rukwa at Sumbawanga (trial tribunal) before Hon. J. Lwezaura, the chairlady in Land Case No. 05 of 2022.

The gist of this appeal leans upon the claim by the appellant that the respondent herein has forcefully acquired a piece of land part of the estate of their late father known as **CLAUDIO MWANISAWA** against the will

of their family and without being given the same by the administratrix (the appellant), in which it has caused misunderstanding among the siblings.

The memorandum of appeal filed in this court consisted of four (4) grounds of appeal which are as reconstructed hereunder;

- 1. That, the Trial Tribunal erred in deciding the dispute without analysing and considering the evidence adduced by the appellant.*
- 2. That, the Trial Tribunal erred in deciding the dispute in favour of the respondent for lack of cogent evidence in proving the ownership of the land.*
- 3. That, the Trial Tribunal erred in law and facts to determine the matter in favour of the respondent without having locus standi to use the land in dispute belonging to Claudio Mwanisawa.*
- 4. That, the Trial Tribunal erred in law and fact by entertaining the matter in favour of the respondent while the land in dispute was filed personally by the appellant without indicating that she is an administratrix of the estate of the late Claudio Mwanisawa.*

In which, out of the above grounds of appeal, the appellant prays for this court to allow this appeal and quash the decision of the trial tribunal and the cost of this appeal be borne by the defendant.

Upon being served the Memorandum of appeal, the respondent while replying to the grounds of appeal, raised and filed two points of preliminary objections that;

- ~~a. The appellant's memorandum of appeal is not properly verified in terms of Order VI rule 15 (I) of the Civil Procedure Code [Cap. 33 R. E 2022]~~
- b. That the appellant in the impugned petition of appeal does not specify by reference to the numbered paragraphs of the Memorandum of Appeal what verifies of his own knowledge and what she verifies upon information received and believed to be true.

It was on the 12th day of October, 2023 in which both parties appeared in court unrepresented, and this court ordered the disposal of the preliminary objections by way of written submission so that the parties would acquire legal assistance from legal experts. This court scheduled that on or before the 26th of October, 2023 the respondent should file his

written submission in support of the objections, and the appellant to reply on or before the 09th of November, 2023 and rejoinder if any to be filed on the 23rd of November 2023 and on the 30th of the same month, parties should appear for necessary orders.

Therefore, the respondent filed his submissions in support of his preliminary objections as scheduled. In his submission, the respondent ~~stated that with regard to the first point of the preliminary objection, he~~ is of the view that this appeal is incompetent for offending the provisions of Order VI rule 15 (I) of The Civil Procedure Code [Cap 33 Re 2022] by containing contradictory evidence.

He added that, from the record what is appealed by the appellant contradicts with record at Trial Tribunal, and therefore the court cannot rely on it as it is short of truth and thus cannot establish the truth. That this is reflected from the Trial Tribunal records and as it is the trite position of the law that the court's records are trust worthy and are supposed to be believed.

The respondent proceeded that it is his firm view that what has not been verified by the appellant on paragraph 3 and 4 of the memorandum of appeal is nothing but the untruth statement. That, this instant appeal is

not in compliance with the said cited order to wit; Order VI rule 15(1) of The Civil Procedure Code [Cap 33 Re 2022] of our laws which provides respectively as follows, and he wished to quote the same as herein;

Order VI rule 15(1):

"Save as otherwise provided by any law for the time being in force. Every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case."

That, the Appellant's Memorandum of Appeal is not under total compliance of the cited provision for it does not contain verification clause and therefore, in the circumstances the same is incompetent.

The respondent then referred me to the case with a similar stand in **Paul Makaranga vs Republic**, Criminal Application No. 03 of 2010; As to the rationale of verifying an affidavit, the court in, **Lisa E. Peter vs Al-Mushoom Investment**, Civil Application No 147 of 2016, quoted with approval the Indian case of, A ,K.K Rembiar Union Of Indian [1970] 35 cr.121, which explained the importance of a verification clause in affidavit as follows,-

"The reason for verification of affidavit is to enable the court to find out which facts can be said to be proved on the affidavit evidence or rival parties' allegations may be true to information received from persons or allegation may be based on records, the importance of verification is to test the genuineness and authenticity of allegation and also to make the deponent responsible for allegations. In the essence, verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In the absence of proper verification clause, affidavit can not be admitted as evidence."

