

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

LAND APPEAL NO. 267 OF 2020

(Originating from Kinondoni District Land and Housing Tribunal in
Land Application No.633 of 2019 (Hon.R.L. Rugarabamu)

ABDUL HASSAN MSUYA (Administrator of the Estates of the
Deceased IBRAHIM HASSA MGHAMBA)
APPELLANT

VERSUS

MONICA AMANI MSUYA..... RESPONDENT

Date of Last Order: 26.01.2022
Date of Judgement: 21.02.2022

JUDGMENT

V.L. MAKANI, J

The Appellant ABDUL HASSA MSUYA is appealing against the decision of the Kinondoni District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 633 of 2019 (Hon. L.R. Rugarabamu, Chairman).

At the Tribunal the appellant herein was claiming that the suit premises located at Mbweni area Kinondoni Municipal (**the Suit Land**) is the property of the late Ibrahim Hassan Mghamba and that respondent herein be ordered to give vacant possession of the suit land. Respondent in her written statement of defence raised two points of preliminary objection that, the applicant was suing the wrong person and that the tribunal lacked jurisdiction to try the matter. The objections were sustained and the application was dismissed with costs. Being dissatisfied with the decision, the appellant preferred this appeal on two grounds that:

- 1. The Chairman of the Tribunal erred in law to despise off the suit on preliminary objection basing on a matter of fact alleged by one side and disputed by the other side which formed an issue for determination on merits and subject to be proved by evidence.*

- 2. That the Chairman erred to hold that the applicant ought to have sued the administrator of estates of the deceased Gideon Mghamba without regard that the applicant has no cause of action against the administrator as the suit land is not part of the estates of the deceased Gideon Danson Mghamba and the administrator of states is not the trespasser in to the suit land save the respondent who is the trespasser.*

Appellant prayed for this appeal to be allowed with costs and the suit be remitted to the Tribunal for trial before another Chairman.

Submissions on behalf of the appellant were drawn and filed by Advocate Benedict Bahati. Ms. Grace Daffa, Advocate from Women Legal Aid Centre drew and filed reply to the main submission on behalf of respondent.

Regarding the first ground of appeal, it was argued that it is a settled law that the court has to confine itself to the framed issues. That the chairman soon after framing the issues did not determine it. That the chairman did not made any reasoning on whether the preliminary objections are pure points of law or not, rather he jumped at page 8

of the ruling to hold that he agrees with respondent that the proper person to be sued is the administrator of the estates. He said that in his pleadings the appellant stated that suit land is not part of the estates of the late Gidion Danson mghamba and that the letter of the administrator was attached to form part of the application. That the said allegation is denied by respondent who maintains that the suit land is the one listed in the estates of the late Gidion Danson Mghamba. He said that in such a situation the party alleging has to prove by evidence and therefore it cannot be a point of law capable of being disposed on preliminary objection. Counsel observed that had the chairman proceeded to determine the issue he had framed he would arrive at the finding that the preliminary objections are not pure point of law. That the Chairman could have also found that the issue of non-joinder of the party raised as the first point of preliminary objection was nothing but a matter within discretion of the court and thus not pure point of law. Counsel relied further on Order 1 rule 9 of the Civil Procedure Code Cap 33 RE 2019 (**Cap 33**), that a suit shall not be defeated by reasons of misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it. He said that even if respondent was wrongly sued the suit would not be subjected to dismissal rather the court would remedy by ordering the name of the respondent improperly joined to be struck out and the proper part be added. He relied on Order 1 rule 10 (2) of the CPC and the case of **Tanzania Railway Corporation (TRC) vs GBP (T) LTD, Civil appeal No.218 of 2020.**

Submitting for the second ground, Advocate Bahati reiterated his submissions on the first ground. He added that it is respondent in person who has trespassed the suit land and not the administrator of the estate of deceased. That the administrator of the estate of the late Gidion Danson mghamba as clearly stated in para 6 (a) xi went further in writing a letter denying the suit property to be one of the estates he administers and the said letter has been annexed to the application. Therefore, the applicant could not join the administrator as he has no cause of action against him. That it is upon the respondent being an interested part in the estate of the deceased to have sued the administrator of the deceased and any other person claiming the suit property as clearly stated in the decision of the Primary Court. He said that KIWANJA CHA MBWENI listed as part of deceased's estate is different from the suit property. That as administrator also proved the same, therefore respondent would have a fit case against the administrator. He insisted that it is the respondent who trespassed the suit land and not the administrator. He prayed for the appeal to be allowed with costs.

