IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 28 OF 2021

JOHN NKANA ..... APPELLANT

VERSUS

FILIPINA SINDANI ..... RESPONDENT

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga)
(J. Rwezaura, Chairperson)
Dated 30th day of September 2021
In
(Land Appeal No. 30 of 2020)

JUDGMENT

Date: 12/08 & 30/09/2022

NKWABI, J.:

This appeal originated from Land Dispute No. 19 of 2019 in the Ward Tribunal for Kipande. The respondent sued the appellant for a seven-acres piece of land which was given to her by his brothers-in-law and sisters-in-law to cultivate in order to subsist her family after her late husband passed away. In its decision dated 10th day of March, 2020, the trial tribunal stated as follows:

> *"Watoto hao ni watoto wa ndugu yake na mlalamikiwa, hivyo wanayo haki ya kupewa sehemu ya urithi kama ndugu wengine na kwa sababu eneo limeuzwa wapewe fedha kiasi kinacholingana na thamani ya hizo ekari ili*

wanunue sehemu nyingine au waonyeshwe sehemu nyingine kulima.

Kwa sababu hizo na nyinginezo Bi. Filipina Sindani kwa niaba ya watoto anatakiwa kuoneshwa hekari saba (7) zinazodai au apewe shilingi milioni moja na laki nne (1,400,000/=) ili aweze kununua sehemu nyingine kwani watoto wake wanayo haki sawa na wengine."

Thus, the tribunal decided in favour of the respondent, it ordered the appellant to give the respondent seven acres of land in default the respondent be paid T.shs 1,400,000/= to enable her to purchase another piece land. The appellant was aggrieved by the decision of the trial tribunal. He unsuccessfully appealed to the District Land and Housing Tribunal. Because of that, he has approached this Court. Since, one of the grounds of appeal preferred by the appellant is based on law, I will address it first. That ground of appeal goes:

"That the District Land and Housing Tribunal erred in law and in fact by its failure to consider the fact that the respondent had no locus standi to sue on behalf of the family of children of majority age or for the deceased Godfrey Nkana."

The hearing of the appeal was conducted through oral submissions. The parties being lay persons who appeared in person, unrepresented, had nothing useful to state to the Court but merely adopted the grounds of appeal and the reply to the grounds of appeal as their submissions.

I have had ample time going through the court record, the record tells it all that the respondent sued the appellant on behalf of the family. Even in cross-examination by the appellant, the respondent replied:

> *"Mimi nimesema kama familia ya Godfrey Nkana kwa niaba ya watoto."*

The record is totally silent on how the respondent was clothed with representative powers for the family. For one to have the locus standi to sue on representative capacity, there should be a procedure which has to be followed. In the trial tribunal, the respondent did not attempt to show it or put to the court the record that the family, indeed, gave her the mandate to sue and represent for the family. The complaint in respect of the irregularity on the representative suit was not raised in this Court for the first time. It had also been raised in the District Land and Housing Tribunal, it appears it was not given much attention. But on my side, I pay attention to the complaint because there is guidance on the situation that was clearly demonstrated by the Court of Appeal of Tanzania in

Ramadhani Omary Mbuguni v. Ally Ramadhani & Another, Civil Application No. 173/12 of 2021 (unreported) where it was 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."*

It is overused law that failure to sue or be sued in the proper capacity is fatal. See **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."

In the premises, I am of the view that this appeal is merited. The respondent had no locus standi to sue on behalf of the family without pleading and indeed proving the required authorization from the family. The appeal is allowed. The proceedings and decisions of both lower tribunals are quashed and set aside respectively. In the circumstances of this appeal, each party shall bear their own costs.

It is so ordered.

J. F. NKWABI

JUDGE

30/09 2022