

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LAND DIVISION AT DAR ES SALAAM MISC. LAND APPLICATION NO. 16951 OF 2024 CASE
REFERENCE NO. 202407161000016951 CHANDRAKANT VRAJLAL
KANABAR..... APPLICANT VERSUS RUPESH CHANDRAKANT
KANABAR..... Ist RESPONDENT REGISTRAR OF
TITLES.....2nd REPONDENT ATTORNEY
GENERAL..... 3rd RESPONDENT

RULING

16/12/2024 & 29/01/2025 GWAE, J In this application, the applicant, Chandrakant Vrajlal Kanabar and the first respondent, Rupesh Chandrakant Kanabar are biological father and son respectively. The applicant got married to one Rita Chandrakant Kanabar in 1954 who passed away on 22nd June 2014. After demise of the late Rita the first respondent is said to have applied and obtained letters of administration issued by Kariakoo Primary Court on 1st August 2014. i Before this Court is an application brought under section 78 (4) of the Land Registration Act Cap 334, R. E, 2019 ("LRA") and , Order XLIII Rule 2 and section 95 of the Civil Procedure Code, Cap 33, R. E, 2019 (CPC). He is essentially praying for removal of caveat filed and registered by the first respondent herein (the applicant's son) and the second respondent (RT). The registered caveat is in respect of the landed property described as Plot No. 701 B-Upanga area, Ilala-Dar es salaam with Certificate of Title (CT) No. 186173/35. The first respondent contested this application unlike the second and third respondent who have not resisted it. Through his counter affidavit, the first respondent has not only contested the merit of the application but also challenged the competency of the same before the Court. He therefore filed a notice of preliminary objection (PO) consists of two points of law, to wit;

1. That, this court lacks jurisdiction
2. That, the first respondent has no locus standi to be sued on his own name At the hearing of the first respondent's PO, Mr. Dimesh Mawji and Ms. Dora Mallaba, both the learned advocates appeared before me representing 2 the applicant and first respondent respectively whereas the second and third respondents did not enter appearance. Arguing for the preliminary objection, Ms. Dora stated that, this court lacks jurisdiction in the ground that, the sought removal of the caveat so registered on the property jointly acquired by the

applicant and his late wife one Rita Chandrakant Kanabar. She argued that, this court lacks the requisite jurisdiction since the matters between the parties are regularized by the Indian Succession Act. Hence, the matter at hand is pertaining to Probate and Administration of the estate of the late Rita to her three heirs. In her endeavors to convince the court, she invited the Court to refer to the cases of Tumainiel Tumsifu vs. Agness Tumsifu, Probate and Administration Cause No. 83 of 2020 and Mgeni vs. Mohamed Yahaya, Civil Application No. 1 of 2009 (Letisia Mtani vs. Adventina Masonyi, Civil Appeal No. 521 of 2021 (unreported-CAT)). Having submitted as herein, Ms. Dora prayed this case be dismissed for want of jurisdiction. As to the second limb of objection, the learned advocate for the first respondent submitted that, her client ought not to have been sued in her personal capacity since he lodged the caveat in question in the capacity of an administrator of the estate of his late mother (deceased). She went on 3 arguing that, the applicant must have been aware of the appointment of the first respondent as an administrator through caveat. Strengthening her submission, Ms. Bora urged this court to be guided by the decision of the Court of Appeal in Peter Mpalanzi vs. Christina Mbaruka, Civil Appeal No. 153 of 2019 (unreported -CAT) Reacting to the oral submissions advanced by Ms. Bora and praying for an order of the court overruling the PO on both points of law so raised, Mawji argued that, the first limb of objection by stating that this court is seized with jurisdiction since the matter at issue is removal of registered caveat and not administration of estate. He thus questioned the relevance of the case of Tumsifu Mgeni and Leticia (supra) since the former cases were pertaining to administration of the deceased persons' estate whereas the present one is on removal of caveat. He went on to cite section 78 (4) of the Land Registration Act, Cap 114, Revised Edition, 2019 whereby the first respondent as the caveator may be summoned by the Court in order to show cause as to why such caveat should not be removed from the office of RT. Regarding the second point of law, it was the submission of Mr. Mawji that, the first respondent has capacity to be sued in his personal capacity as 4 the applicant/plaintiff is entitled to sue any person whom he thinks fit to be sued. In this regard, Mr. Mawji fortified his submission in the decision of this court in the case of Joseph vs. Mapunda Silengi, Land Appeal No. 9531 of 2024 (unreported). Similarly, it is the submission of Mr. Mawji that, the first respondent has failed to prove if he is an administrator of the estate of his late mother. Further, the learned counsel argued that failure or omission to state that, the first respondent is the administrator of the deceased's estate is not fatal. To buttress his submission, he cited the decision of the Court of Appeal of Tanzania in Suzana S. Waroba vs. Shija, Civil Appeal No. 34 of 2017 (unreported). Rejoining to the submissions by the advocate for the applicant, Ms. Dora reiterated that, this court lacks jurisdiction since the sought relief is connected to the deceased's estate, subject to distribution to heirs and that there is a proof to the effect that the first respondent is the administrator of the estate. It is also the rejoinder of Ms. Dora in respect of the second point that, the omission to cite or state that, the first is the legal representative of the estate of the deceased as evidenced by Form No. 1, is a fatal irregularity and 5 that, the case of Suzana S. Waroba (supra) is distinguishable from the present matter. Now, it is the noble duty of the Court to determine two points so raised by the first respondent's advocate one Dora Mallaba. In the first limb of objection, I have