The respondent then winded up on the 1st preliminary objection by submitting that, basing on the above cited cases, therefore the verification clause is one of the essential ingredients of any valid memorandum of appeal which must show the facts the appellant asserts to be true of his own knowledge and those based on information or beliefs.

Coming to the second point of Preliminary Objection the respondent submitted that, the Memorandum of Appeal contains no verification clause thus offending the Provisions of Order VI Rule 15 (2) of The Civil Procedure Code [Cap33 Re 2022]

He proceeded that it is the trite law that; where Memorandum of Appeal is made on information, it should not be acted upon by any court unless the sources of information are specified. That, the appellant's memorandum of appeal contains both the information which is not to the best of her knowledge and that which was information of the third party as observed for under paragraph 4 of the Memorandum of Appeal.

That, the failure of the Appellant to disclose the source of information renders the memorandum of appeal to be defective and incompetent and fine the incompetent Memorandum of Appeal cannot be relied on it, as provided under Order VI Rule 15(2) of The Civil Procedures Code {Cap 33 Re 2022} which provides that;

"The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true."

He added further that, basing on the above provisions it is settled law that, if the verifier had received information from other sources, he must disclose the said source of information. He then insisted further by referring to the case of **Anatol Peter Rwebagira The Principal**

Secretary, Ministry of Defense And National Service And The General, Civil Application No; 548/04 of 2018; that quoted the book in Civil Procedure by C.K. Takwani, 8th Edition. Where it was stated at page 21 that:-

"where an averment is not based on personal knowledge the source of information should be clearly disclosed."

He then added another case of **Zera Kateti vs Baraka Malima & Others** Land Appeal No;25 O f 2021(unreported). Where it was held;

"As it was held by the chairman of the District Land and Housing Tribunal that for the District Land and Housing Tribunal to set aside the dismissal order, the applicant has to show good cause why it has to do so. Since in the present appeal the appellant failed to shows good cause as to why the dismissal order is not merited and must fail, in the upshot, the appeal is without merit and it stands dismissed."

In conclusion, the respondent submitted that since in the present appeal the appellant failed to verify and to show good cause why the land application was dismissed, he prays before this honorable court to find the Appeal is not merited and be dismissed with costs.

In response to the respondent's submission, the appellant filed her written submissions in which she stated that before she embarks on the preliminary objection and ground of appeal, she drew the attention of this court that she is an Administratrix of the Estate of the Late CLAUDIO MWANISAWA who passed away on July 2005 and that, she was appointed to be the Administratrix of the Estate of the late CLAUDIO MWANISAWA on 03 November 2020.

She then submitted that, in rebuttal to the respondent's submission on preliminary objection, she replies that the instant objections are lacking merit and should be dismissed with cost. She then submitted that she wishes to firstly differentiate between Memorandum of Appeal and Pleadings. In that regard, she submitted that, a Memorandum of Appeal means to be succinct statement of the grounds upon which the appellant proposes to support the appeal, while Pleading means are formal court documents setting out a party case which includes plaint, written statement of defense and a counter claim.

The appellant then submitted that, it is trite law that the Preliminary Objection should base on the point of law and not point of fact, as the matter of practice law does not state that memorandum of appeal as pleading but generally pleading includes a Plaint, Written Statement of

Defense, Counter Claim and other pleadings as required by the Civil Procedure Code (Cap. 33 R.E 2022) under Order VI Rule 1.

