IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
LAND DIVISION
AT IRINGA

LAND APPEAL NO. 11 OF 2022

MELCKIZECK MICHAEL SANGA
[As Administrator of the Estate of
the Late MICHAEL GUYAGILE SANGA] ..... APPELLANT

VERSUS

AYOUBU MBILINYI [As Administrator
of the Estate of the Late
JOEL TUGHIMBAGE MGAJILO] ..... RESPONDENT

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for Iringa district at Iringa)

(Hon. A. J. Majengo (Chairperson))

Dated the 16th day of January, 2023

in

Land Application No. 159 of 2020.

JUDGMENT

Date of last order: 31/05/2024.
Date of Judgement: 07/06/2024.

S.M. KALUNDE, J.:

In order to expand the Iringa Airport runway and terminal building and associated infrastructures, the Government of the United Republic of Tanzania, through Tanzania National Roads Agency (TANROADS), acquired scores of areas of land around Nduli Area in Iringa where the airport is located. Among the areas acquired was a piece of land measuring around 45 acres located at Mjimwema Street, Nduli Ward in Iringa Municipality (henceforth **"the suit property"**). Prior to issuance of compensation, in 2018, an assessment of the value of the suit

property was conducted. The property was evaluated at around TZS. 21,567,000.00. The result of the valuation attracted interests with both the appellant and respondent claiming to be lawful owners of the suit property so that they can claim the assessed compensation.

It was Melckizeck Michael Sanga, the appellant, purporting to sue in his capacity as administrator of the estate of the late Michael Guyagile Sanga, who commenced proceedings against the respondent at the District Land and Housing Tribunal for Iringa district which sat at Iringa (henceforth **"the DLHT"**). He pleaded that the suit property was the property of the late Michael Guyagile Sanga and therefore formed the estate to which he was entitled to administer. The appellant pleaded further that in 1968, the late Michael Guyagile Sanga invited the late Michael Joel Tughimbage Mgajilo to occupy 4 acres out of the 45 acres. The appellant alleged that upon the demise of the late Mgajilo, the 4 acres were returned to the lawful owner, the late Sanga. The property continued to be in possession of the late Sanga until his demise in 2010.

Upon the departure of the late Sanga, the property devolved to his heirs who continued to cultivate over the said property. According to the appellant, in 2018, the Iringa Municipal Council conducted a survey with a view to expand the Iringa Airport. It was at this point when the respondent, purporting to be an administrator of the estate of the late Michael Joel Tughimbage Mgajilo started to claim ownership over the suit property. The

appellant alleged that the respondent fraudulently registered himself as the rightful person for payment of compensation relating to the suit property.

In view of the above averments, the appellant prayed for a declaratory order that the respondent was a trespasser over the suit property. He also requested the trial tribunal to order the Iringa Municipal Council to pay him the compensation related to the suit property.

In reply, the respondent filed a written statement of defence challenging the appellants claims. He contended that the four acres constituting the suit property were part of the 9 acres which was allocated by the village council in the 1960's to the late JOEL TUGHIMBAGE MGAJILO. He argued that the said Mgajilo continued to be in possession of the suit property until his demise. Upon his demise, the respondent was appointed the administrator of his estate. He also pleaded that the appellant was present when the survey for purposes of compensation was conducted in 2018 but never raised any question of ownership over the said property.

Having heard the parties, the trial tribunal made a finding that the appellant had no ***locus standi*** to institute the suit, at the tribunal, because he did not have letters of administration relating to the estate of the late MICHAEL GUYAGILE SANGA.

Aggrieved, the appellant preferred the present appeal. In the current appeal the findings and decision of the learned trial

chairman are being challenged on the ground that he failed to consider the strong evidence adduced by the appellant, and instead he relied on the weak contradictory evidence of the respondent. The chairman is also faulted for failing to visit the locus in quo. The other complaint relates to failure, by the chairman, to consider the opinion of the wise assessors.

