

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO.164 OF 2020

(Arising from Land Appeal No. 43 of 2019 of the District Land and
Housing Tribunal for Kinondoni, in Land Application No.348 of 2019)

INNOCENT LEONARD MALLYA APPELLANT

VERSUS

ATHUMANI SALUM HASSAN(Administrator of the

Estate of the late Asha Masudi Likolovele) RESPONDENT

JUDGMENT

Date of Last order: 27.09.2021

Date of Judgment: 29.09.2021

A.Z.MGEYEKWA, J

At the centre of controversy between the parties to this appeal is a parcel of land described as Plot No. MSK/KSN/1843 located at Mwanayamala, Kinondoni. The decision from which this appeal stems is the judgment of the Ward Tribunal in Application No. 2 of 2019.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: Athumani Salum Hassan, the administrator of Estate of the late Asha Masudi Likolovele, the respondent lodged a suit against Innocent Leonard Mallya, the appellant. Athumani Salum Hassan claimed that he was pointed to administer the estate of his grandmother one Asha Masudi Likolovele tried to evict the respondent's tenants out of the suit premises but the respondent refused to vacate claiming that he has purchased the suit premises from the late Asha Masudi Likolovele. The respondent claimed that there is no point in time the late Asha Masudi sold the house to the respondent.

The respondent claimed for a declaration that the late Asha Masudi Likolovele was the rightful owner of Plot No. MSK/KSN/1843 located at Mwanayamala Kisiwani, Kinondoni at Dar es Salaam and Innocent Leonard Mallya is a trespasser. The respondent also prayed for vacant possession. The District Land and Housing Tribunal determined the matter and found that there was no any sale or disposition of the suit premises done by the Asha Masudi to Innocent Leonard Mallya. The application was decided in the favour of the respondent.

Believing the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.348 of 2019 was not correct, the appellant lodged this second appeal on four grounds of complaint seeking to assail the decision of this court. The grounds are as follows:-

- 1. That the trial District Land and Housing Tribunal erred in law and fact by entering a judgment on favor of the Respondent in this Appeal who did not tendered any document during trial to prove that he was duly appointed as Administrator of the Estate of the Late **ASHA MASUDI LIKOLOVELE** who was the owner of the land.*
- 2. That the trial District Land and Housing Tribunal erred in law and facts by entertaining contractual matters without having jurisdiction.*
- 3. That the trial District Land and Housing erred in law and fact by failing to properly evaluate the evidence on record.*
- 4. That the trial District Land and Housing Tribunal erred in law and facts by failing to appreciate the Appellant's evidence.*

When the appeal was placed before me for hearing on 27th September, 2021, the appellant enjoyed the legal service of Mr. Berbard Mahuka, learned counsel and the respondent appeared in person unrepresented.

Mr. Mahuka, learned counsel for the appellant started his onslaught by seeking to consolidate the 3rd and 4th grounds and argue them together and he opted to abandon the 2nd ground and argue the 1st ground separately. He argued that the appellant the Form No.1 of Administration of Estate was not tendered at the tribunal as evidence hence the same vitiated the judgment of the District Land and Housing Tribunal as per the requirements of the law documents accompanying Form No.1 cannot be regarded as evidence when the case was heard. He went on to submit that the records are silent whether the respondent tendered the certificate of Administration. He added that failure to tender the said certificate means the judgment could be decided against the respondent. To fortify his submission he cited the case of **Chantal Tito Mziray & another v Ritha John Makala and Another**, Civil Appeal No.59 of 2018. He ended by submitting that failure to tender the Forms of Administration renders the judgment nullity since the respondent had no *locus standi* to institute the said case.

On the third and fourth grounds, the appellant's Advocate submitted that the Chairman erred for failure to consider the evidence of the appellant by abiding by the assessors' opinion. To support his submission he referred this court to page 5 of the District Land and Housing Tribunal.

He went on to submit that the Chairman also erred in finding that the Advocate witnessed the sale agreement of both parties Innocent Leonard Mallya and he also witness the side of Asha Masudi (the deceased). He argued that the law does not restrain an Advocate to witness the signing of an agreement. He added that the Chairman misdirected himself since the Advocate who witnessed the sale agreement was nor or did not represent any party to the case. He referred this court to section 45 (2) of the Advocates (Professional Conduct and Etiquette) Regulations No.118 of 2018 that an Advocate is restricted to represent any part in case if he has prepared the pleadings.

