

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 117 OF 2021**

(Arising from the District Land and Housing Tribunal for Morogoro at  
Morogoro in Land Application No. 37 of 2018)

**MKASI IDD MKASI ..... APPELLANT**

**VERSUS**

**ANWAR ALLY KHAN** (The Administrator of

The Estate of the late **MOHAMOOD**

**MOHAMED KHAN) ..... RESPONDENT**

**JUDGMENT**

Date of Last order: 03.12.2021

Date of Judgment: 08.12.2021

**A.Z.MGEYEKWA, J**

This is the first appeal. At the centre of controversy between the parties to this appeal is ownership. The decision from which this appeal

stems is the judgment of the District Land and Housing Tribunal for Morogoro in Land Application No.37 of 2018.

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: Anwar Ally Khan, an administrator of the estate of the late Mohamood Mohamed Khan, is the epicenter of the dispute in this matter. He lodged a suit against Mkasi Idd Mkasi, the appellant. Firstly, Anwar Ally Khan is claiming to administer the estate of the late Mohamood Mohamed Khan. Secondly, he is the lawful attorney of Abdallah Mohamed Khan.

Anwar Ally Khan claimed that the appellant rented a frame at their premises but since 2014 to date, he was not paying rent. The appellant is alleged to have sublets the suit premises for commercial purposes. He was served with a notice to vacate the suit premises but he ignored and refused to vacate. The trial tribunal decided the matter in favour of the respondent. The appellant was ordered to vacate the suit landed premises and pay the outstanding amount to a tune of Tshs. 500,000/= per month starting from 1<sup>st</sup> June, 2014 to the date of the judgment.

Believing the decision of the District Land and Housing Tribunal for Morogoro was not correct, the appellant lodged this Petition of Appeal containing six grounds of appeal as follows:-

1. *That, the trial District Land and Housing Tribunal, erred in law and fact in giving its decision in favour of the respondent herein who lacked locus to institute the impugned suit.*
2. *That the trial District Land and Housing Tribunal erred in law and fact in not holding that the Respondent herein claim is time-barred.*
3. *That, the trial District Land and Housing Tribunal erred in law and fact in determining the Application jurisdiction of which is not vested.*
4. *That, the trial District Lan and Housing Tribunal erred in law and fact as it took into account extraneous and irrelevant matters in arriving at its conclusion.*
5. *That the trial District Land and Housing Tribunal was biased, ignored the Appellant herein testimony, and decided the dispute on matters in respect of which no evidence was given.*
6. *That, the trial District Land and Housing Tribunal's decision is against the weight of evidence on record.*

When the matter was called for hearing before this court on 23<sup>rd</sup> September, 2021 the appellant had the legal service of Ms. Shael Richard, learned counsel holding brief for Mr. Benjamin Jonas, learned counsel for the appellant whereas the respondent enjoyed the legal service of Ms. Hawa Turuisa, learned counsel. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant's Advocate filed his submission in chief on 06<sup>th</sup> October, 2021 and the respondent's Advocate filed his reply on 21<sup>st</sup> October, 2021 and with leave of the court the appellant's Advocate filed a rejoinder out of time on 02<sup>nd</sup> December, 2021.

Mr. Benjamini, learned counsel for the appellant in his written submission opted to drop the second ground of appeal. On his first ground, he contended that the Land Application No.37 of 2018 was instituted by the respondent in his capacity as the Administrator of the estate of the late Mahmood Mohamed Khan, he claimed that the owner of the disputed land was Abdallah Mohamed Khan who was alive at the time of the institution of this case.

The learned counsel for the appellant continued to submit that Mahmood Mohamed Khan died in 1985 and there is no evidence tendered at the trial tribunal relating to Mahmood Mohamed Khan Interest in the suit premises. For the reason that Abdallah Mohamed Khan was still alive at the time of the institution of the impugned application. Thus, it was his submission that the tribunal ought to have considered the tenability of the application brought by the respondent in his capacity as the administrator of the estate of the late Mohamood Mohamed Khan to vindicate the interest of Abdallah Mohamed Khan. To support his submission he cited the case of **Inland Revenue Commissioners v National Federation of Self Employment and Small Business Ltd** (1981) 2 WLR 722.