In reply, Ms, Grace submitted that the suit land is the same premises which formed part of the estate of deceased husband and was subject to Probate and Administration cause in Kawe Primary Court hence the appellant ought to have sued administrator of the estate and not the beneficiary as correctly ruled by the Chairman. She said that appellant is lying to defeat the ends of justice as the suit property is the same to that of the deceased and it is a matrimonial home which respondent and her late husband lived during the

lifetime of the deceased. For the interest of justice counsel prayed for appeal to be dismissed with costs.

In rejoinder Advocate Bahati repeated his main submission and added that the suit land is different from the one listed in item 10 as KIWANJA CHA MBWENI, that the suit land is referred to as KIWANJA CHA BIASHARA MBWENI.

Having gone through submissions from both parties and the records from the case file, the main point for determination is whether this appeal has merit.

The records of the case are clear that the appellant being the administrator of the estate of the late Ibrahim Hassan Mghamba sued Monica Amani Msuya (respondent herein) for the alleged trespass over the suit land. Respondent herein is the wife of the late Gideon Damson Mghamba who is the brother to Ibrahim Hassan Mghamba. Therefore, this dispute over the suit land involves two related brothers (all now deceased), appellant being the legal representative of the former, suing the wife of the later. Respondent herein raised preliminary objection at the tribunal that she was wrong sued as she is not administratrix of her late husband (Gidion Damson mghamba) and that the suit land was subject to administration therefore the Tribunal had no jurisdiction to entertain the matter.

To establish the merit or otherwise of this appeal let us trace the origin of the suit land. It is Advocate Bahati's contention that the suit land does not form part of the estate of the late Gidion Damson

Mghamba and that it is a separate land which was not listed in the Shauri la Mirathi No.222/2014 where deceased wife was denied to administer the estate of his late husband and instead Omari Mghamba was appointed as administrator of the estate of the late Gidion Damson Mghamba. On his side, respondent herein maintained that the suit land forms part of the estate of the late Gidion Damson Mghamba. Therefore, there is an issue of whether or not the suit land forms part of the estate of the Late Gidion Mghamba. When I was perusing tribunals file, I came across sale agreement in which the appellant herein relied to claimed that the late Gidion Mghamba sold the suit land to the late Ibrahim Hassan Mghamba. This fact clearly verifies that the suit land is a contentious matter under the probate cause No.222/2014, since there is evidence that it is connected to the estate of the Late Gidion Mghamba's estate. On the other hand, the same does not bar the appellant from instituting a claim of ownership at the tribunal as he did. The issue however is against whom the suit was preferred. As stated above the suit land is contested by the parties, appellant claiming that it does not fall under the estates of the late Gideon Mghamba while respondent claims that it forms part of the estate of her deceased's husband. Who was the proper party to sue therefore? Obvious it is Omari Mghamba who was appointed to administer the estate of the deceased. Respondent herein was improper party as correctly stated by the tribunal. Respondent herein could have been joined as necessary party or rather be summoned as a witness. Respondent had no locus standi to be sued at the tribunal and therefore the matter was legally dismissed at the tribunal. Regarding the second ground of appeal, I have noted that Advocate Bahati reiterated much of the first ground of appeal which has been

accordingly attended. In the end result I find no reasons to fault with the Tribunal's decision. This appeal is therefore devoid of any merit and is hereby dismissed with costs.

It is so ordered.

**V.L. MAKANI
JUDGE
21/02/2022**