He did not end there, he argued that the Chairman did not consider the evidence of DW2, Bernard Jacob since he testified to the effect that he was informed by the late Asha Masudi that he sold the suit land to innocent Mallya. He referred this court to section 62 of the Law of Evidence Act Cap. 6 [R.E 2019]. Mr. Maguha went on to submit that the Chairman erred in law for not considering both contracts signed by Innocent Mallya and Asha Masudi. It was his justification that the law does not restrict parties to prepare two contracts. He submitted that one contract was ignored during the sale process and the second contract was signed after finalizing the payment.

He claimed that there was no any defect or forgery on the signatures thus the tribunal was required to abide by the conditions stipulated under section 34 (g) of the Evidence Act Cap.6 [R.E 2019]. He continued to blame the Chairman for not considering DW3 evidence who testified that he witnessed the sale but did not see the conclusion part of the sale agreement and the Chairman denied to consider the Land Form No.35 since the parties had a dispute in regard to residential licence area.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to quash the judgment and decree of the District Land and Housing Tribunal for Kinondoni and allow the appeal and grant any relief it may think to grant.

On the strength of the above submission, the appellant's Advocate beckoned upon this court to quash the decision of the appellate tribunal and allow the appeal.

I reply the respondent was brief and straight to the point. On the first ground he argued that the respondent followed all procedures to institute the case. He stated that they obtained a death certificate and the

certificate was tendered at the tribunal which enabled the Chairman to determine the case.

Submitting on the 3rd and 4th grounds, the respondent submitted that DW1 was not able to confirm whether the parties entered into a sale agreement since by that time DW1 was not the Chairman of Mwanayamal Kisiwani area. He submitted that the two contracts had two differences dated; 18th August, 2012 and 19th July, 2014. He added that in the first contract all witnesses were not able to confirm before the tribunal that the appellant bought the suit land from Asha Masudi.

He added that DW3 testified that he did not witness the signing of the said sale agreement to the end. He only said that he saw people walking around the suit premises he did not see the terms and conditions of the contract. The respondent claimed that Form No.35 in regard to residential areas thus the Tribunal did not consider it since the sale was not finalized he cannot say that he bought the said house from Asha Masudi. He lamented that Asha Masudi had neighbours, relatives but none of them witnessed the sale of the suit premises.

Having summarized the submissions and arguments by both sides, we are now in the position to determine the grounds of appeal before me. In

my determination, I will consolidate the second and third grounds because they are intertwined. Except for the second ground which this court will disregard, the first ground will be argued separately.

On the first ground that the District Land and Housing Tribunal erred in law and fact by entertaining a judgment in favour of the respondent who did not tender any document during the trial to prove that he was duly appointed as Administrator of the Estate of the late Asha Masudi Likolovele who was the owner of the land suit. I have revisited the tribunal records and found minutes of clan meeting and a copy of the death certificate to prove that Asha Masudi Likolovele passed away. However, as rightly pointed out by the learned counsel for the respondent that the appellant was required to show legal proof that he was appointed to administer the estate of the later Asha Masudi Likolovele.

The law allows an administrator to bring and defend a case where a suit property was owned by a deceased person and the procedure is to apply for administration of the estate of the deceased. He was supposed to tender a letter of appointment of administrator of the estate of the late Asha Masudi Likolovele. Failure to tender the said letter or the decision of the court which appointed the administrator of estate, it boils down to one

fact that the respondent had no *locus standi* to sue the appellant on behalf of the late Asha Likolovele. Hon. Samatta, J. K. (as he then was) in the case of **Lujuna Shubi Ballonzi, Senior v Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203, the court had the following to say:-

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings 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..."

Since the respondent was suing the appellant in respect of his late grandmother's suit landed property there is no doubts that the respondent had no requisite *locus* hence as rightly held by the learned counsel for the appellant that the trial tribunal erred in deciding in favour of the respondent who had no *locus standi* to institute the said case.

With the above findings, I refrain from deciding on the remaining three grounds of appeal as, I think, any result out of it will have no useful effect on this appeal. It will be but an academic endeavor.

In the light of the foregoing and for the reasons stated above the appeal is hereby upheld. I proceed to quash and set aside the decision of the District Land and Housing Tribunal for Kinondoni. No order as to costs. Order accordingly.

Dated at Dar es Salaam this date 30th September, 2021.


A.Z.MGEYEKWA

JUDGE

30.09.2021

Judgment delivered on 30th September, 2021 in the presence of Mr. Maguha, learned counsel for the appellant and the respondent.


A.Z.MGEYEKWA

JUDGE

30.09.2021

Right to appeal fully explained.