thoroughly examined the parties' submissions and their pleadings. It is evidently clear that, the applicant claims to be sole owner of the land property (See para. 2 of the applicant's affidavit "that I am the sole legal owner of the property situated on Plot No.701 B....") and that the first respondent claims to be the administrator of the estate of the deceased. I am bound by the decision in the case of Mgeni Seif vs. Mohamed (supra) where it was stated at page 14 and I quote; 'Ms n/e have said earlier, 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 The Court of Appeal went on holding that; "Since the Primary Court of Kariakoo (Probate and Administration Cause No. 15 of 1985) is seized with the administration of the estate of the deceased Ibrahim Athumani Ngude, it should be allowed to complete its task. The applicant and respondent herein, or any other person who has any vested interest in the estate of the deceased, must go back to the Primary Court which is still seized with an application for the administration of the estate of the late Ibrahim Athumani Ngude." Guided by the above principle, I hold the view that, where there is borne contentions between the parties is on rightful successor of the estate and the application is pending, one claiming to have vested interest in the estate must trace the root back to the letters of administration or probate so granted. I further find myself properly guided by the decision of the Court of Appeal in Leticia (supra) at page 15 of the judgment where it was held that; "where the husband has died, the surviving spouse cannot seek distribution of matrimonial assets in a matrimonial cause and any claims or perceived rights thereto must be sought in a Probate and Administration Cause..... we are enjoined to hold that the avenue taken by the appellant in filing claims in a Matrimonial Cause was improper and misguided." Nevertheless, I find the authorities quoted above are distinguishable from the present case as in this application the applicant is after removal of the caveat. Worse still, there are no records to sufficiently enable the court to hold that, the first respondent is still an administrator as no any extension 7 order for administration of the estate is attached neither proof that the first respondent is duly registered as an administrator by the RT in the CT. I have further considered the applicant's pleaded facts at paragraphs 8 and 9 of the affidavit, which deny the alleged appointment of the first respondent as an administrator of the estate of the late Rita taking into account that, the applicant is/was the husband of the late Rita. Due to the nature of the reliefs sought and reason given above, I form the opinion that, the first limb of objection is prematurely raised. Coming to the second point of law on the first respondent's locus standi. It is through the applicant's affidavit at paragraph 6 that, the discovered that, the first respondent filed the caveat on 8th November 2016 in the office of the second respondent and that, the copy of the caveat so filed and duly registered plainly reveals that, the first respondent filed the same in the capacity of the legal representative of the estate of the deceased as a heir and therefore with an interest in the estate. More so, the letter written by the applicant and addressed to the second respondent demonstrates that, the applicant discovered the filing of the caveat by the first respondent (See paragraph 6 of the applicant's letter). However, through the applicant's affidavit as earlier explained the applicant has seriously contested the alleged appointment of the first respondent as the administrator of the estate of the deceased since he is the only surviving spouse. I am alive

of the principle regarding requirement to have capacity to sue or to be sued. First and foremost it is the applicant or plaintiff as the case may be, who is duty bound to ensure that, he has locus standi/ capacity to sue or file an application. My holding is fortified by the decision of the Court of Appeal Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi (1996) TLR where locus standi is defined:- " A principle governed by common law whereby in order to maintain proceedings successfully, a 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." I am also aware of the principle articulated by the Court of Appeal in Suzana (supra) where the omission to state the status of the appellant as an administrator of the estate of the late Stanslaus Waryoba in the title, was found not fatal since the letters of the administration was produced and that, it was clear to that effect throughout the trial. However, the Court of Appeal 9 highlighted that the one suing as an administrator or administratrix of estate such capacity should be reflected in the title. I therefore find validity of the argument by the learned counsel for the applicant that, since the applicant is the one who brought the application he was at liberty to sue any person whom he thinks has interfered his or her rights or to whom the relief is obtainable unlike the respondent or defendant who is merely brought into a legal battle. Therefore, since it was the first respondent who has certainly lodged the caveat in question and since it is highly disputable fact that, the first respondent is the administrator of the applicant's late wife, it is thus improper at this juncture to hold that, the first respondent has no locus standi unlike in a situation where the applicant does deny the fact that the caveator is an administrator or executor of an estate of the deceased person.. In the upshot, the first and second points of law raised by the counsel for the first respondent lack merit. Therefore, I hereby overrule the first respondent's PO on both points of law. Given the nature of this ruling, I order that each party shall bear its own costs of the PO It is so ordered dated and delivered at dar ES salaam this 29th January 2025

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