

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

MISC.LAND APPLICATION NO.523 OF 2023

BWATTA MSAFIRI.....APPLICANT

VERSUS

FATMA JUMAA GOBA.....1ST RESPONDENT

FARID JUMAA.....2ND RESPONDENT

RAHMA JOHN.....3ND RESPONDENT

ALLY MALIMA.....4TH RESPONDENT

RULING

Date of Last Order: 05/02/2024

Date of Ruling: 04/03/2024

MWAIPOPO, J

The Applicant herein filed an Application for extension of time to file a Reference on a Bill of Costs No. 337 /2022 before this Honorable Court. He also prayed for costs and any other reliefs this Court would deem fit to grant.

Upon being served with a Copy of the Chamber Application the Respondents herein filed a preliminary objection on point of law to the effect that:-

That the Applicant has no locus standi to bring this

Application in his own capacity.

Hearing of the preliminary objection proceeded by way of Written Submissions pursuant to the timetable ordered by the Court. Kudos to all the parties to the case for complying with the timetable.

At the commencement of the hearing, the Applicant was represented by learned Advocate Frank Mposso and the Respondents enjoyed the services of learned Advocate Doroth Mkwizu.

Arguing in support of their preliminary objection, the learned counsel for the Respondents began by submitting that the Applicant herein filed an application before the Court for extension of time to file a Reference on a Bill of Costs no. 331 of 2021 which originated from the decision of Ilala District Land and Housing Tribunal(DLHT). Based on the above facts, the Applicant has no locus standi to bring the Application in his own capacity.

The learned counsel submitted that it is a trite principle of law that a person cannot maintain a suit or action unless he has an interest in the subject matter and the right to bring the action. She cited the case of **Lujuna Shubi Balonzi vs. Registrar of Chama cha Chama cha Mapinduzi (1996) TLR 203**, to support the position

on the principle of locus standi drive. The case states that:

Locus standi is a principle governed by common law whereby in order to maintain proceedings successfully, plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court".

The counsel for the Respondents also cited the case of **Registered Trustees of SOS Children's Tanzania vs. Igenge Charles and 9 others Civil Application No. 426 of 2018** which states that;

"Locus standi is a principle which 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".

Furthermore, she cited the case of **Khan Said Alfabry vs. Nevumba Salum Mhando Miscellaneous Land Application No. 81 of 2021, HCT Land Division at Dar es Salaam** (unreported) to drive point home that Locus Standi is a matter of law, therefore, even if the same could have not been raised by the party, the

Tribunal could have still raised it.

The Learned Counsel further submitted that, from the above quoted decisions, it can be argued that for a person to have locus standi to sue, he or she has to show that his or her right has been directly affected by the act he/she is complaining about. She contended that in the present Application, the Applicant lacks *locus standi* to bring this Application in his own capacity, since in his Affidavit, he stated that he was the Applicant, in Land Application No. 337 of 2021 which was before Hon. Kirumbi, Chairman while in fact Land Application No. 337 of 2021 was instituted by Bwatta Msafiri Ruwa as the Administrator of estate of the Late Ibrahim Ruwa and not by himself as seen in this Application. The Applicant ought to have brought the Application as a personal and legal representative of the Late Ibrahim Ruwa and not in his own name and capacity as seen in the Application. She cited the case of **Jenga Said and 258 others vs. Blanket Manufacturer and 2 others Civil Application No. 668 /01/2021** where the Court of Appeal of Tanzania found that the Applicant's Application before the Court was incompetent as the parties in the proceedings did not appear exactly as they did in the

previous proceedings. Therefore, the Respondents find it incumbent on this Court to draw the attention of the parties on the issue of locus standi before proceeding to determine the Application. The learned counsel finally prayed for the Application to be dismissed with costs.

