

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT SUMBAWANGA**

**MISCELLANEOUS LAND APPEAL NO. 14 OF 2022**

*(Arising from the Decision of the District Land and Housing Tribunal of Rukwa at Sumbawanga in Land Appeal No. 2 of 2021 which originated from the decision of the Kalambanzite Ward Tribunal in Land Case No. 24 of 2020 from)*

**ESSI <sup>S</sup>/o CHAMBANENJE.....APPELLANT**

**VERSUS**

**DEUS <sup>S</sup>/o MWARWANDA.....RESPONDENT**

**JUDGEMENT**

*21<sup>st</sup> March, 2023 & 18<sup>th</sup> May, 2023*

**MRISHA, J.**

The parties in this appeal had a land dispute way back in 2018. Their dispute relates to a farm located at Kalambanzite ward within Sumbawanga District in which each of them claims to be belonging to his parent(s).

It appears that the appellant complained before the Mlombo Village Land Committee that the respondent had invaded his farm and that he

tried his level best to please him to vacate the said land but in vain, then after hearing both parties the said committee decided in favour of the applicant.

Aggrieved by such committee's decision the respondent filed a Land Case No. 24/2020 before the Kalambanzite Ward Tribunal (**the trial tribunal**) which after hearing evidence from both parties, reached its decision in favour of the respondent.

Discounted by such decision the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa at Sumbawanga (**the DLHT**) vide Civil Appeal No. 2 of 2021. Still aggrieved, the appellant has lodged his appeal before this court challenging the decision of the DLHT which upheld the decision of the trial tribunal.

His petition of appeal is comprised of five grounds which are: -

- 1. That the first Appellate Tribunal erred in law and fact by giving decision in favour of respondent while the respondent has no locus standi to sue on behalf of his late father;*
- 2. That the first Appellate Tribunal erred in law to determine the land dispute in favour of the Respondent while the matter itself is time barred,*

- 3. That the first Appellate Tribunal erred in deciding the dispute in favour of the Respondent for lack of cogent evidence in proving the ownership of the land,*
- 4. That the first appellate Tribunal erred in law to visit the locus in quo without recording the evidence adduced by parties in the land in dispute, and;*
- 5. That the first Appellate Tribunal erred in law and fact in failing to comply with the mandatory provision of the law and its composition.*

When this appeal was called on for hearing both parties appeared in person, unrepresented and it was the appellant who started to make his submission in chief regarding his grounds of appeal. He submitted that the truth is that the suit land was owned by his father since 1978 but the respondent came to state that the same belongs to his father.

The appellant went on to submit that the respondent sued him at the Village Land Tribunal at Mlombo but he emerged a winner, then the respondent appealed to the Ward Land Tribunal at Kalambanzite (the trial tribunal) where at this time he lost. Being dissatisfied by the decision of the said trial tribunal he decided to lodge his appeal before the DLHT which upheld the decision of the said Ward Tribunal.

Having said the above, the appellant prayed this court to adopt his grounds of appeal and consider all the errors committed by the DLHT and allow his appeal, quash the decisions of both the DLHT and the trial tribunal and declare him as the lawful owner of the suit land. He also implored this court to order the respondent to pay costs of this case.

His appeal was opposed by the respondent who submitted that he is not Deus Mwarwanda; his proper name is **Daudi Mwarwanda**. Submitting in reply to the appellant's grounds of appeal the respondent argued that he was appointed by his family to be the Executor of the estate of his father and he was certified by the court and approved to be the Administrator of his father's estate. He therefore, concluded that he has a locus stand to sue on behalf of his late father's estate.

In rejoinder, the appellant submitted that the respondent did not show any proof or evidence that he was appointed and approved by a court of law to be the Administrator of his late father's estate. According to him, the respondent was supposed to tender documentary evidence to prove his status before the trial tribunal but he failed to do so. The appellant finally submitted that in the above circumstances the respondent was not supposed to sue him because he was not an administrator of his late father.

Having passionately gone through the submissions by both parties in this appeal as well as the records of both the DLHT and the trial Tribunal in which this appeal finds its genesis, I think that this appeal can be disposed of by one issue which is whether the respondent had *locus standi* to institute the claim at the Ward Tribunal against the appellant.

It is from record that in both petitions, that is before the DLHT and before this court, one of the appellant's grounds of appeal was that the respondent has no locus stand to sue on behalf of his late father.

