

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

LAND CASE NO. 13 OF 2022

MIRIAM JEREMIAH SOLOMON PLAINTIFF

VERSUS

JOHN MAROA DAUDI1ST DEFENDANT

COMMISSIONER FOR LANDS 2ND DEFENDANT

THE ATTORNEY GENERAL NECESSARY PARTY

RULING

Date of last Order: 06/4/2022

Date of Ruling: 28/4/2022

A. MSAFIRI, J

This is the Ruling in respect of the preliminary point of objection raised by the 2nd and 3rd defendants in this suit. While filing their written statement of defence, the 2nd and 3rd defendants raised a preliminary objection that the plaintiff has no locus standi to file the present suit.

The preliminary objection raised was disposed of by the way of written submissions. In support of the preliminary objection, the 2nd and 3rd defendants were represented by Kause K. Izina, State Attorney who drew and filed the submission in chief and rejoinder.

Kause K. Izina, started the submission by addressing the Court that the logic behind the preliminary objection is that the court need to be sure

Alle

that a party claim cannot be established by a person who is not entitled to claim before the Court.

She said that, it is a position of the law that, the administrator of the estate of the deceased is the one mandated in law to initiate a case in the capacity of administrator and not in his personal capacity. She pointed that this position is provided for under Section 71 of the Probate and Administration of Estates Act, Cap 352.

She submitted further that it is crystal clear from the Plaintiff filed by the plaintiff that, the said Plaintiff does not disclose that she is suing as the administrator of the estate of the late Jeremiah Solomon but rather she filed the case in her personal capacity. That, the contents of the Plaintiff and the annexures attached does not show that the said plaintiff has right or interest in the plot in dispute.

She added that, although at paragraph 7 of the said Plaintiff, the plaintiff claims to be the administrator of the estate of the late Jeremiah Solomon who is alleged to be the owner of the plot in dispute, the plaintiff instituted this case in her personal capacity and this by itself vitiates this proceedings. To buttress her arguments, the counsel cited the case of **Omary Yusuph (legal representative of the late Yusuph Haji vs. Albert**, CAT Dar es Salaam (unreported).

She concluded that, the act of the plaintiff suing the defendants in her personal name rather than suing as administrator is not a technical *Allo.*

defect as it goes to the substance of the case. She prayed for the court to uphold the preliminary objection and struck out the suit with costs.

In reply, the submission by the plaintiff was drawn and filed by Mr. Chidowu, advocate for the plaintiff. He started his submissions by referring this court to the case of **Lujuna Shubi Ballonzi vs. Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203 where the rule on locus standi was properly defined.

He stated that in the said case, the Court held that;

"Locus stand is governed by Common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with".

Basing on the above principle, Mr. Chidowu stated that, in the present case, the court has power to determine this suit, and the plaintiff has interest as administratrix of the estate of the late Jeremiah Solomon to whom the letters of administration were granted by the High Court on 1st August 2012. He asserted that, the plaintiff have interest in the disputed parcel of land, being the wife of the deceased as pleaded under paragraph 7 in the Plaintiff.

He pointed that, Section 99 of the Probate and Administration of Estates Act (supra), provides that the executor or administrator of a deceased person becomes his legal representative for all purposes and all powers of the deceased person vests in him. And Section 100 of the same Act

Adls.

gives powers to an executor or administrator to sue in respect of all causes of action which survives the deceased, so she has locus as the plaintiff. He concluded that the plaintiff has a sufficient interest in the subject matter of this suit which is the land and thus, has capacity to sue. He submitted that the preliminary objection advanced by the 2nd and 3rd defendants has no merit and hence it should be dismissed with costs.

In rejoinder, Ms. Izina, State Attorney reiterated her submission in chief. She added that, the 2nd and 3rd defendants are not in dispute that the executor or administrator is mandated with power to be the representative of the deceased, to sue and be sued until such probate or letters of administration has been revoked or annulled. That, it is a requirement of law that the administrator needs to institute the suit in the capacity of administrator and the same needs to be reflected in the Plaintiff.

Having gone through the submissions by both parties in this matter, I have observed that, the 2nd & 3rd defendants are asserting that the plaintiff Mariam Jeremia Solomon, although is an administratrix of the estate of her late husband Jeremia Solomon, she has instituted the present case in her own capacity instead of doing so as an administratrix. That she has no locus standi to sue in her own capacity. This assertion by the 2nd and 3rd defendants is vehemently objected by the plaintiff, who argued that, she has locus standi to sue because she has letters of administration and the letters were granted to her by the Court. *Aelle*

In such circumstances, I am of view that the pertinent issue is whether the plaintiff has locus standi to sue on her capacity. I have examined the Plaintiff and found undisputed that the plaintiff was appointed an administratrix of the estate of her late husband Jeremia Solomon Sumari through letters of administration of the property. Furthermore, it is claimed in the Plaintiff that, the plaintiff's husband acquired the land in dispute in 1992 by being granted by Amani Gomvu Village Council. However at paragraph 7 of the Plaintiff, the plaintiff is claiming to own the land in dispute in her own right.

Paragraph 7 of the Plaintiff reads thus;

*"7. That the plaintiff who was the spouse of the late Jeremiah Solomoni Sumari, after the death of her husband on 19th January 2012, letters of administration of the property, the land in dispute inclusive and credits of Jeremiah Solomon Sumari, **devolved to her and she became the administratrix and lawful owner of the deceased's real property, the land in dispute inclusive, which land devolved to the plaintiff, as from 1st August, 2012.** [Emphasis added].*

Alle

From paragraph 7 of the Plaintiff, the plaintiff has demonstrated sufficient interest by stating that the land in dispute was being owned by her deceased husband effectively from 1992 until 2012 when he passed away. Following the demise of the plaintiff's husband, among the property that came into the plaintiff's ownership is the land in dispute. Hence much as I understand paragraph 7 of the Plaintiff, the suit land devolved from the plaintiff's late husband to her. Hence she claims to be the lawful owner of the suit land as clearly stated on paragraph 7 of the Plaintiff. It follows therefore that basing on contents of paragraph 7 of the Plaintiff, the plaintiff rightly preferred the present suit in her personal capacity. How the suit land devolved from the deceased husband to the plaintiff is a matter of evidence to be adduced during hearing of the matter.

In upshot, the preliminary objection raised by the 2nd and 3rd defendants lacks merits and is hereby overruled. The matter shall proceed on merit.

Costs to follow events.

It is so ordered.

Alle-

Dated at Dar es Salaam this 28th day of April 2022



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

A. MSAFIRI
JUDGE