The appellant proceeded further that, the law cited by the respondent in his submission, that is Order VI Rule 15(1) of Civil Procedure Code [CAP 33 R.E 2019] is distinguishable to this memorandum of appeal in which it concerns pleadings and not Memorandum of Appeal, it is her belief that the respondent tries to mislead the court by stating that the Memorandum of Appeal is a pleading and it requires verification clause, on the contrary, an affidavit is the one which requires a verification clause. In which a verification clause was clarified in the case of **Director of Public Prosecution vs Dodoli Kapufi & Patson Tusalile**, Criminal Application No. 11 of 2008 (Unreported) to mean that;

"Shows the facts that the deponent asserts to be true of his own knowledge and those based on information or beliefs."

She added that, verification clause is mostly important in an affidavit, Counter Affidavit, Plea and written statement of Defense rather than in memorandum appeal. She again cited the case of **Lisa E Peter vs Al-hushoom Investment**, Civil Application No. 147 Of 2016 (Unreported)

which quoted with approval the Indian Case of **A.K.K Nambiar vs Union of India** (1970) 35 CR 121, which stated that;

"The reason of verification clause of affidavits is to enable the Court to find out which facts can be said to be proved on the affidavit evidence or rival parties' allegations may be true to information received from persons allegation may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence, verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification clause, affidavits cannot be admitted as evidence".

Based on the submission above and plethora of relevant authorities pinned in, the appellant prays the preliminary objection raised by the Respondent be dismissed with cost.

In rejoinder of the preliminary objections, the respondent submitted that the attention drawn by the appellant that she is the administratrix of the estate of the Late Claudio Mwanisawa, at the moment is pointless because

at the Trial Tribunal there is nowhere that she indicates the same as she was the one who instituted the matter, and she was to institute as an Administratrix of the Estate of the Late Claudio Mwanisawa rather than Imelda Mwanisawa herself. Therefore, the appellant relying on it, is to come with a new allegation before the Appellate Court., mindful she appeals against the decision of the District Land and Housing tribunal of Rukwa at Sumbawanga.

The respondent then proceeded that, with regard to the 1st ground of preliminary objection the Appellant tries to escape that memorandum of appeal differ from the pleading the specific meaning of memorandum of appeal and pleading has illustrated in Law Dictionary.

That, in its general sense, the word Pleading – Means;

"The proceedings from the statement of claim to issue joined that is the opposing statement of parties or any part of these proceeding."

He then added further that, according to Wharton's Concise Law Dictionary Sixteenth Edition (Concise) 2013, it defines Pleadings to mean, *"Includes appeals or applications, Counter- Statement rejoinders replies permitted to be filed before the Appellate Board."*

The respondent then referred me to the case of **Shri Udhaw Singh vs Madhaw Rao Scindia** AIK 1976 SC 744 (750); (1977) 1 SCC 511:(1970) 25CR 246 [CIVIL P.C (5 OF 1908) 66 r. 2, where Memorandum of Appeal was defined to Mean;

"The Memorandum of appeal contains the grounds on which the judicial examination is invited for purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed".

Then the respondent insisted that, the cited order are not distinguishable to this memorandum of appeal, thus the appellant is one who tries to mislead the Court by stating that the memorandum of appeal is not Part of pleadings.

Moreover the respondent states that, the Chief Justice of the United Republic of Tanzania Court of Appeal Insisted about verification clause that it must include a statement by the intended witness that he/she believes the facts in it are true. Things which the appellant In her memorandum of appeal did not State. Also stated that, the Court cannot wear the Shoes of the appellant to correct the memorandum of appeal which was wrongly prepared. That, in Rule 5 of the Civil Procedure Code

(Approved Forms) (Amendment) Notice, 2022 G.N No. 355 Published on 20/5/2022, which provides Verification (Statement of Truth), that;

"A witness statement is the equivalent of the oral evidence which the witness would, if called, give in evidence, it must include a statement by the intended witness he believes the facts in it are true."

The respondent then penned off by stating that, the string of authorities above shows that the memorandum of appeal missing verification clause deserves to be rejected and the respondent prays this Honourable Court to find that this appeal lacks merits and the same be dismissed with costs.