Insisting, he contended that the applicant was required to tender cogent evidence to prove his *locus standi* in claiming the interest of Abdallah Mohamed Khan. Therefore, it was his view that the applicant had no capacity to lodge the said Application. The learned counsel for the appellant beckoned upon this court to quash the proceedings and judgment of the tribunal.

Arguing for the third ground, the learned counsel for the appellant claimed that the respondent claimed for rent arrears but the tribunal evicted the appellant from the suit premises and ordered him to pay rent arrears in the sum of Tshs. 500,000/= per month from 01<sup>st</sup> June , 2014 to the date of the judgment. The learned counsel for the appellant strongly argued that this case is not a land matter. He added that this case was required to be determined by the District Court since the nature of the claim, reliefs claimed by the respondent, and the relationship of the parties; landlord and tenant. Fortifying his submission he cited the cases of **Ibrahim Twahir Kasundwa v Zakaria Maftah and Simba Oil Company Ltd**, Land Case No.37 of 2018, and **Charles Rick Mulaki v William Jackson Magero**, Civil Appeal No. 67 of 2017 HC (both unreported). Stressing, he stated that the issue of jurisdiction is a fundamental issue its absence cannot be cured.

Submitting on the fourth ground, the learned counsel for the appellant contended that the tribunal discredited the claim that there was a shop frame that was bequeathed to the respondent by Abdallah Mohamed Khan when he was still alive. He claimed that the tribunal disregarded the evidence of the appellant for the reason that a shop cannot be constructed

and given to the appellant on the same day and there was no building permit also the mark X was not appended on the premises. He valiantly argued that the appellant tendered a document; to hand over one frame out of four frames to Mkassy Iddi Mkassy. He added that in a Contract of Construction of two frames; the appellant occupied the said frame for three years but there was no any agreement that was signed for construction. It was his view that the two documents contained two different and separate themes, therefore, the issue of construction and signing the contract on the same day does not arise.

As to the fifth ground, the learned counsel for the appellant simply contended that the proceedings were brought by a person who had no *locus*. He complained that the tribunal did not refer to or at least state as to why it chose not to consider the testimony of the appellant's witnesses and the documentary evidence of the appellant. He complained that the appellant's documents were disregarded without stating any reason. He strongly submitted that the tribunal was biased in its analysis of the evidence on record.

With respect to the sixth ground, Mr. Benjamin contended that the issue for determination at the trial tribunal was whether the appellant herein was lawfully on the suit premises. He contended that the tribunal ought not to proceed with hearing the case since the proceedings were brought without locus and Abdallah Mohamed Khan was alive when this application was lodged at the tribunal. He went on to argue that there was no valid evidence that was tendered to discredit the validity of the documentary and oral evidence tendered by the appellant. Therefore, it was his view that had the tribunal assessed the evidence on record properly it could reach a different conclusion.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to allow the appeal and quash the decision of the District Land and Housing Tribunal with costs.

Opposing the appeal, the learned counsel for the respondent from the outset stated that they have observed a disquieting aspect that the present appeal had been brought with a defective judgment and decree. He stated that the defect is that the names of the respondent whereas at the institution of the suit, the respondent appeared as Anwar Ally Khan (Administrator of the Estates of the Late Mahmood Mohamed Khan). He added that in course



of proceedings, the amendment was made and the respondent appeared as Abdallah Mohamed Khan suing by the Lawfully of Attorney Anwar Ally Khan. The learned counsel for the respondent claimed that he was surprised to see the judgment of the trial tribunal indicated the respondent as Anwar Ally Khan (Administrator of the estates of the late Mahmood Mohamed Khan) which is wrong for the same was already changed. It was his view that the said error can be rectified and corrected through a formal application before the trial tribunal.