In responding to the submissions, the Learned Counsel for the Applicant was very brief in conceding to the Preliminary Objections raised by the Respondents. The Learned Counsel admitted that the Applicant filed the Application in his own capacity as it is seen on the front page of the document and he thus conceded to the Preliminary Objection raised. He further argued that failure to show that the Applicant is the Administrator of the Estate was not intentional rather it was due to the fact that the documents for the administrator of the estate who was appointed by the Kariakoo Primary Court, were in possession of another person and not the Applicant by at the time of filing the case. That is way after receiving the documents the Applicant pleaded the fact in para 2 of their Counter affidavit. Thus he prayed for the Court not to grant costs against the Applicant as prayed by the Respondents considering the fact that the Applicant is

an old man and that they have also not objected to the preliminary objection raised by the Applicant so as to save Court's precious time so that the applicant can be given a chance to amend their Application and proceed with the substantial Application before it. The learned counsel argued further that the defect of not suing as an Administrator of the Estate of the late Mohamed Msafiri Ruwa is a human error. He prayed for the Applicant not to be given costs since he is a low-income earner.

Having gone through the submissions of the parties, I have noted and observed that indeed, the current Applicant, Bwatta, Msafiri Ruwa filed Application No. 337 of 2021 before the District Land and Housing Tribunal for Kivukoni (Ilala) claiming for various costs such as those related to litigation, representation, Tribunal attendance, documentation and communication. In the said case, the Applicant sued as an Administrator of the Estate of the late Ibrahim Ruwa.

In the instant Chamber Application, which is contesting the decision of Ilala District Land and Housing Tribunal in Taxation Cause No. 337 of 2021, decided on 8th June, 2023 before Hon. A.R. Kirumbi, Chairman, the Applicant has just filed an Application as "Bwatta

Msafiri Ruwa". I have observed that there is an omission of the words "As an Administrator of the Estate of the late Ibrahim Ruwa. It is a matter of procedure and law that, once a person who has capacity to sue/ be sued on his own behalf dies, then the legal representative or administrator of the estate must be appointed to sue or be sued on his own behalf whenever there is a need to do so. See the case of **Lutaha Shilangonga vs Maulid Hassan Hango land case Appeal no 1/2023 Tabora and Lujuna shubi balonzi (supra).**

Following the Preliminary Objection raised by the Respondents that; the Applicant has no locus standi to sue as Bwata Msafiri Ruwa in this matter, the Applicant, has conceded to the objection and or defect raised by the Respondents and admitted that lack of relevant documents for administration of estate made him to file the Application the way it is, therefore the act was not intentional, it was a human error. Further he prayed for the costs not to be granted to the Applicant, him being an old man and a low-income earner and apart from that they have saved Court's precious time. They thus prayed to be given a chance to amend the application, while the Respondents have prayed for the dismissal of the same with costs.

With regard to the issue of amendment of the Application, It is trite law that once the Preliminary Objection has been raised, the matter cannot be amended or withdrawn to cure the defect. The Court has to first dispose the Preliminary Objection. See the case of **Jenga Said and 258 others.**

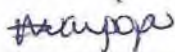
Therefore, based on the submissions of the Applicant on the preliminary objections, and those of the Respondents which have conceded to the Preliminary Objection, I am of the firm position that the Applicant ought to have filed this Application as an Administrator of the Estate of the late Ibrahim Ruwa as done in the previous case. I share the position expressed by the Respondents above that **in order to maintain proceedings successfully, Applicant must show not only that the Court has power to determine the issue but also that he is entitled to bring the matter before the Court".**

See the case of **Registered Trustees of SOS Children's Tanzania(supra), Lujuna Shubi Balonzi(Supra) and Jenga Said(supra)**

In the upshot I proceed to strike out the Application. I give no order

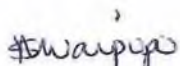
as to costs as the Applicant has indeed saved Court's time by conceding to the Preliminary Objection.

It is so ordered.


S.D. MWAIPOPO
JUDGE
04/03/2024



Ruling delivered this 4th day of March, 2024 in the presence of Frank Mposso, the learned counsel for the Applicant and Ms. Dorothy Mkwizu, Learned Counsel for the Respondents, is hereby certified as a true copy of the original.


S.D. MWAIPOPO
JUDGE
04/03/2024