After both sides have completed their submissions on the preliminary objections raised by the respondent herein, on the face of it, I should not waste any of this court's precious time discussing them as they are too irrelevant to be considered.

I should point out that the submission made by the appellant opposing the objections should be enough to straighten that verification clause is not part of a memorandum of appeal. In that, I simply hold that a Memorandum of Appeal is a primary document for initiating of appeal from the lower court to the higher court., while Pleading is a formal statement of the cause of an action or defence. These could be documents

setting out a party's case which includes a plaint, written statement of defense and/or a counter claim.

As they stand, the preliminary objections raised by the respondent are irrelevant and they stand to be dismissed. I believe the legal expert who assisted the respondent in preparing his reply to the grounds of appeal misunderstood **Order VI rule 15 (I)** of the Civil Procedure Code [Cap. 33 R. E 2022].

I therefore proceed to dismiss the preliminary objections without any further orders as to costs. This appeal will proceed to be determined substantively on merit.

Nevertheless, I had earlier instructed the parties to submit in chief for and against the grounds of appeal regardless the outcome of the preliminary objections, and therefore I proceed to consider the submissions in chief as hereunder;

Starting with the appellant, she submitted that she will submit on the 1st and 2nd grounds of appeal together and the 3rd and 4th separately.

Starting off as she clarified, the appellant stated that the evidence adduced by the respondent during the hearing of the land in dispute

before the trial tribunal contained contradictions since the trial tribunal, declared the respondent to be the lawful owner of the said land in dispute without considering the evidence adduced by his witness which created contradiction on the issue of acres as the evidence adduced by the respondent stated that the land in dispute is 13 acres while the evidence adduced by Filbert Kwimba, Charles Ndezu, Edinata Wakota and Wilbroad Chipusa stated that, the measured said land in dispute contained 17 acres.

The appellant then referred me to the case of **Emmanuel Abrahamu Nanyaro vs Peniel Ole Saltabau** (1987) TLR 48 where it was clearly stated that unreliability of witnesses, conflict inconsistencies in their evidence entitles a Judge to reject their evidence.

The appellant added that, her evidence as the Administratrix of estate of CLAUDIO MWANISAWA who passed away 2005 and was the lawful owner of the said land in dispute, that the decision of the family was that the land in dispute should be used for rent in order to get money for taking care of the widow (the wife of late CLAUDIO MWANISAWA) while the respondent was given another land separate from the land in dispute.

She clarified further that, the respondent decided to file a case before the Primary Court of Kate without informing the Administratrix of estate of

late CLAUDIO MWANISAWA and the said court declare the respondent to be lawful owner of the said land in dispute. She then cited the case of Hemed Said vs Mohamed Mbilu [1984] TLR 113, where the court held that, the person whose evidence is heavier than that of the other is the one who must win. She then closed off on the 1st and 2nd grounds of appeal by insisting that her evidence that she adduced at the trial tribunal was enough to prove that the land in dispute belongs to the family of the late CLAUDIO MWANISAWA and not the respondent alone.

Submitting for the 3rd ground of appeal, the appellant stated that the evidence adduced by the respondent failed to prove how the Court had allocated the said land to him without having the *locus standi* to appear on behalf of administratrix of the estate of late CLAUDIO MWANISAWA. She referred this court to the case of **Gerevazi Jacob vs Kamugisha Saulo**, Misc Land Case Appeal No. 71 of 2018, (HC) Bukoba where it was held that;

"It was also the complaint of the Appellant that both tribunals below erred to determine the matter in absence of the Administratrix of the estates of the late Saulo bishop.

In view of the anomalies portrayed above, I hereby declared all proceedings before both tribunals below a nullity, quash the decision and set aside all orders made therein. The matter should be pursued by an interested party with locus standi."

The appellant then lastly submitted for the 4th ground of appeal that, the trial tribunal has the duty to inform the parties the importances of being sue or sued on behalf of the deceased person but the matter was determined in favour of the respondent while the land in dispute was filed personally by the appellant without indicating the name of Administratrix of estate of late CLAUDIO MV'ANISAWA.

