

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 4 OF 2022

LAURENT TITUS MWAMI APPELLANT

VERSUS

GIRIBERT ALBETO MILALA RESPONDENT

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

(G. K. Rugalema, Chairman)

Dated 14th day of December 2021

In

(Land Application No. 1 of 2020)

RULING

Date: 23/06 & 05/09/2022

NKWABI, J.:

Like a lightning that strikes when it rains, this appeal was struck by a preliminary objection on points of law. If the appeal survives the strike, that is unknown to me at this point, it will be apparent at a later stage of this ruling. Four legal points of objection were raised by the learned counsel for the respondent, Mr. Laurence John. In written submissions, those legal points of objection were briskly resisted by Ms. Sekala Amulike, also learned counsel, who represents the appellant. I am greatly indebted to both learned counsel for their well-researched and powerful submissions.

The brief facts leading to this appeal are that on 10th January, 2020, the appellant instituted a land application No. 1 of 2020 in the District Land and Housing Tribunal for Katavi at Mpanda. He was claiming for a piece of land which is located at Kanyense area within Ikulu suburb, Kabungu village in Tanganyika district which is within Katavi region. In the application form, he indicated that the disputed land belonged to the appellant's deceased father namely Titus Boniphace. He went on to show that he is for that reason a beneficiary and heir and that the late Titus Boniphace acquired the disputed land time immemorial. He also stated that the appellant had been developing the suit land till the respondent trespassed into the suit land in September, 2019. The respondent destroyed the appellant's crops and hut having the value of T.shs 1,000,000/=, the appellant further narrated.

The respondent briskly resisted the application. He was successful as the trial tribunal decided that each one of the parties respect the boundaries of their pieces of land as shown by the Ward leadership. The decree of the trial tribunal upset the appellant who decided to file this appeal in this Court.

After I have gone through the submissions of both counsel and scanned the record of this case, I am of a firm view that the legal point of objection that the appeal is incompetent for being preferred by the appellant in his personal capacity instead of being preferred as administrator of the estate as it is reflected in the trial tribunal proceedings, judgment and decree disposes this appeal. On that basis, I will consider and determine this legal point of objection only.

In submission in chief, while backing it with several case laws, Mr. Laurence vigorously contended that it is glaring open that appellant lacks locus standi to institute this suit, which locus standi is fundamental in the proceedings citing **Lujuna Shubi Ballonzi, Senior V Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203 (HC)**, Samatta J.K., as he then was, where he held:

"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; see Halsbury's Laws of England, 4th ed, para 49 at p 52."

It a further assertion of Mr. Laurence that parties are bound by their pleadings citing **James Funke Gwagilo v. Attorney General [2004]** T.L.R. 161 and **Pravin Girdhar Chavda v. Yasmin Nurdin Yusufali**, Civil Appeal No. 165 of 2019 CAT (unreported). In **Pravin's** case, it was underscored that:

"We feel compelled, at this point to restate the time-honored principle of law that parties are bound by their own pleadings and they cannot be allowed to raise a different matter without due amendments being made. Furthermore, the court itself is bound by the pleadings of the parties as they are themselves."

To insist that the appeal ought to have been instituted by the administrator of the estate, Mr. Laurent argued that the appellant must be recognized by

decree of the trial tribunal. For that position, he cited Hon. Justice C.K. Takwani in his book titled, "**Civil Procedure with Limitation Act, 1963**, 8th Edition at page 478 where he wrote:

"... But before an appeal can be filed under this section, two conditions must be satisfied:

- (i) The subject matter of appeal must be a "decree" that is conclusive determination of "the rights of the parties with regard to all or any matters in controversy in the suit" and*
- (ii) The party appealing must have been adversely affected by such determination."*

Mr. Laurence insisted that **Laurent Titus Mwami** was never a party in the trial tribunal, but the party was **Laurent Titus Mwami (As administrator of the estate of Titus Boniphace)**. According to Mr. Laurence, that offended **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021 CAT (unreported) decision which held that:

"Letters of administration being an instrument through which the applicant traces his standing to commence the

proceedings, was in our view an essential ingredient of the application in whose absence the Court cannot have any factual basis to imply the asserted representative capacity. It is now a settled law that, where, like in instant case, a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing."

Mr. Laurence further stressed that, failure to sue or be sued in the proper capacity is fatal. He referred me to the case of **Abdullatif Mohamed Hamis v. Mehboob Yusuph Osman & Another**, Civil Revision No. 6 of 2017 CAT (unreported) where it was, at pages 27 & 28, authoritatively stated:

"When all is said and applied to the situation at hand, as already mentioned, it is beyond question that the 2nd respondent was, at all material times, the administratrix of the deceased's estate. The life of her legal

representation with respect to the estate was still subsisting at the time of her transaction with the 1st respondent just as the suit land was vested in her in her capacity as legal administratrix. But, as we have also hinted upon, the 2nd respondent was not sued in that capacity. Instead, the 1st respondent sued her in her personal capacity and, for that matter, no executable relief could be granted as against her personally with respect to the suit land which, as it turns out, was vested in her other capacity as the legal representative."

Mr. Laurence concluded by claiming that the appellant is a total stranger to these proceedings and has entered in these proceedings in his own capacity which is procedurally wrong and without leave of this honourable Court. He prayed this appeal be struck out for being incompetent with costs.

