

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

LAND CASE NO. 11 OF 2023

**ISACK LUNYILIKO MHAVILE (Being the Administrator
of the Estate of the Late Simon Lunyiliko Mhavile).....PLAINTIFF
*VERSUS***

**FATUMA MWINYI.....1ST DEFENDANT
ANJELINA SIMON MHAVILE.....2ND DEFENDANT
SALOME NKONDOLA a.k.a. SALOME SIMON MHAVILE.....3RD DEFENDANT
THE COMMISSIONER FOR LANDS.....4TH DEFENDANT
THE REGISTRAR OF TITLES.....5TH DEFENDANT
THE ATTORNEY GENERAL.....6TH DEFENDANT**

RULING

10th to 16th August, 2023

E.B. LUVANDA, J

The First, Fourth, Fifth and Sixth Defendants named above raised objections embedded into their respective written statement of defence, thus: One, this Court is not vested with the jurisdiction to entertain this suit contrary to section 102(1)(a)(b)(i)(ii) and (3) of the Land Registration Act, Cap 334 R.E. 2019 (raised by the First, Fourth, Fifth and Sixth Defendant); Two, the Plaintiff has no locus standi to institute this suit against the Defendants, contrary to section 71 of the Probate and Administration Act, Cap 352 R.E. 2002.

Mr. Stephen Masha learned Counsel for the Defendant filed a joint submission on behalf of his colleague being premised on the same provisions, submitted that this suit is hinged on paragraphs ten, eleven, twelve, fourteen and fifteen of the plaint, where the Plaintiff claims to be aggrieved by the refusal of the Registrar of Titles to register him as registered owner by way of operation of law. He contended that this Court is not vested with jurisdiction as per section 102(1)(a)(b)(i)(ii) and (3) Cap 334 (supra). He submitted that the Plaintiff having been aggrieved by the decision of the Registrar of Titles on the rectification of title, should have lodged appeal to the High Court instead of filing this instant suit. He cited the case of **Massay Qamunga vs Samwel Surumbu Massay & Another**, Land Case No 33 of 2022 HC, to cement his proposition that the suit offending the above provision is incompetent and should be struck out.

For the objection number two, the learned Counsel submitted that where there are two administrators appointed to the estate of a deceased person, they may be required to act jointly in legal matters concerning the estate. He submitted that in this case at paragraph nine and eleven of the plaint, the plaintiff was appointed as co-administrator of the estate of the late Simon Lunyiliko Mhavile to administer the estate along with Angelina Mhavile, as

per annexure ILM 3 and 4. He submitted that the administrators must act jointly in any legal action taken on behalf of the estate. He submitted that the Plaintiff being single administrator does not have the power to sue alone as the law requires unified representation to protect the interest of the deceased and the estate. He cited the case of **Lujuna Shubi Ballonzi, Senior vs Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 (HC); **Omary Yusuph (Legal Representative of the Late Yusuph Haji) vs Albert Munuo**, Civil Appeal No. 12 of 2018, CAT at Dar es Salaam, on that for a person to institute a suit he/she must have locus standi. He submitted that the powers and duties of administrators are joint and several, meaning that they must act together in their role, to ensure consensus and promoting fairness and accountability in the administration of the estate.

In reply, Mr. Steven Kosi Madulu learned Advocate, arguing for the objection number one, the learned Counsel submitted that the Plaintiff was appointed by the High Court to be administrator of the estate of the late Simon Lunyiliko Mhavile, and is vested with the duty of collecting the properties of the deceased and distributing to heirs. He submitted that the Plaintiff fulfilled all requirements of the said application before he received an order for refusal from the Registrar of Titles dated 31/1/2022 for reasons that the application

has been overtaken by event, the property was transferred to Fatuma Mwinyi since 9/1/2014, arguing the Registrar of Title did not mention the transferor of the said property. He submitted that transfer was done at the time when proceedings for revocation of letters of administration to the Second and Third Defendants (transferor) was pending (filed in November 2010 and ruling for revoking delivered on 5/8/2014). He submitted that after revocation, the Plaintiff had no option other than to file the suit as an administrator against the Defendants who have impeded his obligation of collecting and distributing the estate in respect of Plot No. 1008 with title number 24930 locate at Msasani Peninsular. He submitted that after refusal by Registrar of Titles the Plaintiff decided to sue and prosecute as legal representative rather than to opt to appeal to the High Court against the decision of the Registrar of Titles.

