IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 381 OF 2023

(Originating from Application No. 149/2015, Kibaha

District Land and Housing Tribunal)

CHARLES P. ZOKA A.K.A. OMARY RASHIDI.....APPELLANT

Versus

DR. FLORIAN MATHIAS KESSY.....RESPONDENT

JUDGMENT

29/11/2023 to 16/02/2024

E.B. LUVANDA, J

Charles P. Zoka @ Omary Rashid the Appellant herein and who was a Respondent at the Tribunal, is unhappy with a verdict of the Tribunal which struck out the suit or application of the Respondent herein who was the Applicant at the Tribunal for reason that the Appellant was wrongly sued under his personal capacity and therefore the Appellant has no locus standi.

In the petition of appeal, the Appellant grounded that: One, the Tribunal erred in law for raising issue of locus standi suo moto without parties to the dispute to be heard on said issue; Two, the Tribunal erred in law for deciding

that the Respondent was sued in personal capacity and not as administrator of the estate of the late Ramadhani Mchete; Three, the Tribunal erred in law for failure to compose judgment.

Mr. Godfrey Adilila Samwei learned Counsel for Appellant, abandoned ground number three. Arguing for ground number one, the learned Counsel submitted that at page six of the judgment of the Tribunal, the trial Chairperson raised the issue of locus standi and proceeded to state that in this case he (Appellant herein) alleges and proved to be administrator of the late Ramadhani Mchete. He submitted that the issue of locus standi was neither raised by any party to the case but it was raised suo moto by the trial Chairperson and non of the parties were invited to address the issue of locus standi, arguing failure to invite parties to address it, violated the fundamental right to be heard which is guaranteed under Article 13(6) of (sic, the Constitution) of United Republic of Tanzania of 1977. He cited the case of **Margwe Erro & Two Others, VS. Moshi Bahalulu,** Civil Application No. 11 of 2014 CAT at Arusha, for a proposition that the consequences for denial of a right to be heard vitiated the proceedings.

For ground number two, the learned Counsel submitted that at page six of the Trial Tribunal, the trial Chairman ruled that it was wrong for the

Respondent who was the Applicant at the Tribunal, to sue the Appellant (Respondent at the Tribunal) in her (sic, his) personal capacity. The learned Counsel argued that the Appellant was sued as administrator of the estate of Ramadhani Mchete, as also testified by the Respondent in his defence and tendered letters of administration. He submitted that even in the written statement of defence filed by the Appellant, it was clearly stated that he was the administrator of the late Ramadhani Mchete. He submitted that it was wrong for the trial court (sic, Tribunal) to hold that the Appellant was wrongly sued in his personal capacity.

In reply, Mr. Rajabu Mrindoko learned Counsel for Respondent submitted that the issue as to whether the Appellant was wrongly sued in her (sic, his) personal capacity was not raised suo motto by the trial Chairman, rather was born from pleadings of the Appellant and his evidence on record and thus the matter was left to the Tribunal for decision though it was not among issues which were specifically framed by the Tribunal for determination. He cited **Well Worth Hotels & Lodge Limited and Another vs. Enterprises Tanzania Limited,** Civil Appeal No. 73/2020. He submitted that since the issue that the Appellant is the administrator of the estate of his grandfather the late Ramadhani Saidi Mchete was brought in the record through pleadings and evidence, argued that parties were given the right to

be heard and the Tribunal was entitled to decide on that issue. He distinguished **Magwe Erro** (supra), on that is not applicable in the circumstances of this matter.

Ground number two, the learned Counsel submitted that the trial Chairman was correct in holding that the Appellant was wrongly sued in his personal capacity instead of being sued as administrator of the estate of the late grand father. He submitted that the Respondent initiated a case against the Appellant in his personal capacity claiming to be the lawful owner of the parcel of land which he alleged to have bought from the late Ramadhani Saidi Mchete and he is the administrator of the estate of the deceased. He submitted that the Applicant (Respondent herein) ought to have indicated in the heading of application that he is suing the Appellant as an administrator of the estate of the late Ramadhani Mchete, arguing the Appellant is wrongly sued hence lacks locus standi. He submitted that the irregularity vitiate the trial proceedings rendering the trial nullity. He submitted that the Tribunal was correct to have acted promptly by strucking out the suit. He cited **Maletha Gabo vs. Adam Mtemvu** Civil Appeal No. 485/2022. He submitted that soon after passing of the impugne decision, the Respondent filed law suit against the Appellant in his capacity as administrator of the

estate of the late Ramadhani Said Mchete, Land Case No. 318/2023 being the appropriate cause in the circumstances of this matter.