Again, she referred this court to the case of Sharifu Nuru Muswadiku vs Razaka Yasau & Muswadiku Chamani, Civil Appeal No. 48 of 2019 CAT at Bukoba (Unreported) at page 6, where it was held that;

"We are settled that the District Land and Housing Tribunal not only violated the dictates of Order XXII rule 4(3) of Civil Procedure Code but denied the respondents a fair hearing, thus the proceedings before the DLHT and subsequent appeal to the High Court were a nullity for being conducted in the absence of the second respondent's legal representative."

The appellant lastly submitted that basing on her submission she made above and the plethora of relevant authorities pinned in, she prays her appeal be allowed.

Responding to the appellant's submission in chief, the respondent submitted that, there is no dispute that the appellant was the one who instituted the Land case at the District Land and Housing Tribunal of Rukwa at Sumbawanga (trial tribunal) and it does not give her an automatic right to institute a case in the trial tribunal without first showing that she is doing so as an Administratrix of the deceased's estate.

The respondent added that, since the appellant told the Trial Tribunal that she had instituted the case on behalf of the deceased, it is apparent that she knew that she was supposed to institute the same as an administratrix and not as Imelda Mwanisawa. Thus, the issue of administration of estate does not apply against the respondent.

He added further that, at the case at hand the respondent has been in occupation and peacefully enjoying the land/Farm in dispute for Over 18 Years after the death of the Respondent's Father Claudio Mwanisawa in 2005. Thus, according to the Law and in reality he is recognized as the lawful owner of the said Land/ Fann in dispute. That, it is a Legal Principle

that each case has to be looked at it's own circumstances. Then he urged this court to see the case of **Citibank (Tz) LTD vs TTCL & Others**, Civil Appeal No. 97 O f 2003, (Unreported)

The respondent proceeded that, at the trial tribunal after hearing both parties the trial tribunal had this to Say; and he quoted:

"Kwamba, Wakati Shauri linasikilizwa kwenye Mahakama ya Mwanzo, Sm1 alieleza Mahakama kuna Su1 alikuwa amepewa hekari 13 na Mahakama iiliamuru kuwa Su1 athibitishiwe ekari 13 na uongozi wa Kijiji kuwa yeye ndie mmiliki halali. Su3 alikuwa shahidi wakati eneo gombewa linapimwa mnamo tarehe 14.03.2019 na waliokuepo ni Faustin Visulo akiwa mjumbe, Demo Kawamba akiwa mwenyekiti wa serikali ya Kijiji cha Kate, Filbert Kwaimba akiwa VEO, Charles Mbezu akiwa mzee wa Baraza, Edinata Mkota akiwa Mzee wa Mahakam ana Aniset Mpusa na Visulo kama majirani."

He went on submitting that, the decision of the trial tribunal in Application No. 05 of 2022 was dismissed for want of merit or it was entered in favour of the respondent, and that, it is the respondent's considered view that the ground of appeal by the appellant that the respondent had no right of

occupancy over instituted application No. 05 Of 2022 or over the disputed land is of no merit, and should be dismissed.

Regarding the issue of the disputed land, the respondent states that, it is trite that the issue has been ascertained at the earliest possible stage in the probate cause No. 03 of 2020 at Kate Primary Court in Nkasi District in which the disputed land were resolved by the appellant herself were she admitted before Kate Primary Court that the disputed land is to be

distributed to the respondent, otherwise there would be a possibly of creating more chaos.

Respondent added that, he had the right to challenge the institution of the case at the District Land and a Housing Tribunal, including claiming the disputed Land from forming part of the deceased's estate but the appellant did not institute it as the Administratrix of the estate.

He did not end there as he submitted further that the issue is whether this Appeal is Meritorious. That, an inevitable question here is whether the appellant had Locus Standi to institute the Land Application No. 05 of 2022 at the District Land and Housing Tribunal of Rukwa at Sumbawanga personally?