In arguing the appeal, the appellant appeared in person unrepresented, while the respondent enjoyed the representation of Mr. Emmanuel Chengula, learned Advocate. By consent of the parties the appeal was argued in writing. Submissions were dully filed in accordance with the schedule ordered by the court. For the reasons that shall soon become apparent, I shall not reproduce the entire substance of their submissions.

Having carefully examined the records and submissions of the parties regarding the issue of locus standi, I think this appeal may be disposed on this ground without examining the merits. I have pointed out above that, in its decision, the trial tribunal observed that the appellant had no locus standi to institute the proceedings before it.

It is a settled principle of law that for a person to institute a suit he/she must have locus standi. Locus standi is a common law principle which provides that, only a person whose right or interest has been interfered with by another person has a right to bring his claim to court against that other person. In **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha**

Mapinduzi (1996) TLR 203, Samatta, J (as he then was) had the following to say on locus standi:

> *"Locus standi is governed by common law 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. The High Court has the power to modify the applied common law so as to make it suit local conditions."*

The issue of locus standi is a very crucial issue because it relates to the litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted. In turn, the right to the title is among the initial matter to be established in a litigation matter. It is for this reason that in the case of Chama Cha **Wafanyakazi Mahoteli Na Mikahawa Zanzibar (HORAU) vs Kaimu Mrajis Wa Vyama Vya Wafanyakazi Na Waajiri Zanzibar** (Civil Appeal 300 of 2019) [2020] TZCA 1923 (18 December 2020) TANZLII, the Court of Appeal (Levira, J.A) observed that:

> *"We have carefully considered submissions by the counsel for the parties, grounds and the record of appeal. We think, it is necessary for us to determine first the issue regarding appellants locus standi before turning to the merits of the case. We observed that, although the learned High Court Judge struck out the respondent's notice of preliminary objection for being improperly moved, still the issue regarding appellant's locus standi was very vital and we think, the High Court ought to have considered it. This is due to the fact that, the appellant's claims*

could not be established by a person who is not entitled to claim before the court."

Likewise in the case of **Peter Mpalanzi vs Christina Mbaruku** (Civil Appeal 153 of 2019) [2021] TZCA 510 (23 September 2021) TANZLII, the Court of Appeal (Mwampashi, J.A) sated:

> *"Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it- see* ***Godbless Lema v. Mussa Hamis Mkanga and 2 Others,*** *Civil Appeal No. 47 of 2012 (unreported).*
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> *Further, locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised."*

In the case at hand, the appellant, Melckizeck Michael Sanga, commenced proceedings at the trial tribunal purporting to be an administrator of the estate of the late Michael Guyagile Sanga. He appended a copy of letters of administration which were allegedly issued by the Bomani Primary Court in Iringa. However, for the reasons known to himself, throughout trial, the copy of the said letters of administration was not tendered in evidence. In his submissions, the appellant argued that once the letters of administration were appended to the application at the

trial tribunal there was no need to formally prove it during trial. To support this, he cited an unreported decision of the Court of Appeal in the case of **Mwajuma Mbegu vs Kitawana Amani** (Civil Appeal 12 of 2001) [2004] TZCA 46 (16 January 2004) TANZLII.

In his submissions, the appellant seems to concede that he did not tender the letters of administration in evidence. However, he still maintains that since they were attached to the pleadings the court should have taken judicial notice of the same without a need to have them tendered in evidence. Having carefully considered the circumstances in this case I do not think this a true position of the law. It is trite that, as part of the rule that parties are bound by their pleadings, annexures are part of pleadings. Thus, a court or tribunal may look into annexures with a view to properly understand the actual disputes between the parties for the purpose of resolving it effectively. See **Oilcom Tanzania Ltd vs. Christopher Letson Mgalla**, Land Case No. 29 of 2015, High Court of Tanzania, at Mbeya, Hon. Utamwa J (as he then was).

However, it is also trite that annexures to a plaint are not exhibits in evidence unless they are tendered and cleared for admission during trial. In the case of **Abdallah Abas Najim v. Amin Ahmed Ali** [2006] TLR 55, it was held that: -

> *"Annexures to the plaint are not exhibits in evidence; they cannot be relied upon as evidence and cannot be the basis of the decision; As the annexures to the respondent's plaint were not*

tendered in court as exhibits and were not tested in evidence, it was improper for the learned Regional Magistrate to base his judgment on those annexures".