On the first ground of appeal, the learned counsel for the respondent submitted that the respondent herein had *locus stand* to sue the appellant and therefore he was competent to lodge the suit before the trial tribunal as he is an interested person in the estate of the late Mahmood Mohamed Khan. The learned counsel for the respondent went on to submit that at the time of the institution of the suit, the suit premises were not officially transferred to Abdallah Mohamed Khan as a beneficiary of the estate of the late Mahmood Mohamed Khan.

It was his further submission that it is settled principle of law that, once the registration of a title is completed it is a proof of ownership of the title. To support his submission he referred this court to section 40 of the Land

Registration Act, Cap. 334 [R.E. 2019]. She argued that the transfer of the suit premises to Abdallah Mohamed Khan was completed thereon the respondent successful applied to the trial tribunal for amending the Application to effect change on the capacity to sue by the respondent from being the administrator of the estates of Mahmood Mohamed Khan to be the lawful attorney of Abdallah Mohamed Khan.

Ms. Hawa went on to submit that the appellant was aware of the said amended application. She insisted that at the time of institution of suit the premise was under the ownership of Mahmood Mohamed Khan and the transfer was in progress, therefore the proceedings were proper and legal. The learned counsel added that the respondent has the interest to protect and preserve the property of the deceased hence had the *locus stand* to institute the application in that capacity.

Arguing for the third ground of appeal, Ms. Hawa submitted strenuously that the arguments of the appellant are improper, wrong, misleading, and devoid of merit. She went on to submit that the District Land and Housing Tribunal had jurisdiction to determine the matter. Fortifying her submission she referred this court to section 4(1) of the Land Dispute Court Act, Cap.216 [R.E. 2019]. The learned counsel for the respondent continued to submit that

in order to determine whether the matter is of Land or not, His Lordship Mziray, J in the case of **Exim Bank (T) Limited v Agro Impex (T) & Others**, Land Appeal No. 29 of 2008 (unreported), the court held that two matters need to be considered; one, the pleaded facts constituting the cause of action; and two, reliefs claimed and see whether the court has the power to grant them.

She continued to submit that in the present suit, the respondent claimed for among others for payment of rent arrears and vacant possession and it was her view that an order for vacant possession could not have been made without determining the issue of whether payments of rent were made. The learned counsel for the respondent added that under paragraph 4 of the amended written statement of defence the appellant contended to have been bequeathed the suit property thus he is a rightful owner, thus, the issue of who is the rightful owner automatically arose.

She distinguished the cited cases by the learned counsel for the appellant by stating that both cases of **Ibrahim Twahir Kusundwa (Supra)** and **Charles Rick Mulaki (Supra)** discussed a claim for compensation for breach of the tenancy agreement and general damages which are pure civil

cases. While in the trial tribunal the respondent never claimed compensation for breach of the tenancy agreement and/or damages therefrom.

As to the fourth ground of appeal, Ms. Hawa contended that Abdallah had no any authority to bequeath one of the shop frames because it belonged to his late father as per Title Deed No. 21502, therefore, it was her view that any agreement made in that particular time was illegal. She stressed that the question of signing the agreements and construction of the shop frames were properly raised by the tribunal because there were severe frames by Abdallah Mohamed Khan after he successfully fended off against the demolition attempt by the Municipal authorities.

She went on to argue that it was wrong for the trial tribunal to reason that the appellant ought to have brought an officer from the authority which put X on the premises, produces building permit as it shifts the burden to the appellant who was the respondent. She submitted that it is trite law that Courts of Law are moved or persuaded by proof, who alleges anything on his/her favour has a burden of proof as per section 110 of the Evidence Act, Cap.6 [R.E. 2019].

