

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISCELLANEOUS LAND APPLICATION NO. 42 OF 2023

(Originating from Land Appeal No. 84 of 2021, in the District Land and Housing Tribunal for Morogoro, at Morogoro.)

MOHAMMED JUMA MFUNGA APPLICANT

VERSUS

RASHID HAMSINI MGAZA RESPONDENT

RULING

24th & 31th July, 2023

CHABA, J.

This appeal stemmed from a dispute over a parcel of land situated at Mgaza street, Kasanga area in Mindu Ward within Morogoro Municipality between the appellant, Mohammed Juma Mfungu and the respondent, Rashid Hamsini Mgaza at the District Land and Housing Tribunal for Morogoro, at Morogoro (the trial DLHT), where the appellant unsuccessfully sued the respondent via Land Application No. 84 of 2019 claiming for a declaration that he is a lawful owner of the land in dispute.



Dissatisfied with the decision of the trial DLHT delivered on the 25th day of January, 2023, the appellant has approached this Court challenging the said decision on the following grounds of appeal: -

- i. That, the said District Land and Housing Tribunal for Morogoro erred in law and fact by considering and deciding on matters pertaining the settled Probate and Administration of the Estate of the Late Juma Mohammed Mfungu which was res-judicata and not within the jurisdiction of the said Tribunal.
- ii. That, the said District Land and Housing Tribunal of Morogoro erred in law and fact by ignoring the evidence given by the appellant and his other witness hence over emphasizing the evidence of the respondent herein and deciding in his favour in the absence of the appellant, and
- iii. That, the honourable trial tribunal erred in law and fact by convening the tribunal without observing the proper column while conducting the proceedings between the parties herein.

It appears from the Court records that, upon being served with the memorandum of appeal, the learned counsel for the respondent on 29th May, 2023, filed his reply to the memorandum of appeal and raised therein a preliminary objection (the P.O) asserting that the appellant has no *locus standi* to file the instant appeal before this Court.

When the matter was called on for hearing of the raised preliminary objection on 24/07/2023, Mr. Bahati Hacks, Learned Advocate appeared for the

appellant whereas the respondent enjoyed the legal services of Mr. Derrick Vicent, also Learned Advocate. By the order of the Court, the P.O., was argued and disposed of by way of oral submissions.

To kick the ball rolling, the learned counsel for the respondent who raised the point of objection, was the first person to argue and submit in support of the P.O. In his submission, Mr. Derick Vicent argued that, the appellant who before the trial DLHT instituted a matter against the respondent herein under the umbrella of the so called the administrator of the estate of the late Juma Mohammed Mfungu has in this matter appealed in his individual capacity. He submitted that, being an administrator of the deceased's estates, in this appeal, has failed to maintain his status/title as an administrator of the estate of the deceased Juma Mohamed Mfungu, hence sued the respondent in his own capacity.

To support his argument, Mr. Vicent referred the Court to the decision of this Court in the case of **Selestine Mlekwa vs. Juma Gideon**, Land Appeal No. 21 of 2020 (HCT-Tabora Registry), where at page 6 (according to him), the Court stated that, all causes of action should be maintained to legal representatives, and that on the contrary such applications/appeal shall be struck out from the Court record and the relevant party shall be directed to file the proper one. He wound up his submission by asking the Court to struck out the present appeal with costs.



On his part, the learned counsel for the appellant, Mr. Bahati Hacks countered the submission advanced by the counsel for the respondent, Mr. Vicent and contented that, looking at the parties' pleadings from the DLHT, the appellant sued the respondent herein in the capacity of being an administrator of the deceased's estate. According to him, the raised preliminary objection might be right but it has been filed against a wrong party as the Court's pleadings shows that the respondent mentioned the names of Mohammed J. Mfungu who has never appeared before the Court. In this regard, Mr. Hacks therefore prayed the Court to struck out the point of objection and order that the present appeal be set for hearing and continue as such on merits taking into account that, the appellant is an administrator of deceased's estate.

