

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

MISC. LAND CASE APPEAL NO. 78 OF 2021

ENOS JEREMIAH KASAMBALA (Administrator of the
Estates of the late Jeremiah Kasambala).....**APPELLANT**

VERSUS

THE REGISTRAR OF TITLES.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT

Date of Last Order: 28.01.2022
Date of Ruling: 28.02.2022

RULING

V.L. MAKANI, J

This is the ruling in respect of preliminary objection raised by
defendants that:

"The appellant has no locus standi."

The preliminary objection was, with leave of the court, argued by way
of written submissions. Mr. Xavier M. Ndalaha, State Attorney drew
and filed written submissions on behalf of respondents. While the
submissions in reply were drawn and filed by Mr. Allan Emily Kabitina,
Advocate.

Mr. Xavier gave a brief background of the matter that appellant is the second administrator who step into the shoes of the former administrator one Samwel Kasambala. That the former administrator stepped down on 11/08/2020 and on the same date the appellant was appointed by Kinondoni Primary Court as administrator of the estate of the late Jeremia Kasambala vide *Shauri la Mirathi No.189/1999*. He said that on 19/05/2021 the appellant wrote a letter to the Registrar of Titles requesting to be registered as the Legal Personal Representative of the property known as Plot No.361 Oysterbay with CT No.186034/43 (**the suit property**) which is in the name of JERRY SAM KASAMBALA and which is believed to be the remaining property for administration. That the request was declined by the Registrar on 08/06/2021 for the reasons that the suit property has already been transferred to Hanna Kasambala, Stella Shoo, Roy Kas Tambwe, Pepe Kisa Mwakasega and Marry Lauden Pondo with equal shares. That upon dissatisfaction by the decision of the Registrar, the appellant filed this appeal. He said in *Shauri la Mirathi No.189/1999* the administrator was ordered to collect the deceased properties and divide them to all heirs four months from the date of order. He said that the letter of administration issued to the administrator on 11/08/2020 was for the period of four months only. That the letters

of administration issued to the appellant on 11/08/2020 ceased to have legal force on 10/12/2020. That in case the appellant had any interest in the suit land he was required to go back to Kinondoni Primary Court and ask for extension of time to close *Mirathi No.189/1999* as per section 107 (1) and (2) of the Probate and Administration of Estates Act, CAP 352 RE 2019. He said that the need to file an inventory and administration of estate was also discussed in the case of **Joseph Shumbusho vs Mary Grace Tegerwa & 2 Others, Civil Appeal No. 183 of 2016** (unreported) where the court stated that filing of accounts must be done within one year and an inventory within six months from the grant of letters of administration or within such further time as the court grants.

He said that the grant of letters of administration is not meant to be for entire life of administrator. He said the letters are issued for specific performance of making inventory within six months and administer the estate of the deceased by paying debts and dividing residues to heirs within one year. That the essence is to close the matter. Learned State Attorney referred the court to the case of **Rukia Mahamudi Afande (Administrator of the estate of the late Kibwana Mnyingo) vs. Issa Muhibu Kibwana and 4**

others, Land Case No.349 of 2017 in which he said the court observed that the probate was supposed to be closed on or before 03/08/2015 and there was no proof of granted extension of time. That the estate remained without an administrator. He insisted that since the appellant did not complete the inventory, he had to go back to the court which granted the probate (Kinondoni Primary Court) applying for extension of time in order to complete the task and honour the court order. He insisted that the appellant has no *locus standi* and prayed for the appeal to be dismissed with costs.

In reply, Mr. Kabitina said that appellant has *locus standi* to institute this appeal. That appellant is an administrator of the estate of the late Jeremiah Kasambala. That he was appointed by Kinondoni Primary Court on 11/08/2020 through *Mirathi No.189 of 1999*. That on 11/08/2020 he filed an inventory and accounts as per section 107 (1) of Probate and Administration of Estates Act. That on 09/09/2020 his appointment was challenged by way of revision vide Revision No.30/2020 and the same was struck out on 29/03/2021. That one of the beneficiaries Stella filed an objection challenging the inventory filed by the appellant and the same was overruled. He said that the cases cited by respondent are distinguishable to the case at hand due

to the fact that in the present case the appellant filed an inventory and accounts on time. He insisted that appellant has *locus standi* as he is the sole administrator, and he has never been revoked by any court of law. He relied on the case of **Shabani Issa vs Ramadhani Kasimu, Misc. Land Case Appeal No.33 of 2020**. Counsel prayed for the court to overrule the raised preliminary objection with costs.

In rejoinder, Mr. Xavier reiterated he submitted in the main submissions.

The main issue for consideration is whether the preliminary point of objection raised by respondent has merit. Mr. Xavier was of the view that appellant herein has no *locus standi* to institute this appeal. That appellant was appointed by Kinondoni Primary Court on 11/08/2020 and on the same date he was ordered to collect the properties of the deceased and divide it to the heirs within four months. His lateral translation he declared is that the status of the appellant as an administrator ceased on 10/12/2020, which is four months from when he was appointed. Mr. Kabitina on the other hand said that the appellant has *locus standi* as his appointment has not been revoked by any court of law. That appellant filed inventory and accounts before

the court as per section 107 (1) of Probate and Administration of Estates Act. What is not at issue between the parties is that appellant was appointed to be the administrator of the estate of the late Jeremia Kasambala on 11/08/2020.

It is common knowledge that, a preliminary objection should raise a pure point of law based on ascertained facts from the pleadings or by necessary implication, but not on facts which have not been ascertained. And even if ascertained, when argued, a preliminary objection should be capable of disposing off the case. A preliminary objection cannot also be raised if what is sought is the exercise of judicial discretion (see the case of **Mukisa Biscuit Manufacturing Company Limited vs. West End Distributors Limited (1969) EA 696**).

Now, can the issue of *locus standi* in this matter be determined at this preliminary stage? I am of the view that this is not possible because establishing whether the administrator filed inventory accounts followed by closure of probate case requires looking carefully at the records of the Tribunal to ascertain whether the objection falls within

the ambit of the case of **Mukisa Biscuits** (supra); and if indeed, the accounts were filed and of most important to see whether or not the appellant was discharged by the court by the closing of the file as per section 107 (1), (2) of the Probate and Administration Estates Act. The records of the Tribunal are yet to be received by this court; therefore, this issue will properly be decided upon when the records are received for the court to ascertain the basis of the alleged error by the Registrar of refusal to register the appellant as the owner of the suit property. And further, whether at that time of registration he was still the Legal Representative of the deceased estate. In my considered view this issue can well be encompassed in the judgment of this appeal.

In view thereof, the preliminary objection is dismissed with no order as to costs.

It is so ordered

V.L. Makani
V.L. MAKANI
JUDGE
28/02/2022

