

TANZANIA / JUDGMENT

Kapolo Judgment

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE SUB-REGISTRY OF MWANZA
AT MWANZA LAND APPEAL NO. 18333 OF 2024 (Arising from the decision of the land and
housing tribunal for Ukerewe at Ukerewe in Land Application No. 15 of 2022) KAPOLO
MASUI APPELLANT VERSUS MAGULU
MASAGA RESPONDENT

JUDGEMENT

11th September & 4th December, 2024 CHUMA, J. Aggrieved by the decision of the District Land and Housing Tribunal for Ukerewe (herein the DLHT) in Land Application No.15 of 2022 the appellant preferred this appeal fronting four grounds of appeal as follows;

1. That the trial tribunal erred in law and facts in holding that the appellant had failed to prove his claims on balance of probability while there was watertight evidence.
2. That the trial tribunal erred in law and facts on evaluation and analysing the evidence by disregarding the valuation report from the forest officer which proved his claims of TZS. 615,000/-
3. That the trial Chairman erred in law and fact by holding that the appellant is not an administrator of the estate while the disputed land and alleged trees belong to the appellant
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4. That the trial Chairman erred in law and fact on relying its decision on the non-joinder of a necessary party without concrete evidence from the respondent. The appellant then prayed for the following reliefs: -
 - (a) The appeal be allowed with cost.
 - (b) The impugned judgment in Land application No.15 of 2022 be quashed and set aside.
 - (c) This court be pleased to analyse and evaluate the evidence thereto and grant the sought prayer.
 - (d) Any other order (s) this court may deem fit to grant. This appeal proceeded by way of written submission dully filed by the parties themselves which I see no reason to reproduce but rather will appear in the course of my analysis. In my determination of this appeal, I will

start with the third ground of appeal which is to the effect that, the trial Chairman erred in law and fact in holding that the appellant is not an administrator of the estate while the disputed land and the alleged trees belongs to the appellant. In his submission, the appellant argued that where the ownership of the property has been passed from the deceased to another person during 2 his lifetime automatically the said property does not form part of the deceased estate. The submission further reveals that the trespassed land is under the ownership of the appellant and it is not part of his late father's estate. Hence the trial Tribunal erred in relying on the issue of the administrator of the estate while the said land is not among the estate of the deceased. To the contrary, the respondent contested the appellants' submission by arguing that, the submission by the appellant was baseless because the appellant claimed that the farm belonged to his late father and since he had no letter of administration, he had no locus stand to sue. The above parties' submission and my carefully perusal on the record, derives me to determine whether the appellant had mandate to institute the application before the District Land and Housing Tribunal. Locus stand being a jurisdictional issue it is of essence 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. 3 The above position can be ascertained from the case of Lujuna Shubi Ballonzi Senior Vs. Registered Trustees of Chama Cha Mapinduzi

(1996) TLR 203, where the term locus standi was defined as follows: - "In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court... Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest which the law takes cognizance of." A similar position was held in the case of Godbless Jonathan Lema Vs. Mussa Hamis Mkanga & 2 Others, Civil Appeal No. 47 of 2012 where the Court of Appeal cited the Malawian Supreme Court decision in the case of The Attorney General Vs. The Malawi Congress Party & Another, Civil Appeal No. 22 of 1996 where it was held 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 sufficiently close relation to it to give a right 4 which requires prosecution or infringement of which he brings the action". Reverting to the instant appeal, the record and submission of the parties indicate that the disputed land belongs to the late father of the appellant. This is evidenced on page 9 of the trial tribunals' proceedings where the applicant when cross-examined responded as here under, I prefer to quote the proceedings for ease of reference: - Swali: Eneo ulilipataje? Ni la baba mzazi. Alishafariki mimi niliteuliwa na ukoo tu. Mimi sio msimamizi wa mirathi kesheria. The above-quoted response of the appellant indicates that he was never appointed to administer the estate which may mandate him to pursue the matter in court against the respondent. It is a trite law that only a person granted probate or letters of administration by a probate and administration

court can sue or be sued on behalf of the deceased's estate. The above position can be garnered from the provisions of the 5th Schedule of the Magistrate Court Act that governs Primary Court which provides that: - 5 “An administrator may bring and defend proceedings on behalf of the estate.” Under section 71 of the Probate and Administration of Estates Act Cap. 352 R.E 2019. The prescribes 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.” Based on the above-cited cases and provision of law, and the record of the District Land and Housing Tribunal though the application was decided in disfavour of the appellant but from the outset it was improper for the trial tribunal to entertain the application before it because the appellant was not appropriately mandated to file the land application before that Tribunal as he was not an appointed Administrator of his father's estate. The appellant's act of instituting the application in his name contrary to the dictate of the law as herein above explained renders the whole of the Tribunal's proceedings and decision null and void ab initio. 6 In the spirit of the foregoing reasons, I find no reason to discuss the remaining grounds of appeal as in essence there was nothing before the trial Tribunal. This ground suffices to dispose of this appeal. The appeal is therefore dismissed. I quash the proceedings of the DLHT and set aside its decision. The appellant is at liberty to pursue the matter in line with the law and procedure herein above highlighted. Considering the circumstances of this matter I desist from making an order as to cost. It is so ordered. DATED at MWANZA this 4th day of December, 2024. W. M. CHUMA JUDGE 7 The judgment delivered in court virtually in attendance of Mr. Kapolo appellant and Mr. Antony Masanga for the respondent this 4th day of December, 2024. W.M. CHUMA JUDGE 8

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