It is unfortunate that neither the trial tribunal nor the DLHT dealt with that issue. There is no doubt that prior to the year 2021 when the Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 was enacted, the ward tribunals had jurisdiction to enquire and determine disputes arising under the Land Act Cap. 113 and the Village Land Act Cap. 114. The District Land and Housing Tribunal still has such jurisdiction to date.

However, it is my considered view that the land jurisdiction conferred by statute upon such tribunals was limited to parties who had locus stand to sue and/or being sued in relation to a particular land dispute.

This is because locus stand is a jurisdictional issue; hence it is very important for a court of law or a tribunal to examine at the earliest stage

and satisfy itself if it has jurisdiction to entertain a dispute that is brought by a party before it in order to avoid grabbing jurisdiction of other courts.

The above position can be ascertained from the case of **God Bless Jonathan Lema Vs. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 CAT at Arusha (unreported) the Court of Appeal cited the Malawian Supreme Court decision in the case of **The Attorney General Vs. The Malawi Congress Party and another**, Civil Appeal No. 22 of 1996 in which it was stated that,

*"Locus stand is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."*

The above rule entails that if a party has no interest in the subject matter of the suit, then he or she cannot be allowed to bring an action in a court of law or tribunal against the other person and claim for a right or infringement thereof.

In the present appeal it seems that both the appellant and the respondent claims to have interest on a piece of land estimated to be 20

acres which is a subject matter of this appeal. Each of them seems to step in the shoes of his late father. That being the case and by virtue of the rule of locus standi as discussed above, it is my view that had the trial tribunal and the DLHT considered whether the respondent had locus stand to sue the appellant in respect of the suit land then they would have arrived at a different decision.

I say so because there is no dispute that none of the two parties claims to be the lawful owner of the said Suitland. What each of them claim is that the suit land belongs to his father. If that is the case then each of them ought to have petitioned for letters of administration, if their late fathers died intestate, or probate, if the two deceased persons died testate, in order to have locus stand on the subject matter.

The records of the said tribunals are silent as to whether the respondent and the appellant tendered such legal documents before the said tribunals to prove that they had locus stand to sue or be sued on behalf of their respective fathers' estates.

If that is not enough, it appears that despite claiming that he was appointed by the court to be the administrator of his late father, the respondent did not tender letters of administration before the trial tribunal which indicates that his assertion that he has been an

administrator of his late father since at the time the Land Case No. 24/2020 was instituted, is a total lie.

Upon being probed off record, the respondent alleged that after being proposed by his family on 14.08.2022 and proceeded to petition for and obtained letters of administration in the Primary Court of Sumbawanga at Sumbawanga which after hearing his petition vide Probate Cause No.76 of 2022 appointed him to be the administrator of his late father one **James Mwarwanda Sikulumba** on 15.11.2022, and thereby granted him with letters of administration.

From the respondent's submission it appears that he petitioned for letters of administration in the Primary Court of Sumbawanga at Sumbawanga sometime in the year 2022 and after hearing his petition the said Primary Court granted him with letters of administration on 15.11.2022 after appointing him as administrator of deceased estate, but the records of the trial tribunal as well as those of the DLHT clearly shows that when filing Land Case No. 24/2020 before the trial tribunal, the respondent (who, presumably, was the plaintiff in that case) stood in his individual capacity and not as the administrator of his late father.

This is because the said records are silent whether in filing the above case the respondent filed letters of administration of his late father;



could it be so then even the records of the two tribunals could describe him as the administrator of his late father and not as they currently reveal.

Moreso, even the date in which the respondent seems to have been granted with letters of administration vary with the one in which he instituted the Land Case No. 24/2020 which, as per the records of said tribunal is 02.10.2020. That indicates that at the time of filing that case the respondent was not an administrator of his late father and therefore he had no locus standi to sue the appellant.

It seems to me, and I believe so, that the respondent decided to file Probate Cause No.76 of 2022 after realising that he was wrong to proceed against the appellant without having a locus standi to do so. That in my view cannot help him; he has to go back to the roots as per the rule of locus standi in order to properly move the courts of law. That means, his journey of protecting his interests in the estate of his late father ought to have started from the date he was granted letters of administration by the Primary Court of Sumbawanga at Sumbawanga and not from the date the impugned decision of the tribal tribunal was handed down because at that time he was not an administrator of his late father.