A similar view was also stated by the court in the case of **Japan International Cooperation Agency v. Khaki Complex Limited** (2006) TLR 343, where the Court concisely stated that: -

"This Court cannot relax the application of Order XIII Rule 7 (1) of the Civil Procedure that a document which is not admitted in evidence cannot be treated as forming part of the record although it is found amongst the papers in the record".

In the present case, since the letters of administration were appended to the application, but they were not tendered and admitted in evidence, they cannot be treated as forming part of the record.

The applicant cited the case of **Mwajuma Mbegu vs Kitawana Amani** (supra) for a proposition that letters of administration needed not be tendered in evidence because they were public documents. However, I have carefully read the content of the said case and I am of a firm view that the substance in that case is different from the present case. In that case, the Court considered the contents of what was referred to as "Mr. Minja's Report" and concluded that it was a public document. However, even after that conclusion, the Court resolved that the learned High Court judge had erred in taking

into consideration a public document which had not been tendered in evidence as proof of the facts stated therein.

I have also carefully studied the said judgment and noted that in the said decision the Court took note that certain matters need not formally be proved. Having said so, the Court observed that the principal matters of which the court will take judicial notice are contained in section 59 (1) of the Evidence Act, 1967 and that a report cannot be said to be covered in the said list.

For my part, having carefully examined the contents of section 59(1) and noted that the section does not suggest that there is no need for one to tender letters of administration as the court is expected to take judicial notice of the same. While under section 51(1)(d) seals of courts are listed as one of the items which the court might take judicial notice. But that is in no way an indication that any document bearing a seal of the court need not be tendered in evidence. The circumstances in **Mwajuma Mbegu vs Kitawana Amani** (supra) are therefore different from the present case.

In his further submissions, the appellant attached a copy of the said letters of administration in hope that the same may form part of his submissions. He had hoped that this court may consider the said letter as having been admitted as evidence to support his claims that he was appointed as an administrator. However, as I am aware submissions are not part of evidence. For this see the case of **Trade Union Congress of Tanzania (TUKTA) vs Engineering Systems Consultants Ltd & Others**

(Civil Appeal No.51 of 2016) [2020] TZCA 251; (26 May 2020) TANZLII, where the Court (Kitusi, J.A) observed that:

> *"In our considered view, the submissions by the appellant's counsel proposing the contrary, is no more than a statement from the bar which has no evidential value. After all, it is trite law that written submissions are not evidence.*

The appellant plea that the said letters of administration be considered at this stage, is nothing but an equivalent of a statement from the bar which has no evidential value.

It is trite that person whose right or interest has been interfered by another is able to come to the court personally or through an authorised agent or board depending on the circumstances of each case. In the present case, the appellant purported to be the administrator of the estate of the late Michael Guyagile Sanga. The prime issue before the trial tribunal was, therefore, whether the appellant had the requisite locus standi to commence proceedings. He therefore needed to present evidence in support of his contention that he was indeed the administrator. As it were, there was no evidence before the trial tribunal to support this contention.

As demonstrated above in this decision, in the instant case, there is no evidence on record to show that the appellant was appointed as the administrator of the estate of the late Michael Guyagile Sanga. Since the letters of administration were not tendered before the trial tribunal it cannot be safely vouched that

MELCKIZECK MICHAEL SANGA had locus standi to commence a case against the respondent on behalf of the late MICHAEL GUYAGILE SANGA.

In the circumstances, I find that the appellant had no locus standi to institute a case against the respondent. The trial tribunal was therefore justified and right in its findings. That said, I do not see the need to determine the remaining grounds of appeal presented by the appellant.

This appeal is therefore not merited. I hereby dismiss it in its entirety with costs.

It is so ordered

DATED at **IRINGA** this **07th** day of **JUNE, 2024.**

S.M. KALUNDE

JUDGE