On my part, ground number is meritorious. The question of the Appellant's locus standi crop up in the judgment and was raised *proprio motu* by the learned Chairperson. To my view, if the trial Tribunal formed an opinion that the question of locus standi was vital to be adjudicated upon, ought to had postponed or halted crafting or composing the judgment and summons parties for an invitation to address the Tribunal, thereafter revamp into composing judgment by taking into board the arguments or opinion of litigants to the question raised or taken by or at the Tribunal own accord. To my opinion raising an issue of locus standi at the time of crafting a judgment, adjudicating on it and making a final verdict on it, it curtailed the fundamental right of being heard fairly. The argument of the learned Counsel for Appellant that the learned Chairman did not occasion injustice to the parties for reason that parties were given the right to be heard on the account that the issue was brought in through pleadings (written statement of defence WSD by the Appellant) and evidence of a letter of administration exhibit D1 tendered by the Appellant, is totally misplaced and misleading. It is true that in the WSD by the Appellant who alleged to be the grand child of the late Ramadhani Said Mchete, claimed the suit land to be a matrimonial

land and alleged the wife of the deceased one Zainabu Said Mchete did not consent to the disposition of the same. The Appellant annexed a letter of administration on his written statement of defence annexure CPZ1, vindicating that he is a grantee and an administrator of the estate of the late Ramadhani Said Mchete. The letters of administration were tendered and admitted as exhibit D1. However, the Appellant did not raise any counter claim claiming for ownership under the capacity of the administrator of estate of the late Ramadhani Said Mchete. To my respective view, had had the Appellant pleaded or embedded a counter claim into his WSD he could invariably make impleadment to the effects that he is suing as an administrator of the estate of the late Ramadhani Said Mchete, and state his cause of action if any against the Respondent.

It is a wrong notion and misconception to say the Respondent was under obligation to implead the Appellant as an administrator of the estate of the late Ramadhani Said Muhete. That was a cause to be taken by the Appellant himself had it been raised any counter claim against the Respondent.

My undertaking above are grounded on a fact that the Appellant was sued by the Respondent as a trespasser to the land alleged to have been purchased by the Respondent from Ramadhani Said Mcheta way back when

the late Ramadhani Said Mcheta was still alive, on 26/11/2003. In the reliefs, the Respondent craved for an order of the Tribunal to declare the Respondent as a trespasser. I wonder if in the circumstances where the Plaintiff is suing the Defendant for trespass, if at all he is under obligation to implead the allege trespasser under a capacity of an administrator, indeed purporting to administering the estate of someone who is alleged to have disposed and passed his title to the Plaintiff. On the same footing, it is a fallacy idea on the part of the Appellant's Counsel to say the Appellant was sued as an administrator by merely pleading to be an administrator or tendering into evidence letters of administration. As I have said above, the course ought to be taken by way of filing a counter claim. The case of **Grande Regency Hotel** (supra) is in applicable to the circumstances of this case, because therein, the Applicant was seeking revision in respect of the decision of this Court, which nullified proceedings and decisions of lower courts, for which the Applicant alleged to have been denied the right to be heard by this Court, in so far it nullified proceeding, decision of probate courts for which his right of ownership was predicated for, as she purchased the suit property on auction conducted under the auspicious of the probate court. It is where the apex Court made an obiter dictum that revising the decision of this Court will save nothing, in that it will not guarantee the

Applicant's right to be heard, instead advised the Applicant therein to file a fresh suit for his right to be effectively and completely adjudicated upon.

Herein, the Respondent sued the Appellant for a claim of trespass, the Appellant did not make a counter claim, merely pleaded to be the administrator, parties adduced and tendered the respective evidence meaning that both parties were effectively and completely heard on the merit of the dispute. Only that the learned Chairman come up with his own issue not subject for adjudication and neither raised or argued by any party, nor invited litigants to address on it.

To my view a proper course to be taken here, is to nullify and quash the judgment, for which I do, and direct the Tribunal to compose a fresh judgment based on the facts pleaded in the pleadings, evidence adduced and tendered by the parties, and deliver a judgment to parties within sixty days counting from a date of dispatch of this judgment and records of the Tribunal.

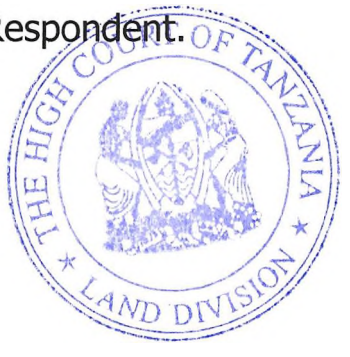
Regarding Land Case No. 318/2023, I cannot comment on it, my adumbration above speak louder and said it all. But on the face of, it borders forum shopping which courts abhor.

Suffices to say, my adumbration above have take into board both grounds of appeal.

The appeal is allowed. No order for costs.

E. B. LUVANDA
JUDGE
16/02/2024

Judgment delivered in the presence of Mr. Michael Kayombo learned Counsel for Appellant and Mr. Living Raphael Kimaro learned Counsel for Respondent.



E.B. LUVANDA
JUDGE
16/02/2024