It is a trite law that only a person granted with probate or letters of administration by a probate and administration court can sue or be sued on behalf of the deceased's estate or act as a representative of the deceased person in a court of law.

The above position can be gleaned from the provisions of section 71 of the Probate and Administration of Estates Act [CAP 352 R.E. 2019] which provides that,

*"After any grant of probate or letters of administration; no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased..."*

Likewise, under regulation 6 of the 5<sup>th</sup> Schedule to the Magistrates' Courts Act [CAP 11 R.E. 2019] which is applicable in Primary Courts, it is provided that, *"An administrator may bring and defend proceedings on behalf of the estate."*

As I have said earlier, the respondent filed the Land case No. 24 of 2020 at the trial tribunal without having letters of administration which tells that he had no locus standi to sue the appellant and the said tribunal had no jurisdiction to inquire and determine the land dispute between the two parties at that time.

Also, the law in this country is well settled that when two persons are disputing on the ownership of a piece of land which is belonged to the deceased person, then the court with jurisdiction to inquire and determine such dispute is the probate court.

That position of law was stated in the case of **Mgeni Seif vs Mohamed Yahaya Khalfan**, Civil Application No. 1 of 2009, CAT at Dar es Salaam whereby the Court of Appeal held that,

*"...where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership."*

In providing the rationale behind the above position of the law, at page 8 of its judgment, the Court of Appeal had the following to say,

*"It seems to us that there are competing claims between the applicant and the respondent over the deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person's estate passed on to a beneficiary or a bona-fide purchaser of the estate for value."*

I find the above case intertwined with the case at hand hence I will be guided by the principle of law enshrined therein. Moreover, the above position of the law was applied in the recent case of **Hilal Z. Maftah and 3 Others vs. Ibrahim Zakaria Maftah and 3 Others**, Land Case No. 221 of 2021 HCT at Dar es Salaam where it was held that,

*"...the probate court is placed at the better position to address the matter before resorting to the jurisdiction of this court."*

What can be learnt from the above courts of record decisions is that when there is dispute between two or more persons over the estate of the deceased, the proper forum to deal with such dispute is the probate and administration court and not the land court. So, one has to seek remedy in the probate and administration court before resorting to the land court.

In the instant case, it appears to me that the respondent had no locus stand to sue the appellant before the trial Ward Tribunal as well as the DLHT which is the District Land and Housing Tribunal for Rukwa at Sumbawanga, the reason being due to lack of locus standi as this court has endeavoured to clarify above. In the circumstances, it is my settled opinion that the respondent had no locus standi to sue the appellant and if I have to add, I may say that in the absence of a *locus standi* on the

part of the respondent, neither the trial tribunal nor the DLHT had jurisdiction to entertain such suit.

Before I pen off, I wish to say something about one of the appellant's prayers that he be declared by this court to be the lawful owner of the suit land. I am afraid I cannot grant such prayer; the reason is obvious that since the appellant just like the respondent, lacks the *locus stand* to bring an action on behalf of his father, then the rule of *locus stand* applies mutatis mutandis to him as well.

It follows, therefore that the first ground of appeal raised by the appellant has merit and the same is allowed. So far as that ground of appeal suffices to dispose of this appeal, I see no need of dealing with the rest grounds of appeal.

As for the way forward, I allow the instant appeal, quash and set aside the respective judgments of the two tribunals below. Since both parties claim to have interest on the suit land, then each of them can file a suit to claim ownership of the same after duly obtaining probate or letters of administration from the proper forum, if still wishes to do so.

Considering the fact that the tribunals below omitted to deal with the issue of *locus standi* which omission, in my view led the said dispute to

be prolonged unnecessary instead of being determined expeditiously, I  
make no order as to costs.

Order accordingly.

  
**A.A. MRISHA**  
**JUDGE**  
**18.05.2023**

**Dated at Simbawanga this 18<sup>th</sup> Day of 2023**



  
**A.A. MRISHA**  
**JUDGE**  
**18.05.2023**

Right of Appeal is fully explained.

Date - 18/05/2023

Coram - Hon. L. Ndelwa, Ag. DR

Appellant - Present

Respondent - Absent


B/C - Zuhura

**Appellant:** I am ready for judgment.

**Respondent:** I am prepared too.

**Court:** Judgment is delivered in the presence of both parties.



  
**L. Ndelwa**  
**Ag. Deputy Registrar**  
**18/05/2023**

Right of appeal is full explained.