

**IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT SUMBAWANGA**

LAND APPEAL NO. 9 OF 2020

**(From the Decision of the District Land and Housing Tribunal of
Rukwa at Sumbawanga in Land Application No. 53 / 2014**

GASPER KALOLO KAUZENI.....APPELLANT

VERSUS

MATHIAS MICHAEL KAUZENI	} RESPONDENT
ROGATA MATHIAS KAUZENI		
GIFT MATHIAS KAUZENI		

JUDGMENT

21st April – 11st May, 2020

MRANGO, J

This an appeal has been preferred by the appellant against the judgment and decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga (henceforth the trial tribunal) in land application No. 53 of 2014 which was delivered on 19. 12. 2019. At the trial tribunal the appellant unsuccessfully sued respondents over the piece of land measuring 200 acres as the decision of the tribunal was in favour of the respondents. Aggrieved by the trial tribunal decision the appellant has

brought this an appeal before this court which comprised of the two grounds of memorandum of appeal of which I may quote hereunder;

- 1. That the trial tribunal's proceedings are vitiated hence null and void, for failure to accommodate assessor's opinion**
- 2. That the trial tribunal erred in law and fact by wrongly proceeding to determining the issue of ownership of the plot in dispute, having found and declared that the appellant (the applicant thereto) lacks locus stand over the plot in dispute.**

When the appeal was called on before this court for hearing, appellant was represented by Mr. Deogratius Sanga – learned advocate, whereas, the respondents all appeared in persons.

Addressing this court in supporting the appeal, Mr. Deogratius Sanga informed this court that he has lodged an appeal comprised of two grounds against the decision of the trial tribunal in application No. 53 of 2014 of which the judgment was delivered on 19. 12. 2019 of which he argued one ground after another in a following manner.

As regard the first ground, learned advocate submitted that the trial tribunal failed to accommodate the assessor's opinion. He said **section 23 (2) of Act No. 2/ 2002 Land Dispute Courts Act** directs that the tribunal is dully constituted when held by Chairman and two assessors who shall be required to give their opinion before the chairman reaches the judgment.

In the present case, he further argued that the Chairman failed to accommodate the assessors and consider their opinions. He is of the view that Chairman erroneously reflected the opinion in his judgement and assumed their opinion as per the case of **Sikuzani Said Magambo vs. Mohamed Roble & Other, Civil Appeal No. 197 of 2018 CAT (Dodoma) unreported**, pg. 9, that whatever occurred in the trial proceedings is a serious irregularity as it was observed by the Court of Appeal and he prays for this court to declare so and nullify the proceedings as per the case cited at page 11.

As regard the second ground Mr. Sanga submitted that the trial tribunal judgement at page six (6) declared the appellant to have no *locus stand* as he was not an administrator of his father estate. The trial tribunal had to dismiss the matter for want of *locus stand* and not to determine the

ownership, that is irregularity and he prays for this court to nullify the trial proceedings. He finally prayed for the court to allow the appeal with costs.

In responding to the arguments as submitted by the advocate for the appellant, the first respondent said it is not correct that the assessor's opinion was not accommodated. The Chairman considered their opinion. Again he further said that it is correct as argued by the appellant's advocate that the appellant was not the administrator of the deceased's estate so he had no right to sue.

The second respondent submitted that the trial tribunal made a proper decision and he prays for this court to uphold the said decision as per their reply to the memorandum of appeal.

The third respondent was of the view that the assessors participated at the trial and their opinions were considered by the trial tribunal. He further said the appellant is not the administrator of the deceased estate as per the trial decision.

In his rejoinder, Mr. Sanga stressed that respondents have never challenged the Court of Appeal decision he cited. They neither challenged that the assessors did not opine in the case at hand. Technically he said the respondents are subscribing to the submission he has made. He

therefore prayed for the trial tribunal proceedings to be nullified as earlier submitted. The decision is from the nullity proceedings.

Having considered submission by both parties the question before this court for determination is whether the appeal is meritorious.

As for the first ground of appeal, as regard the failure by the chairperson of the trial tribunal to accommodate assessor's opinion, it is mandatorily requirement of the law that on sitting of the tribunal the chairperson of the tribunal must sit with at least not less than two assessors, and who shall be required to give out their opinion before the chairperson reaches the judgement. Let me reproduce the said provision of **section 23 (1) (2) of the Act, the Courts (Land Dispute Settlement), No. 2 of 2002** hereunder to appreciate the contents;

23 (1). The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors; and

(2) The District Land and Housing Tribunal shall be duly constituted when held by a chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgement

My scrutiny of the tribunal proceedings, it transpired before this court that Chairperson sat with two assessors from the day the proceeding started until 29. 05. 2018. However, on 26. 02. 2019 is when the tribunal informed the parties that one assessor, namely A. Masonda is sick, then Hon. Chairman proceeded the suit with one assessor up to the conclusion of judgement under **section 23 (3) of the Act**, (supra). The said **Section 23 (3) of the Act** provides thus;

*23(3) Notwithstanding the provisions of Sub (2), if in the course of any proceedings before the tribunal either or both members of the tribunal who were present at the commencement of proceedings is or absent, the **chairman and the remaining member (if any) may continue and conclude the proceedings notwithstanding such absence.**[emphasis is supplied]*

In our case at hand, Hon. chairman upon informed the parties of the absence of one member (assessor) of the tribunal she finalized the proceedings up to the writing of the judgement with one assessor which is in my view was appropriate according to the spirit of the provision of **section 23 (3) of the Act, the Courts (Land Dispute Settlement)**

(supra). Even at pg. 5 of the typed judgement of the tribunal Hon. Chairman made it clear that she finalized the suit under **section 23 (3) of the Act No. 2 of 2002** for the reason that one assessor fell sick and who eventually passed away. The remaining assessor gave out his opinion in writing which according to pg. 5 of the typed judgement Hon. Chairman rightly accommodated his opinion unto the judgement.