Ms. Hawa did not end there, she submitted that the appellant alleged that the suit premises was marked X for demolition and he applied for and

successfully granted a building permit, thus, the only person to prove such facts was upon the respondent. She continued to submit that the suit was instituted by Abdallah Mohamed Khan through Lawfully Attorney one Anwar Ally Khan, therefore the one who was suing the appellant was Abdallah Mohamed Khan. She stressed that Abdallah Mohamed Khan was the one contesting the existence of the appellant in the suit premises.

On the fifth ground of appeal, the learned counsel for the respondent from the outset submitted that this ground is devoid of merits. She added that the trial tribunal analysed the testimony and exhibits tendered by the appellant. Thus, it was her view that the tribunal analysis was correct and the Chairman considered the two documents tendered by the appellant.

Concerning the sixth ground of appeal, the respondent contended that the proceedings were properly instituted and all testimonies and documentary evidence were fairly and legally analysed by the trial tribunal. Stressing, she stated that the trial tribunal reached the decision based on the weight of the evidence before it.

On the strength of the above submissions, Ms. Hawa beckoned upon this court to dismiss the appeal with costs.

Reiterating what he submitted in submission in chief, Mr. Benjamin argued that the contention by the respondent's counsel that the appeal is accompanied by defective copies of judgment and decree is misconceived and misplaced. He added that the argument is also mischievous because there is no dispute that the said Mohamood Mohamed Khan died in 1985, he could not, therefore, appoint and ordain the respondent herein as his lawful attorney to institute the suit in the year 2018. He added that even if the late Mahmood Mohamed Khan had given such power of attorney when he was still alive, the same was inoperative after his death. He stalwartly argued that the authorities cited in support of the respondent's contention are irrelevant and inapplicable to the case at hand. He urged this court to ignore the respondent's Advocate contention.

Mr. Benjamin went on to state that the respondent counsel submission bristles with contradictions and misdirection since he admits that the suit was instituted in the name of Mahmood Mohamed Khan, in some places he changes and claims that the application was amended so that the suit is shown as instituted by the respondent herein in his capacity as the lawful attorney of Abdallah Mohamed Khan and in some other parts he

shows that the respondent was suing in his capacity as an administrator of the estate of Mohamed Abdallah Khan.

He insisted that the respondent instituted the impugned suit without locus is founded on evidence on record. As to the regards the blindness of the said Abdallah Mohamed Khan, he argued that the learned counsel for the respondent's contention is ludicrous as is evident on records that the appellant brought witnesses to prove that the said Abdallah Mohamed Khan was able to sign the exhibits.

On the strength of the above submission, Mr. Benjamin beckoned upon this court to base on the authorities cited by the appellant's Advocate and find that the appeal is meritorious and deserves to be allowed with costs.

Having summarized the submissions and arguments by both learned counsels, I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the second, and third grounds, the fourth, fifth, and sixth grounds because they are intertwined. Except for the first ground which will be argued separately in the order they appear.

On the first ground, that the District Land and Housing Tribunal determined the suit erred in law and fact in giving its decision in favour of the respondent herein who lacked *locus* to institute the impugned suit. I have gone through the court record, the respondent's name appearing in the District Land and Housing Tribunal Judgment is Anwar Ally Khan (Administrator of the estate of the late Mohamed Khan), the applicant. The records reveal that the respondent at the District Land and Housing Tribunal on 4<sup>th</sup> April, 2019 tendered a Power of Attorney and the tribunal granted his prayer. Thus on 4<sup>th</sup> June, 2018, the applicant filed an amended Application which reads Abdallah Mohamed Khan suing by the Lawfully Attorney Anwar Ally Khan.

The matter was adjourned several times, then the tribunal Chairman scheduled the hearing of the case on 1<sup>st</sup> April, 2021 whereas the Respondent testified to the effect that he is the administrator of the estate of the late Mahmood Mohamed Khan. He said that he has been administering the deceased estate since 2019 when he was appointed as an administrator of the estate. The record revealed that Mahmood Mohamed Khan passed away in 1985 and he was the owner of the suit land.