By way of rejoinder, Mr. Vicent averred that, since it is undisputed fact that before the trial DLHT the appellant sued the respondent in the capacity of being an administrator of the deceased's estates, no doubt that the appellant the was duty bound to indicate in the present appeal to the effect that, he was suing the respondent in the capacity of being an administrator of the deceased's estates and not suing in his own capacity. In the end, the counsel for the respondent echoed his prayer and insisted that the appellant's appeal must be struck out on the ground of being incompetent before the Court.

Having carefully and cautiously heard the contending arguments from both sides and upon going through the Court's records, the pertinent issue for



consideration and determination is, whether or not the raised preliminary objection has merits.

At the outset, I would like to point out that, in as much as this appeal is concerned, it is undisputed fact that the appellant is the administrator of the estates of the late Juma Mohammed Mfungu, following his appointment as such on 26th day of March, 2019 vide Probate and Administration Cause No. 22 of 2109 before the Primary Court of Chamwino, in Morogoro Region. It is also not in dispute that at the DLHT, the appellant sued the respondent on his capacity as an administrator of the estates of the late Juma Mohammed Mfungu, though surprisingly, the said status (an administrator of the deceased's estates) was not indicated and or cited as such in the memorandum of appeal presented for filing before this Court, and instead therefore, the memorandum of appeal presented for filing, shows that the appellant herein is suing the respondent in his own individual capacity, hence triggering the raised point of objection, a subject of this ruling.

Based on the above observation, in my considered view, the contention that the appellant herein had no *locus standi* to lodge the instant appeal does not hold water for reasons which I will explain shortly. After a quick glance on the memorandum of appeal, it is crystal clear that, the appellant is challenging the decision of the trial DLHT dated 25th January, 2023, in which he was a party battling on behalf of his late father. In my settled mind, with due respect to the learned counsel for the respondent, the issue of lack of *locus standi* could be



fatal if the appellant would have omitted to indicate that he was suing as representative of the deceased at the trial tribunal and not at this appellate stage.

More-over, upon a thorough perusal of the memorandum of appeal, I have observed that in the first and second grounds of appeal, the appellant is being referred to as the person who involved and participated in the lower tribunal as a party to the original suit, which is a subject of this appeal and hence in my view, it is wrong to regard him as a new party appealing on his individual capacity only on the mere failure to indicate that he was suing as an administrator of the deceased's estate. For the sake of clarity, I find it wise to reproduce the first and second grounds of appeal hereunder: -

*"1. - That the said District Land and Housing Tribunal of Morogoro erred in law and fact by **ignoring the evidence given by the appellant and his other witness** hence over emphasizing the evidence of the respondent herein and deciding in his favour in the absence of the appellant."*

2. That, the said District Land and Housing Tribunal of Morogoro erred in law and fact by ignoring the evidence given by the appellant and his other witness hence over emphasizing the evidence of the respondent herein and deciding in his favour in the absence of the appellant.

[Emphasis Added].



In **Israel Malegesi and Another vs. Tanganyika Bus Service**, Civil Application No. 172/8 of 2020, CAT at Mwanza, the Court of Appeal of Tanzania was confronted with almost a similar scenario like the matter at hand in which the appellants failed to indicate their status as administrators of the estates of the deceased person. In its deliberation, the CAT had the following to state: -

".....failure by the applicants to state their status though an omission, but in my candid view is not fatal as to render the application incompetent..... It is my sincere conviction that the omission can be cured by invoking the overriding objective principle embodied in the provisions of section 3A (1) of the Appellate Jurisdiction Act, Cap. 141 R. E. 2019 as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018 (Amending Act) while stipulates as follows: -

- *The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by this Act."*

The Court went on further and stated that: -

"That apart, the overriding objective intends to give statutory effect to Article 107 (2) (e) of our Constitution which insists on dispensation of substantive justice instead



of being tied up with-technicalities. On - account of the facts presented to the Court and for the interest of justice, I am of the view that, justice demands the application be heard on merit. As intimated earlier, the omission is not fatal, but curable, thus for the purpose of keeping the record proper, I hereby give the applicants thirty days from the date of this ruling within which to amend their application to include their proper status on the heading of the notice of motion and the affidavit."