He added that, the law on Locus Standi is very clear as the same had been repeatedly in many cases in this land. The Locus Standi has been defined in the famous case of **Lujuna Shubi Balonsi Snr vs Registered Trustees of CCM** [1996] TLR, 203 (1996) as:

"A principle governed by common law whereby in order to maintain proceeding 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"

He added further, in Halbury's: Law of England 4th Edition Paragraph 49 at Page 52 states as follows, he again quoted;

"Locus Standi, means a party must not only show how that the court has power to determine the issue but also that the party is entitled to bring the matter before the Court"

In further clarification, he submitted that the general rule known Worldwide is that, When the property in dispute belongs to the deceased person, the only person with Locus Standi to sue on behalf of the deceased is the one who has sought and obtained letters of administration of the deceased's estate. He then referred this court to the case of **Tatu**

Adui vs Malawa Salum & Another, Misc. Civil Application No. 08 of 1990 HC DSM where it was held that:

"Only Administratrix of the estate who is also a personal legal representative of the deceased can sue or be sued over the estate."

Her then added that, therefore to put it in their way, it is very clear from the record of the trial tribunal that the appellant instituted the Land Application No 05 of 2022 at the District Land and Housing Tribunal of Rukwa at Sumbawanga as Imelda Mwanisawa not as the Administratrix of the deceased's estate.

Submitting against the 4th ground of appeal, the respondent states that the appellant, had a duty to prove her competency to sue before instituting the suit at the District Land and Housing Tribunal, that, at that time she had obtained letters of Administration, but the citation of the suit shows that the appellant instituted the suit in her individual capacity.

In explaining this, the respondent stated that the matter at hand is not probate matter, therefore the reasons given by the appellant as why she delayed to indicate that she applied as the administratrix does not feature in the record of the trial tribunal case.

That, in the present, case, it is very clear from the record of the trial tribunal and submission by both sides that the deceased Claudio Mwanisawa who was the Appellant's and Respondents father passed away in 2005, leaving the respondent in the disputed Land in which they were on enjoying the same without interference until 2022 when the appellant instituted the Land Application No. 05 of 2022 against the respondent at the District Land and Housing tribunal of Rukwa at Sumbawanga for trespassing into the disputed land.

It is the respondent's view that, the appellant's act of petitioning for letters of Administration of the deceased's estate as an act intended to fight, annoy and disturb the respondent. He further argued that, according to Section 9(1) of The Law of Limitation Act [Cap 89 Re 2019] and the case of **Yusufu Same & Another vs Hadija Yusuph**, [1996] TLR, 346.

"A person cannot institute a cause of action beyond twelve (12) years over a property left by the deceased. The position of the law, it is apparent that up to this moment, no suit had been instituted by the Appellant over the deceased's properties, therefore the Appellant was faulted on that area."

He however added that, as the matter of law, any claim which is brought after twelve (12) years is time barred. And even where an administratrix is appointed, he/she has no power to disturb the occupier who has occupied the land for over twelve (12) years after the occurrence of death.

Citing Section 9 (1) of the law of Limitation Act, [Cap 89 Re 2019] which provides that;

"Where a person institutes a suit to recover land of a deceased person. Whether under a will or intestacy and the deceased person was, on the date of his death, in the possession of the land and was the last person entitled to the land to be in possession of the land, the right of action shall be deemed to have accrued on the date of death."

That, in the case at hand the respondent has been in occupation and peacefully enjoying the land/farm in dispute for over 18 years since the death of his father one Claudio Mwanisawa in 2005. Thus, according to the law he is recognized as a lawful owner of the said property or land/farm in dispute.