For objection number two, he submitted that Angelina Lunyiliko Mhavile (Second Defendant) was appointed suo motu by the High Court, who ruled that revocation does not extend to her. He submitted that the Second Defendant fled to Russia immediately after the transaction of sale of the deceased landed property above mentioned, to the First defendant in collusion with the Third Defendant. He submitted that the decision of the

Registrar of Titles was back dated to read 9/1/2014 so as to defeat the court's revocation. He submitted that it was difficult for the Second Defendant to be joined because she fled to Russia to her biological mother, also she is accused of being involved in an illegal transaction of sale of the disputed property. He submitted that the Plaintiff was properly and legally appointed to be the administrator of the estate of the deceased and therefore has locus standi to sue or prosecute any suit or otherwise as a legal personal representative of the deceased.

Principally the Plaintiff's Counsel do not dispel a fact that there is a decision of the Registrar of Titles refusing the application by the Plaintiff to be registered as legal personal representative of the deceased by operation of law, on account that the Plaintiff's application has been overtaken by event, the property was transferred to Fatuma Mwinyi since 9/01/2014. At paragraph twelve of the plaint, it was pleaded thus,

'That the 5th Defendant is the Registrar of Titles in the Ministry of Lands, Housing and Human Settlement Development who has a public duty to register or de-register titled/documents.

However the said defendant unlawfully refused to discharge his/her public duties to record changes by operation of the

law and de-register the 1st Defendant respectively as per annexures "ILM-1 and 2" mentioned in paragraph 8 hereinabove of this plaint'

In view of the above, the Plaintiff embarked to challenge the decision of the Registrar of Titles by way of suing in original suit. The argument by the learned Counsel that the Plaintiff decided to sue against the decision of the Registrar of Titles rather than to appeal against it, by virtue of being a legal personal representative, is untenable.

According to section 102(1) of Cap 334 (supra), provide, I quote,

'Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act'

Therefore, whoever intend to challenge the decision, order, or act of the Registrar of Titles performed in the register, the only recourse available in law, is to appeal against that decision. The law Cap 334 (supra) does not provide any other remedy other than to appeal against the decision of the Registrar of Titles. In other words, a plea by the Counsel for Plaintiff that it pleased the plaintiff to sue and not to appeal, is a misplaced idea and misconception, because the law Cap 334 does not provide for an option to

sue against the decision of the Registrar of titles refusing to register or de-register.

For the second objection. It is common ground that the Plaintiff and Angelina Mhavile (Second Defendant) are co-administrators appointed to administer the estate of the late Simon Lunyiliko Mhavile. In this suit, the Plaintiff is suing solo. The Counsel for Plaintiff argued that it was difficult for the Second Defendant to be joined because she fled to Russia to her biological mother, also she is accused of being involved in collusion and illegal transaction of sale of the disputed property. However, these reasons cannot justify the Plaintiff to administer the estate alone. The above complain of fleeing to Russia, collusion and illegal acts of disposing the deceased estate ought to be lodged before the Probate Court for appropriate redress. This is because this Court is mandated to act in accordance with the provisions of section 71, Cap 352, with marginal note grantee alone to act as representative, which provide 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, until

such probate or letters of administration shall have been revoked or annulled'

For the purpose of this suit, the grantees are Isack Lunyiliko Mhavile (Plaintiff) and Angelina Mhavile (Second Defendant), who ought to sue jointly on behalf of the deceased or in furtherance of administering the estate of the deceased. The argument of the Counsel that Angelina Mhavile was appointed by the court suo motu, is legally unsound. Contextually, the rationale of appointing co-administrators, as pointed out by the Defence Counsel that powers and duties of administrators are joint and several, meaning that they must act together in their role, to ensure consensus and promoting fairness and accountability in the administration of the estate. According to section 33(2) of Cap 352, provide for circumstances where the court may exercise its discretion to appoint more than one person to administer the estate of the deceased, that

'Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests'

Therefore, for the administrators to be properly constituted and valid, for purpose of this suit, both two administrators must jointly act or sue. That said, a suit by the Plaintiff alone in absence of his co-administrator is defeated for he is said to have no locus standi to sue the Defendants.

The two objections are sustained.

The suit is struck out with costs.



E.B. LUVANDA
JUDGE
16/08/2023

Ruling delivered in the presence of Mr. S.K. Madulu learned Advocate for the Plaintiff, Mr. Stephen Masha learned Advocate for the First Defendant also holding brief for M. Msemwa for the Second Defendant and Mr. Urso Luoga learned State Attorney for the Fourt, Fifth and Sixth Defendants



E.B. LUVANDA
JUDGE
16/08/2023