

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

Misc. LAND APPEAL No. 35 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at
Musoma in Land Appeal No. 159 of 2021 & originating from
Nyakatende Ward Tribunal in Land Dispute No. 18 of 2021)*

BUDIGO FIDELI **APPELLANT**

Versus

JOHN MALIMA **RESPONDENT**

JUDGMENT

15.03.2023 & 15.03.2023

Mtulya, J.:

Mr. John Malima (the respondent) had sued Mr. Budigo Fideli (the appellant) at **Nyakatende Ward Tribunal** (the ward tribunal) for the land belonged to his father **Mzee Petro Malima Matama** (the deceased) without attaching letters of administration of estates of his deceased father. When he was prompted for the letters at the Ward Tribunal, the respondent is recorded to have said that:

*Baba yangu alifariki mimi nikateuliwa na ukoo kuwa
msimamizi wa mirathi ya Baba. Baadaye nilipeleka
nakala ya barua hiyo ya ukoo katika Mahakama ya*

Mwanzo Bukwaya – Mukirira na wakanithibitisha kuwa msimamizi wa mirathi.

However, the respondent had declined to attach in his complaint or admit the letters of administration of the estates during the proceedings of the ward tribunal. The ward tribunal, after hearing both parties, finally had decided to disregard the letters of administration or instrument constituting the appointment of the respondent and moved forward to decide the dispute in favour of the respondent. The decision of the ward tribunal aggrieved the appellant hence approached the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) and filed **Land Appeal No. 159 of 2021** (the appeal). The district tribunal after hearing of the appeal upheld decision of the ward tribunal, and reasoned that:

Nami baada ya kulipitia jalada la kata nimeridhika kwamba mrufaniwa John Malima ndiye mwenye haki na eneo hilo kutokana na kulitumia muda mrefu. Hivyo, Baraza hili linakosa sababu ya msingi ya kutengua uamuzi wa Baraza la Kata.

However, the district tribunal remained silent on the status of the land in dispute and necessary standing of the respondent.

The record shows further that the respondent claimed to have been granted letters of administration to handle the estates of his deceased father on behalf of other five (5) family members, namely: **Nyanda Nyamauteri, Mandara Saghuno, Stephano Makungu, Gavana Saghuno** and **Buyoro Ejoiga**. However, the record is silent on the letters of administration or any instrument constituting the appointment. The decision and reasoning of the district tribunal had disappointed the appellant hence rushed and knocked the doors of this court complaining that the respondent had no *locus standi* in the disputed land, but was declared the rightful owner of the land.

I have perused the record of the present appeal and found that respondent had testified in the ward tribunal that the land belongs to his father and had letters of administration of the deceased father's estates. However, the record is silent on the alleged letters. When the parties were called before this court today afternoon to state on the reason of appeal, the respondent stated briefly that he has the letters of administration of estates, but he had forgotten the same at home and that all villagers know that the land belongs to the deceased **Mzee Petro Malima Matama**.

Replying the submission of the respondent, the appellant submitted that the land belongs to his father, the late **Mzee Fideli Maiengo**, but he had granted him a piece of land before his demise. On letters of administration, the appellant contended that the respondent has no any letters of administration as he said the same in the ward and district tribunals, but he failed to produce the letters.

The law regulating *locus standi* and letters of administration is well illustrated in the precedent of the Court of Appeal in the precedent of **Ramadhani Omary Mbuguni v. Ally Rashid & Another**, Civil Application No. 173/12 of 2021, at page 4, that:

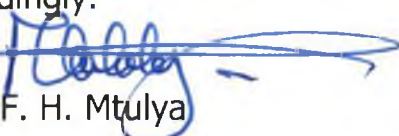
It is a settled law that a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of necessary standing.

In the present appeal it is vivid that the respondent approached and lodged the dispute at the **Nyakatende Ward Tribunal** without attaching the instrument constituting the

appointment. The proceedings of the ward tribunal and subsequent proceedings of the district tribunal are fatal for want necessary standing.

Having said so, I am moved by the powers enacted in section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] to set aside all proceedings and quash decisions of both tribunals below for want of *locus standi*. I do so without costs. Each party shall bear its costs. The reason is obvious that the wrong was initiated by the respondent, but blessed by the lower tribunals. Anyone who is still interested in the disputed land may wish to file fresh and proper land dispute in appropriate forum in accordance to the current laws regulating land disputes. Ordered accordingly.

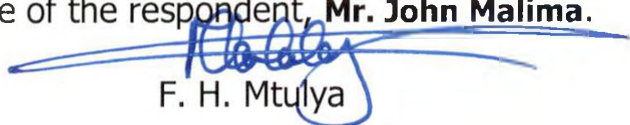



F. H. Mtulya

Judge

15.03.2023

This judgment was pronounced in Chambers under the Seal of this court in the presence of the appellant, **Mr. Budigo Fideli** and in the presence of the respondent, **Mr. John Malima.**


F. H. Mtulya

Judge

15.03.2023