That, it is the respondent's submission that the appellant had applied for Administration of estate in 2022 that, is to say after 17 years since the

death of their father not for good reason of administration of the deceased's estate but to fight the respondent, something which is contrary to the interest of justice. That, it is settled law that an Appellate Court like this one should not lightly interfere with the concurrent findings of fact by the Trial Tribunal below except where it is evident that such concurrent findings of fact were a result of misapprehension, misdirection or non direction of the evidence or omission to consider available evidence. He submitted that, in the instant case, there was no ground of appeal attacking the evidence, that, the complaint of appellant was on the issue of trespassing to the disputed land as the appellant alleged that the respondent had no right to occupying the disputed land.

He insisted that, as argued in the case of **Projest Energy vs Evelina George**, Land Appeal No. 65 of 2021 HC, Tanzania at Bukoba (Unreported). Where it was held that;

"I find no good basic to differ with the concurrent finding of the lower Tribunals, their decision, is accordingly upheld as I dismiss this Appeal for lack of merit."

From his submission above, the respondent prays for this court to dismiss this appeal with costs for lack of merits.

As there was no any rejoinder by the appellant, I thoroughly perused the submissions made by both parties before this court and I am fortified that the only determinant issue to be delt with is ***whether had locus standi to sue the respondent.***

Firstly, it is important to remind the litigants before me that this is the 1st appellate court and that it is entitled to re-evaluate the evidence afresh and arrive at its own finding with respect to this particular matter at hand.

See: **Registered Trustees of Holy Spirit Sisters T. vs January Kamili** (Civil Appeal 193 of 2016) [2018] TZCA 32 (6 August 2018).

Secondly, I will determine this appeal by considering only the 3rd and 4th grounds of appeal together as they suffice to solve this appeal amicably.

It is in the records that the appellant was the one who instituted the suit against the respondent at the trial tribunal. The records show that on 14/11/2022, the appellant started to testify in support of her claim and in doing so, she never testified that she is suing the respondent under her assumed role as the administratrix of the late Claudio Mwanisawa's estate. To make it even worse, there was no any document tendered before the trial tribunal that proved she was indeed suing under the capacity of an administratrix or rather she was indeed an administratrix of the late

Claudio Mwanisawa's estate. This is seen on pages 1, 2, 3 and 4 of the typed proceedings of the trial tribunal.

Nevertheless, the names of the parties as seen at the front of the records of the trial tribunal, do not reflect that the appellant is suing under the capacity of an administratrix of the deceased's estate. Below is an extract of the appearance of the filed Application No. 05 of 2022;

KATIKA BARAZA LA ARDHI NA NYUMBA LA WILAYA
LA RUKWA
LILILOPO SUMBAWANGA
MAOMBI NA. 5/2022
IMELDA MWANISAWA.....MLETA MAOMBI
DHIDI YA
FILBERT MWANISAWA.....MJIBU MAOMBI

From the extract above, it is evident that the appellant was suing on her own capacity of which she had neither *locus standi* nor cause of action of claiming the possession of the disputed land as she herself declared that the suit land belonged to her late father.

Again, it should be kept in mind that it was the appellant who instituted the suit at the trial tribunal, but when one reads the 4th ground of appeal, it will be noticed that even herself recognised that the suit was personally filed by herself without indicating the capacity she claims to have assumed after being appointed as an administratrix of the deceased's estate. And in addition to that, the proceedings and the judgment of the trial tribunal do not reflect anywhere that the appellant did identify herself as the administratrix of the deceased's estate.

As rightly submitted by the respondent and he cited the case of **Lujuna Shubi Balonsi Snr vs Registereed Trustees of CCM** (supra), where it was underlined that, a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with, contrary to what the appellant had submitted before the trial tribunal and conceded herself by her own grounds of appeal.

From my fortified observation, the appellant had no *locus standi* to sue the respondent or any cause of action to maintain a suit against the respondent herein at the trial tribunal. It is therefore my holding that, this matter was null and void from the word go.

On the basis of my discussion above, I find this appeal with no legs to stand on and therefore I proceed to dismiss it with costs.

It is so ordered.

Dated at Sumbawanga this 22nd day of February, 2024.




T. M. MWENEMPAZI

JUDGE