

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.120 OF 2022

SHEKHA MOHAMED AHMED AND SHAKIR MOHAMED AHMED

(Administrators of the Estate of the late Mohamed

Ahmed Issa..... PLAINTIFF

VERSUS

RAJAB KINDANDA.....1ST DEFENDANT

JUWAIRIYA AHMED ISSA.....2ND DEFENDANT

MARIAM TOWER LIMED.....3RD DEFENDANT

RULING

Date of Last Order: 19.06.2023

Date of Ruling: 27.06.2023

T.N. MWENEGOHA -J

When this case came for a Final Pre-Trial Conference, on the 19th June, 2023, the Court noted that, there is a point of law, touching the Locus Standi of the plaintiffs in this suit. Therefore, under Order XIV Rule 1(3) and (4), also Rule 2, of the Civil Procedure Code, CAP 2019 R.E the parties were ordered to address the Court on the issue noted.

Both parties complied with the order and their arguments for and against the issue in question are noted below.

Mr. Abdulfatah A. Albakary, counsel for the plaintiffs insisted that, the plaintiffs have locus to sue in this case. It is because they have interest in

the estate of the Late Issa Ahmed Issa, which is the basis of the matter at hand. This position was well explained in **Mwombeki Byombalirwa versus The Regional Commissioner and Regional Police Commander, Bukoba (1987), TZHC 6**: That, property in dispute was left by the late Issa Ahmed Issa, and it has to be inherited by the 2nd defendant and the heirs of the late Issa Ahmed Issa, including the plaintiffs. He informed the Court that the said property was illegally transferred to the 2nd defendant in his own name. the late Mohamed Ahmed Issa as a co-Administrator was not involved and had his share in the property. After all, this is just a matter of fact and not of law as stated in **Ottu Union and Others versus Hon. Idd Simba and Another (2002) TLR**.

Mr. Abdulfatah insisted further that, this Court has the requisite jurisdiction over the matter as the same is a land dispute.

In reply, Advocate Peter Nyangi for the respondents insisted that, the plaintiffs have no Locus Standi to institute the matter. It is because, their late father was not the owner of the disputed property, rather a co-administrator of the estate of the late Issa Ahmed Issa, his brother. That, after Mr. Mohamed died, no one was appointed to take his place, hence the estate remained with one administrator, Juwairiya Ahmed Issa. That, apparently, the plaintiffs are claiming to be beneficiaries in the disputed property, but they did not plead that fact in their plaint. Hence, they are bound by their pleadings, as stated in **James Funke Gwagilo versus The Attorney General (2004) TLR**.

As for the jurisdiction issue, it was argued that, this matter is not a land dispute, but a probate issue. Therefore, it has to be handled by a probate Court. If the plaintiffs have issues with the Administrator of the late Issa

Ahmed Issa, who is the 2nd defendant, they can file a case to a competent Court for the purpose of revoking his Administratorship.

Having heard the arguments of the parties as presented by their learned advocates, I will proceed to determine the issues noted herein above.

The first issue was whether the plaintiffs have locus standi to sue the defendants in this case, in respect of the suit property. I have picked from the plaintiff's counsel, Mr. Abdulfatah Albakary that, the suit property belonged to the estate of the late Issa Ahmed Issa, a brother to Issa Ahmed Issa. The plaintiffs are niece and nephew of the said Issa Ahmed Issa and administrators of the estate of the late Mohamed Ahmed Issa. They are claiming to have interest in the estate of their late uncle, through their father, Mohamed Ahmed Issa. The said Mohamed Ahmed Issa, was a Co- Administrator together with the 2nd defendant, who as of now, the land in question has been registered in his own name. Mohamed Ahmed Issa was also beneficiary of his brother's property.

Therefore, the property in question is beyond their administrative powers, as administrators of the estate of their late father. Their powers are only limited to the estate to which they have been granted the right to administer. This fact answers affirmatively, the question of Locus on part of the plaintiffs. That is to say, they do not have the powers to sue in respect of the suit property at this stage, unless some inheritance issues connected to the said property are resolved.

This brings us to the 2nd issue of jurisdiction. The estate of their uncle was administered by other persons, and what transpired during their administration, is not within the powers of this Court to decide. The plaintiffs may have interest in the said land, but that interest can be well addressed in probate proceedings. As their interest is not linked directly

with the land in question, rather the distribution of the estate of their late grandfather to his heirs, see **Charles Rick Mulaki versus William Jackson Magero, HC Civil Appeal No. 69 of 2017, High Court of Tanzania at Mwanza (unreported)**. The 2nd issue has also been affirmatively answered.

In the event and for the reasons given here in above, I struck out the suit to being incompetently filed by plaintiffs. No order as to costs.

Ordered accordingly.




T.N MWENEGOHA
JUDGE
27/06/2023