

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 118 OF 2020**

(Arising from the decision of Kilombero District Land and Housing Tribunal  
at Ifakara in Land application No.306 of 2017)

**HANCE EXAVERY OMARY.....APPELLANT**

**VERSUS**

**SABINA FERDINAND** (Administrator of the Estate of the late

ANDREA OMARY ZINGO).....**1<sup>ST</sup> RESPONDENT**

**AIRTEL (T) LIMITED.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 29.06.2021

Date of Judgment: 09.08.2021

**JUDGEMENT**

**V.L. MAKANI, J.**

The appellant HANCE EXAVERY OMARY is appealing against the decision of Kilombero District Land and Housing Tribunal at Ifakara (the **Tribunal**) in Land Application No.306 of 2017.

At the Tribunal the appellant was applying for extension of time within which he could seek leave of the Tribunal to set aside its dismissal order in Land Case No.15 of 2017. The application was struck out on the ground that the appellant herein did not prove as to whether the former administrator one Thomas Philipo Wanguwangu had already

been revoked by the Court. The appellant being dissatisfied with the decision of the Tribunal has appealed to this court with three grounds of appeal which are reproduced hereinbelow as follows:

- 1. That the learned Chairman erred in law and fact to raise suo motto the issue regarding capacity of the successor administrator (appellant) in the course of writing a ruling without affording the parties a hearing opportunity.*
- 2. That, the learned Chairman overlooked the Tribunal record and wrongly proceeded to hold that the Appellant did not offer proof regarding revocation of appointment of the predecessor administrator Thomas Philipo Wanguwangu.*
- 3. That, the learned trial Chairman erred in law and fact to hold that the appellant lacked capacity to have conduct of the matter in the absence of evidence showing that the appointment of the predecessor administrator Thomas Philipo Wanguwangu had been revoked.*

The appellant prayed for appeal to be allowed with costs and the order of the tribunal be set aside.

The hearing of this appeal proceeded by way of written submissions, both parties were represented. Appellant was represented by Mr. Bagen Elijah, advocate while the 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by Mr. Sued Ismail, Advocate.

Submitting on the 1<sup>st</sup> ground of appeal Mr. Elijah said that, as long as the appellant was legally appointed by the Mang'ula Primary Court as the administrator of the estate of the Late Andrea Omary Zingo, it was not proper for the trial chairman to strike out the matter questioning the applicant's (appellant herein) locus standi. He continued to submit that the records of the trial Tribunal reveal that the respondents had no problem with the appellant's (applicant in the Application No.15 of 2017) capacity to handle the matter as a predecessor administrator. He further submitted that because the legal capacity was not an issue posed at the earliest time and whereas the trial chairman discovered it as issue of law, then he should have accorded the parties the right to be heard on the matter. That is the parties were entitled to address the Tribunal on that issue. To support his argument, he cited the case of **Strabag International (Gmbh) vs. Adinani Sabuni, Civil Appeal No. 241 Of 2018 (CAT-Arusha)**(unreported).

On the 2<sup>nd</sup> ground of appeal Mr. Elijah submitted that going through the records of this appeal particularly the paragraphs 2 and 6 of the affidavit supporting the application it was clearly deposed that the appointment of the predecessor administrator was revoked and the

appellant took over the task, and that annexure HA-1 was attached to the application to show the revocation of the processor administrator and the appointment of his successor.

On the 3<sup>rd</sup> ground of appeal, Mr. Elijah submitted that the letter of administration held by the appellant dated 18/7/2017 which was dully attached to the application (that is application number 306 of 2017) was enough to prove the appointment of the appellant so he has a locus standi to prosecute the matter.

Replying on the first ground of appeal Mr. Ismael submitted that the issue of the locus standi was not raised by the Chairman suo motto as submitted by Mr. Elijahcounsel in the counter affidavit.

On the issue concerning the right to be heard Mr. Ismael submitted that both parties were accorded equal right to be heard through their submissions before the Tribunal announced its judgment.

Submitting on the second ground, Mr. Ismael said that the act that the applicant (appellant herein) had the letters of administration of the estate of the late Andrea Omary Zongo does not in itself prove or

justify that the previous administrator has been revoked therefore that the applicant (appellant herein) was supposed to tender document proving the said revocation.

On the third ground Mr. Ismael reiterated what he submitted in the second ground of appeal which I see no need of repeating.

In rejoinder Mr. Elijah reiterated his main submissions. The main issue for determination is whether this appeal has merit.

Mr. Elijah for the appellant was of the opinion that the learned Chairman raised the issue *suo motto* that the appellant herein had no proof that the former administrator was revoked. The records reveals that the same was deponed in the in the 3 paragraph of the 1<sup>st</sup> respondent's counter affidavit. It is therefore correctly as submitted by Mr. Ismail that the issue of appellant's capacity/locus to sue was not raised *suo motto* by the Tribunal's Chairman. The matter of locus standi of the applicant was addressed in detail at the Tribunal and so the first ground of appeal has no merit.

The second and third grounds of appeal are on the legality of Tribunal's dismissal order on the ground that the applicant had no proof of revocation of the former administrator one Thomas Phillip Wanguwangu. These grounds being related are hereby addressed together. It was alleged by the applicant at the Tribunal that he was appointed the administrator of the estate of the late Andrea Omary Zingo in place of the former administrator one Thomas Phillip Wanguwangu. With this allegation therefore, the applicant had a duty to show proof of the revocation of the appointment of Thomas Phillip Wanguwangu and appointment of the applicant as he was not party to Land Application No. 15 of 2017. Since there was an alleged fact that there was revocation of the Letters of Administration of Thomas Phillip Wanguwangu, then the ruling that resulted to the revocation would have been attached to the application. In my considered view and as correctly decided by the Chairman, the attached Letter of Administration in itself, without the ruling was not sufficient proof to enable the Chairman to rule with certainty that there was revocation of the Letters of Administration of Thomas Phillip Wanguwangu and appointment of the applicant in his place. In any case, the records do not state which court revoked the Letters of Administration of the previous administrator, and this makes it more doubtful as to whether

there was any revocation or at all. In that respect, and with the facts and proof on record, the Chairman, was correct when he said that the applicant had no *locus standi* to file the application at hand.

In the result, I find the appeal to have no merit and it is hereby dismissed with costs.

It is so ordered.



*V.L. Makani*

**V.L. MAKANI  
JUDGE  
09/08/2021**