The respondent is claiming that the applicant has no *locus in quo* since he lodged the suit on the capacity of the administrator of the estate of the late Mahmood Mohamed Khan while they are claiming that the respondent entered into a lease agreement with one Abdallah Mohamed Khan.

In the record, there is no evidence to prove the respondent's *locus* to claim the interest of Abdallah Mohamed Khan while he is the administrator of the estate of Mahmood Mohamed Khan. I have read the application dated 7<sup>th</sup> March, 2018 and the amended application dated 4<sup>th</sup> June, 2018. In paragraph 6 of the Application, the applicant is claiming that the suit premise was owned by Mahmood Mohamed Khan and the respondent has a lease agreement between him and Abdallah Mohamed Khan.

The records reveal that the respondent had a Power of Attorney of Abdallah Mohamed Khan which he obtained in 2018 and Abdallah Mohamed Khan passed away in 2019 before the hearing of this case. The Chairman continued with hearing the case while on the record the amended Application reads Abdallah Mohamed Khan sued by his lawful attorney Anwar Ally Khan. I am not in accord with Ms. Hawa, learned

counsel for the respondent that the administration of estate automatically shifted from Mohamood Mohamed Khan to Abdallah Mohamed. It is not automatic, the respondent was required to prove that he was appointed to administer the estate of the late Abdallah Mohamed Khan. Therefore the Chairman faulted himself to proceed with the hearing knowing that Abdallah Mohamed Khan passed away. Continuing with hearing the case means that Anwar Khan could not prove his case since the Power of Attorney ceased when Abdallah Mohamed Khan passed away.

In his written submission the learned counsel for the respondent submitted that the petition of appeal was accompanied by a defective judgment and decree since the names of the respondent appearing in the judgment were wrong. In my view that said correcting will not suffice since the Power of Attorney automatically ceased when Abdallah Mohamed Khan passed away that means Anwar Ally Khan had no longer the authority to sue by the Lawfully Attorney of Anwar Ally Khan

As rightly pointed out by the appellant's Advocate that the respondent had no capacity to institute the Application in such capacity. It was important to establish first the interest of Abdallah Mohamed Khan in the

land of Mohamood Mohamed Khan. The fault was in the proceedings of the case. The Chairman and parties were in the position to rectify the tribunal records by allowing the respondent to prove his administration of the estate of the late Abdallah Mohamed Khan before proceeding with the hearing of the case. Following the reasoning of this court by 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, it boils down to one fact that the appellant had no *locus standi* to sue the respondent. In the **Lujuna Shubi Ballonzi's** case, 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 the power to determine the issue but also that he is entitled to bring the matter before the court: see Halsbury's Laws of England. 4<sup>th</sup> ed, para 49 at p.52. Courts do not have the power to determine issues of general interest: see Re IG Farbenindustrie AG Agreement [1943] 2 ALL ER 525. They can only accord protection to interests that are regarded as being entitled to legal protection. They*


*hypothetical, premature, or dead. Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice to sue or make an application. Of course, provided the interest is recognized by law, the smallness of it is immaterial". [Emphasis added].*


Having so found, I refrain from deciding on remaining 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 endeavour.

On the way forward, I invoke the power vested on me under section 43 (1), (b) of the Land Dispute Courts Act, Cap.216 [R.E 2019] and hereby quash the judgment, proceedings, and subsequent orders of the District Land and Housing Tribunal for Morogoro in Land Application No. 37 of 2018 from the date when Abdallah Mohomed Khan passed away. I, therefore, remit the file to the District Land and Housing Tribunal for Morogoro for a retrial from the date of 1<sup>st</sup> April, 2021. The appeal is partly allowed to the extent explained above without costs.

Order accordingly.

Dated at Dar es Salaam this date 08<sup>th</sup> December, 2021.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
08.12.2021

Judgment was delivered on 08<sup>th</sup> December, 2021 in the presence of Mr. Laurent Mtanga, learned counsel for the appellant and the respondent in person.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
08.12.2021

Right of Appeal fully explained.