

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

LAND APPEAL No. 08 OF 2023

*(Arising from Land Application No. 42 of 2021 of District Land and Housing Tribunal
for Rukwa at Sumbawanga)*

SABAS KALANGULA.....APPELLANT

VERSUS

MWINYI MTEKA.....RESPONDENT

JUDGMENT

18/01/2024 & 28/02/2024

MWENEMPAZI, J.:

Before the District Land and Housing Tribunal for Rukwa at Sumbawanga, the appellant sued the respondent claiming that, the latter, had maliciously invaded his 100 acres piece of land. The applicant prayed for an eviction order against the respondent.

At the end of trial, the District Land and Housing Tribunal found and held that, the suit land belonged to the respondent, and he was held to be the lawful owner of the suitland. The appellant's application was dismissed with costs.

Despite the fact that the appellant had preferred an appeal consisting of six (6) grounds of appeal, only the first ground of appeal suffices to

dispose of the present appeal. In the said ground of appeal, the appellant attempted to fault the trial tribunal by submitting that the trial chairperson failed to note that this matter is a probate issue and therefore it ought to be advanced and determined by a proper forum. That, it is white as snow and clear as blue sky that claims of rights or interests in the deceased estate are determined in a probate and administration cause.

The appellant referred this court to the cases of **Dorice Keneth Rwakatare vs Nurdin Abdallah Mushi & 4 Others**, Civil Application No. 402/17 of 2021 where the Court subscribed without exception the decision of the Court of Appeal in the case of **Mgeni Seif vs Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2019 [2017] TZCA 258(2017) where it was held that;

".....there are competing claims between the applicant and the respondent over the deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person had passed on to a beneficiary or a bona fide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of the title back to letters of administration

where the deceased died intestate or probate where the deceased passed away testate."

He clarified further that, what the above precedent is delivering is that, any person claiming interest in the estate of the deceased person must resort to the court which is seized with an application for administration of the estate of the deceased person. That, in the case at hand, this condition was not considered instead the trial tribunal assumed jurisdiction over the matter and continued to determine the same, the result of which the appellant's rights were prejudiced. That, this matter ought to be determined by the proper forum following the proper procedures for determining the probate and administration cause.

The respondent submitted in reply that, he does agree with the appellant's submission that all claims of rights or interests in the deceased estate are determined in a probate and administration cause. That, he too agrees with the authority cited by the appellant in support of his argument, but the respondent differs with the appellant on the contention that the matter at hand is not a probate issue hence subject to the probate rules, but, he too will submit in clarification if this matter was to be a probate matter.

He added that, the applicant advocated that he is the administrator of the estate of the late Jones Silwamba, but he did not institute the case in that official capacity but in his own personal capacity.

The respondent added that, in the wording of Section 71 and 100 of the Probate and Administration of Estate Act, Cap. 352 R. E. 2019 can impliedly be interpreted to mean that, the only person with an authority ~~to sue or be sued on any cause of action arising from the deceased's~~ estate is either the administrator of the estate or executor of such deceased's will and therefore he cannot sue or be sued in his personal capacity as it was equally held in the case of **Marietha Gabo vs Adam Mtengu**, Civil Application No. 484 of 2022 [2023] TZCA, that it wrong for the administrator to institute proceedings or be sued in his own personal capacity.

The respondent added further that, the appellant being the administrator of the Late Jones Silwamba's estate, he was required to institute this suit in the name of the said deceased person as the administrator of his estate and not in his own name as he did. The respondent again referred this court to the case of **The Registered Trustee of SOS Children's Villages Tanzania vs Igenge Charles & 9 Others**, Civil Application

No. 426/08 of 2018 where the Court of Appeal had the following to say, that;

"The administrator of the estate of the deceased can sue as a personal and legal representative of the deceased and not in his own name and capacity. Locus standi is the common law principle according to which, a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with."

He stressed more by citing the Court of Appeal case of **Swalehe Juma Sangawe (As the administrator of the Estate of the Late Juma Swalehe Sangawe) & Another vs Halima Swalehe Sangawe**, Civil Appeal No. 82 of 2021 which cemented on the position as the Court held that;

".....it is therefore our finding that, she had no standing to institute the proceedings in the trial court. The trial court obviously slipped into error by allowing her to maintain her action in her own name and entertain it. The suit ought to have been struck out."

In concluding, the respondent submitted that with the above findings of the Court of Appeal, it is obvious that, the administrator of estate of the

deceased person can neither sue nor be sued in his own name (in his personal capacity) and in doing so renders the whole proceedings a nullity. That, it is his humble submission that, what the appellant is doing is just to find redress or benefits from his own wrongs. That, he is the one who improperly instituted the case without following the procedures and now he is alleging that the procedures were not observed by the trial tribunal something which is not accepted as no one should be allowed to take advantage of his own wrong.

That, the appellant being the administrator of the deceased person (whom he represents) ought to have instituted the same in his official capacity and not in his own name as he did. That, this suit ought to have been struck out at the early stage for lack of locus standi in the part of the applicant (now appellant).

Upon going through the entire records of appeal, it appears that it is true the appellant herein is the administrator of the estate of the late Jones Silwamba. I am fortified to concede the same due to the letter of administration found within the records of the trial tribunal although the appellant neither attached the same to form part of his application nor did he file the suit in the capacity as an administrator.

An issue that arises out of this court's above observation is ***whether it was justified for the appellant to file a normal land case in relation to an estate of the deceased person.***

Much as I agree with the appellant that he might have a case to prove over ownership of the disputed land, still his option to file a land suit over the property of a deceased person was entirely depriving himself from ~~extracting the truth over the ownership of the disputed land, because the~~ trial tribunal is not vested with the jurisdiction to entertain matters which are of probate in nature.

Nevertheless, I am astonished at the fact the appellant himself faults the trial tribunal for entertaining this suit and yet, the entire records reveal that he was the one who instituted the suit for recovery of the land in dispute which is measured 100 acres and it was the property of the deceased known as Jones Silwamba.

I am in total dilemma as to what the appellant wants this court to do for him, as he himself opted for a wrong forum and he again faults his own choice, whereas, he was supposed to withdraw the suit at the trial tribunal before its finality and opt for a different forum which has jurisdiction in probate matters.

The precedents cited by both sides, meaning the cases of **Dorice Keneth Rwakatare vs Nurdin Abdallah Mushi & 4 Others, Mgeni Seif vs Mohamed Yahaya Khalfani, Marietha Gabo vs Adam Mtengu, The Registered Trustee of SOS Children's Villages Tanzania vs Igenge Charles & 9 Others** and **Swalehe Juma Sangawe (As the administrator of the Estate of the Late Juma Swalehe Sangawe) & Another vs Halima Swalehe Sangawe** (*all supra*) they all suggest that the appellant has opted for a wrong forum and that he cannot benefit from his wrong choice. And I therefore hold that, it was unjustified for the appellant to file a normal land case in relation to an estate of the deceased person.

For the foregoing reasons, I uphold the trial tribunal's decision and proceed to dismiss this appeal for being meritless. The costs of this appeal to be borne by the appellant.

Ordered accordingly.

Dated and delivered at Sumbawanga this 28th day of February, 2024.



T. M. Mwenempazi

T. M. MWENEMPAZI

JUDGE