Having said so, I may say learned advocate for the appellant misdirected himself to believe that Hon. Chairperson failed to accommodate the assessor's opinion in the tribunal's judgement, therefore his contention as reflected in the first ground of appeal in the memorandum of appeal is without merit.

As regard the second ground of appeal that the trial tribunal wrongly proceeded to determine the issue of ownership of the disputed house despite having found and declared that the appellant had no *locus stand* to institute suit in respect of the piece of land. It is a principle of law for a person to institute a suit he / she must have a locus stand. This principle was well stated in the land mark case of **Lujuna Balaonsi Snr vs. Registered Trustees of CCM [1996] TLR, 203** where it was stated that:

"Locus stand is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with"

Having carefully read the judgement of the tribunal, it is crystal clear that the tribunal had found that the applicant (now appellant) had no *locus stand* to claim before the tribunal in respect of the estate of his late father as he was neither an administrator or executor of deceased's estates. The evidence on the record shows that the appellant identified himself before the tribunal as a son of his late father who said to be the owner of the piece of land without a letter of administration. At such point it can be said that the appellant was neither administrator nor executor of the estate of the deceased as he had no letter of administration to administer estate.

It is a cardinal principle of law that an appointed administrator or executor is qualified person at law to deal with the property of the deceased according to the wishes of law. Respectfully, with regard to other rights and duties of administrator he can either sue or be sued. The position has been held in case of **Mohamed Hassan vs. Mayase Mzee & Mwanahawa Mzee 1994 TLR 225 CA**, where it was observed that;

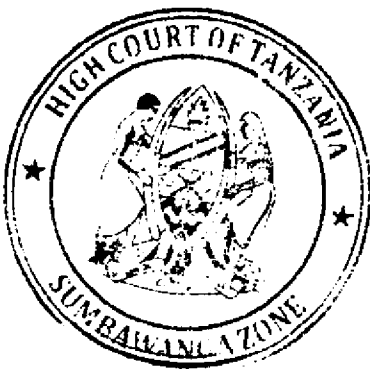
"Administrator is the person who has mandate to deal with the deceased's properties"

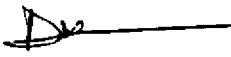
Out of that a person has no right or is not entitled to administer the rights belonging to the deceased at the moment after his/her death in respect of the properties.

However, as rightly argued by the learned advocate for the appellant the trial tribunal went on determining the ownership by declaring the 1st respondent as a lawful owner of the piece of land. In addition the tribunal declared the 2nd respondent and 3rd respondent as users of piece of land as allowed by the 1st respondent. That analysis of Hon. Chairman was inappropriate in the circumstance of this case, otherwise it could lead to fundamental irregularities amounting to miscarriage of justice as it happened in this case. It could be suffice for Hon. Chairman to dispose of the suit by the ground of *locus stand* as it was observed in the tribunal's judgement. *Locus stand* alone may suffice as a ground to dismiss the application by the appellant. But as argued by the appellant's advocate Hon. Chairman failed to stand by such point of law in her judgement instead of she proceeded to determine the issue of ownership which is bad at law as it occasioned miscarriage of justice.

In the premise and without hesitation, I quash the whole judgement and decree of the trial tribunal as the same is contradictory as hinted upon above. If the parties are interested are at liberty to institute a fresh suit before the tribunal, subject to the law of limitation. I allow the appeal with an order as to costs.

Order accordingly.




D. E. MRANGO
JUDGE
11. 05. 2020

Date - 11.05.2020

Coram - Hon. D.E. Mrango – J.

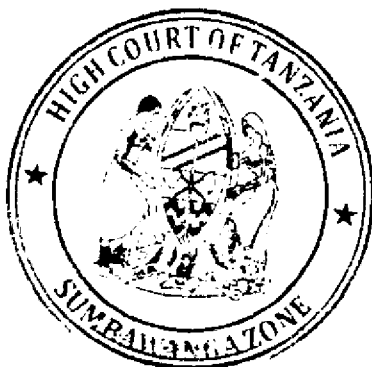
Appellant - Represented by Mr. Mussa Lwila – Adv.

1st Respondent }
2nd Respondent } All present in persons
3rd Respondent }

B/C - Mr. A.K. Sichilima – SRMA

COURT: Judgment delivered today the 11th day of May, 2020 in presence of Mr. Mussa Lwila – Learned Advocate for the Appellant and in presence of the Respondents in persons.

Right of appeal explained.




D.E. MRANGO

JUDGE

11.05.2020