It was the reply submission made by Ms. Sekela Amulike that the point of objection is not maintainable as it contravenes the position in **Mukisa Biscuit manufacturing Co. Ltd v. West End Distributors Limited** [1969] E.A. 696. She expounded her view that that is because on this point of objection parties will need to bring evidence to prove the status of appellant in regard to his capacity while the law is clear that point of objection must contain a pure point of law. She added, it should not raise where the point of law and fact is uncertain.

Despite the above submission, Ms. Amulike beefed up that in the District Land and Housing Tribunal, the appellant instituted the case under his own name on 04/01/2020. Though the tribunal judgment and decree are written in his capacity as administrator of the estate. She justified the appellant's instituting the appeal in his name by the decision of the Court of Appeal of Tanzania in **Isaack Wilfred Kasanga v. Standard Chartered Bank T. Ltd**, Civil Application No. 454/01 of 2019 where it was ruled:

"... We are of the stance that this should always be the position, that parties in the proceeding should at any given

time appear as they did in the previous proceedings unless there is a reason for not observing that ..."

It is for that reason that Ms. Amulike prayed this Court to allow the name of Laurent Titus Mwami to appear as it appeared during the institution of the case before the District Land and Housing Tribunal for Mpanda. She finally prayed this Court to declare the preliminary objection raised by the respondent to be unmaintainable, uncalled for, a wastage of this Court precious time, and that it unnecessarily increases costs and occasions confusion of issues. She prayed the same be dismissed with costs:

Reinforcing his position in rejoinder submission, Mr. Laurence contended that the counsel for the appellant has tried to mislead this Court that the point of objection on law with the case of **Mukisa Biscuits** (supra). In his view, the authority is misplaced and a total misapprehension of the law. He insisted that the point of law is apparent on the face of the record and does not require a long-drawn process to discover the objection.

I have gone through the trial tribunal's record and I am of the firm view that this legal point of objection has merit just as I have already intimated

above. On the statement constituting the claim, in his application in the trial tribunal, the appellant stated:

"... The disputed land belonged to the Applicant's deceased father named Titus Boniphace. The applicant is therefore the beneficiary and heir."

Further, on the relevant documents to be relied upon, the letters of administration of the estate of Titus Boniphace was listed as the first one.

If I accept that the appellant filed the land application in his own capacity, there will be lack of evidence which are the inventory and especially the account of the estate which will ultimately make the case of the appellant crash to the ground. If I take that the proceedings in the trial tribunal were instituted by an administrator of the estate of the deceased, the application form that was used to institute the land application does not indicate so, so does the proceedings. That the appellant is an administrator of the estate of the deceased is indicated and found in the judgment and decree of the trial tribunal and in the places I have indicated in the land application form

in the trial tribunal. This situation is not only unacceptable but also leads to confusion.

Truly, parties are bound by their pleadings. The pleadings indicate (the name of the applicant therein) to be Laurent Titus Mwambi without his capacity as administrator of the estate of the deceased. That is totally unacceptable because if it is left as such, on execution, the piece of land will fall to the appellant in his own capacity. If there are other beneficiary thereto, they will be ousted and will lead to endless litigation.

Further, in the petition of appeal, one of the prayers of the appellant is that this Court declares the suit land to be the property of the appellant. Whereas in the land application the appellant pleaded that the suit land is part of the estate of the deceased, so this prayer is outrageous. If this Court grants the prayer, then it could lead to injustice to other beneficiaries if any. It appears to me the appellant is suing in his personal capacity so that he may illegally benefit from the decree and claim the blessing of this Court. That is too, unacceptable.

I would also add that, since the appellant pleaded that the suit land was the property of his deceased father and even attached the letters of administration, he is bound by his pleadings. Thus, he cannot be heard that he legally instituted the land application in his personal capacity. That was legally wrong, it cannot therefore be blessed by this Court as Ms. Amulike wants this Court to do. I rule that the land application was wrongly instituted in appellant's personal capacity and the appeal too was wrongly instituted in the personal capacity of the appellant. The appeal therefore cannot stand.

Ms. Amulike had invited me to rule that this is a preliminary objection not worthy it since it would require evidence. With the greatest respect to Ms. Amulike, I do not purchase her argument for reasons that, firstly, the matter is at an appellate state where the evidence has already been taken and is already in the record unlike when it is a fresh case which has yet to be heard. Secondly, even if this matter were at its initial stage, the legal

point of objection is apparent on the pleadings, therefore it does not require evidence to be determined

For the above reasons, I rule that the appeal is incompetent. I proceed to strike it out of this Court's register. Costs to follow the event.

It is so ordered.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

JUDGE

05/09 2022

Date - 05/09/2022

Coram - Hon. L.M. Ndelwa – Ag, DR

Appellant - Absent

Respondent - Absent

B/C - Mr. A.K. Sichilima - PRMA

Court: Ruling delivered in court this 5th day of September, 2022 in the
Absence of the both parties.



A handwritten signature in blue ink, consisting of a complex, scribbled pattern of loops and lines, followed by a horizontal line and a small flourish.

L.M. NDELWA

Ag, DEPUTY REGISTRAR

05/09/2022