From the foregoing, I am in four corners with the counsel for the respondent that, the instant appeal was improperly registered but with different reasons, not based on the point of lack of *locus standi* but for a reason that, the names of parties which were cited in the memorandum of appeal before this Court are at variance with those appearing in the ruling, a subject of this appeal. Such an error in my view, did not prejudice the respondent because it is curable under the overriding objective principle stipulated under section 3A (1) of the Appellate Jurisdiction Act, [CAP. 141 R. E, 2019] as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018 (Amending Act) and Article 107 (2) (e) of our Constitution, which calls for the Courts to dispense justice without being tied up with technicalities. The former provisions of the law provide that: -



"Sections 3A (1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate, and affordable resolution of all matters governed by this Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

3B. (1) For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following-

(a) Just determination of the proceedings;

(b) Efficient use of the available judicial and administrative resources including the use of suitable technology; and

(c) Timely disposal of the proceedings in the Court at a cost affordable by the respective parties.

As to the way forward, the counsel for the respondent submitted and urged this Court to be guided by the decision of this Court in the case of **Selestine Mlekwa vs. Juma Gideon** (supra) wherein this Court had the view that, all causes of action should be maintained to legal representation. On the contrary, the same will be struck out and the relevant party shall be directed to file the proper one.



However, my scanning on the above cited authority has revealed that the holding of this Court, at page 6 as it was referred to this Court by Mr. Vicent, was totally different from what I observed from that decision. Honestly speaking, there is no such holding in the entire cited case. Dismayed by the negligence and unprofessional misconduct showed by the learned counsel for the respondent, at this point, I feel compelled to remind all the learned advocates to abide by the relevant law and The Advocates (Professional Conduct and Etiquette) Regulations, 2018; Government Notice No. 118 published on 09/03/2018 in the course of fulfilling their duties and obligations taking into account that advocates are the officers of the Court. As part of their work, it is mandatory to make a thoroughly research on a particular matter instead of appearing before the Court and making submissions and placing reliance on some authorities which are irrelevant to the matter that is before the Court. Advocates role among others is to assist the Courts to arrive to the ends of Justice and not misleading the Courts aiming to win the case at all costs.

Now reverting to the matter under consideration, as observed earlier on, I feel inclined to invoke the overriding objective principle to cure the omission. However, being alive to the fact that the issue of names of parties is central for their identification in any litigation, and for the purpose of maintaining propriety of Court records so as to avoid confusions during execution process, I hereby grant the appellant fourteen (14) days from the date of this ruling within which



to amend the present memorandum of appeal to include his proper names and or status as an administrator of the estate of the late Juma Mohamed Mfungu as the law and practice requires.

That said and done, the preliminary objection raised by the learned counsel for the respondent is sustained to the extent of my observations. Each party shall bear its own costs. It is so ordered.

DATED at MOROGORO this 31st day of July, 2023.

 M. J. CHABA
JUDGE

31/07/2023

Court:

Ruling delivered under my hand and the Seal of the Court in Chamber's this 31st day of July, 2023 in the presence of Mr. Bahati Hacks, Learned Counsel who appeared for the Appellant and Mr. Derick Vicent, Learned Counsel for the Respondent.

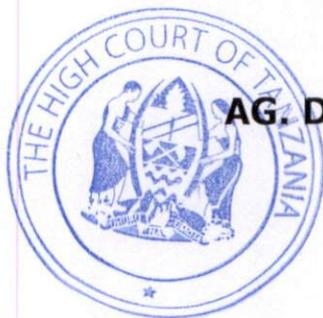
E. A. LUKUMAY

AG. DEPUTY REGISTRAR

31/07/2023

Court:

Right to Appeal to the parties fully explained.



E. A. LUKUMAY

AG. DEPUTY REGISTRAR

31/07/2023

A handwritten signature in blue ink, appearing to be "E. A. Lukumay", is located in the bottom right corner of the page.