

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: OTHMAN, CJ, MSOFFE, J.A and JUMA, J.A.)

CIVIL APPEAL NO. 76 OF 2012

**1. ANTHONY LEONARD MSANZE }
2. JUSTINE ELIAS MSANZE } APPELLANTS**

VERSUS

**1. JULIANA ELIAS MSANZE }
2. RUAICHI JOHN KERETH } RESPONDENTS
3. ONESMO ANDERSON MBISE }**

**(Appeal from the Decision of the High Court of Tanzania
at Arusha)**

(Sambo, J.)

dated the 27th day of September, 2001

in

Land Case No. 26 of 2010

JUDGMENT OF THE COURT

6th & 8th March, 2013

JUMA, J.A.:

On 26th September, 2011 the High Court of Tanzania at Arusha (Sambo, J.) upheld preliminary points of objection and dismissed the appellants' suit against the three respondents, for nullification of a sale and transfer of a parcel of land which belonged to the late Elias Leonard Msanze. That land is situated at Plot No. 65 Block BB Kwangulelo in Arusha Municipality. In dismissing their suit, the trial Judge concluded that the appellants had neither the *locus standi* nor had they

a cause of action to maintain a suit against Juliana Elias Msanze (1st respondent), Ruaichi John Kereth (2nd respondent) and Onesmo Anderson Mbise (3rd respondent).

Anthony Leonard Msanze and Justine Elias Msanze, (hereinafter referred to as the appellants) have come to Court on appeal contending that the trial court erred in law and fact by dismissing their suit on preliminary objections.

The background facts leading up to this appeal centres on the ownership of the Plot No. 65 Block BB at Kwangulelo. The appellants claim to be the legal administrators of the estate of the late Elias Leonard Msanze who died *intestate*. They were on 29th June 2009 appointed by the Arusha Urban Primary Court (Probate No. 56 of 2004) to administer the estate of the deceased. The respondents denied the claim through their joint written statement of defence which they prefaced with preliminary objections based on want of cause of action and *locus standi* to pursue the suit.

At the hearing of this appeal, Mr. Boniface Joseph, learned Advocate represented the respondents. It emerged

that although Mr. Samson S.S. Rumende learned Advocate had represented the appellants at the High Court, he lacked five years of practice, to be eligible to appear before us. Relying on Rules 33 (3) and 4 (2) (a), Mr. Rumende applied, and was accorded by the Chief Justice a waiver, which allowed him to represent the appellants in this appeal.

Both learned counsel agreed with the Court that the main issue in this appeal is whether the trial court was correct to sustain a point of preliminary objection, and dismiss the Land Case No. 26 of 2010 for want of cause of action and *locus standi*. In response to that issue, the two learned counsel relied on a number of authorities. They specifically drew our attention to our previous decision in JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE (TANZANIA) LTD 1983 TLR 1 wherein we had pertinently considered the meaning of the expression "cause of action" appearing in Order VII Rule 1 of the Civil Procedure Code, Cap 33 R.E. 2002.

Order VII Rule 1 requires the plaintiffs who move the courts by suits, to plead particulars in their Plaint to disclose a cause of action. Rule 1 of Order VII states:

1. The plaint ***shall*** contain the following particulars-
 - (a) *the name of the court in which the suit is brought;*
 - (b) *the name, description and place of residence of the plaintiff;*
 - (c) *the name, description and place of residence of the defendant, so far as they can be ascertained;*
 - (d) *where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
 - (e) ***the facts constituting the cause of action and when it arose;***
 - (f) *the facts showing that the court has jurisdiction;*
 - (g) *the relief which the plaintiff claims;*
 - (h) *where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
 - (i) *a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits. [Emphasis provided]*

Order VII Rule 1 (e) in mandatory terms requires Plaints that are filed in courts to manifest brief and concise facts that constitute the cause of action. As rightly pointed out by the two learned counsel, this appeal before us falls within the legal principles governing how and where courts do find ***facts***

constituting the cause of action. We laid down relevant legal principles on cause of action in JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE (supra). Through this decision, we first pointed out that although the expression “cause of action” has not been defined under the Civil Procedure Code, but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit. Secondly, we laid down that for purposes of deciding whether or not a plaint discloses a cause of action; courts should **NOT** go far into written statements of defence or into replies to the written statements of defence. But they should discover a cause of action by looking only at the Plaint. Thirdly, we also said that where the Plaint does not disclose a cause of action, the remedy is **NOT** for the court to dismiss the Plaint, but to reject it.

With these legal principles in mind, we shall seek to go back to the Plaint, at least to determine whether it indeed failed to disclose any cause of action to justify the dismissal of the suit by the High Court. The appellants through paragraphs

1, 2 and 7 of their Plaint clearly claim that they were appointed by Arusha Urban Primary Court to become **legal administrator of the late Elias Leonard Msanze**. These paragraphs in addition imply that the appellants filed their suit as legal representatives of a deceased person:

1. The 1st Plaintiff is the legal administrator of the late Elias Leonard Msanze working for gain within the Municipal Council of Arusha and his address for service for the purpose of this application is P.O. Box 12040 Arusha. A copy of the letter issued by the court for such appointment is marked "AP1"

2. The 2nd Applicant is the legal administrator of the late Elias Leonard Msanze and his address for services for the purpose of this application is P.O. Box 12040 Arusha. A copy of the letter issued by the court for such appointment is marked "AP2." [Emphasis added]

7. That the Plaintiffs were appointed by the court on probate administration application No. 56 of 2004 on 29th June 2009 as administrators of the estate of the late Elias Msanze. A copy of judgment from Arusha Urban Primary Court which heard the application for probate administration marked "AP3"

Further, through paragraphs 5, 6 and 12 of the Plaint disclose the two appellants try to bring out their grievance albeit a cause of action against the three respondents. Appellants complain that respondents have invariably been transacting on a parcel of land belonging to the deceased and which is under their administration:

5. That the 3rd Defendant in this matter is a buyer of properties belonging to the late Elias Leonard Msanze currently known as Plot No. 65 Block "BB" situated at Kwangulelo, Arusha Municipality

6. That Plaintiffs claim against the Defendants both severally and jointly for declaration orders nullifying the sale and ultimately transfer of the property in dispute currently known as Plot No. 65 Block "BB" situated at Kwangulelo, Arusha Municipality

*12. In a follow-up the applicants found that the farm and the house which belonged to the late Elias Leonard Msanze has been sold to the 2nd respondent by the 1st respondent in an agreement which was signed on the 5th November, 2007 annexed hereto and marked **"AP4"***

In our opinion, in the above-cited paragraphs of the Plaint where the appellants are claiming that they are administrators of the estate of the deceased, manifest cause of action and sufficient interest in the estate of the late Elias Leonard Msanze. Acting under the umbrella of administrators of an estate of deceased person, appellants have *prima facie* manifested in their Plaint, sufficient interest to sue the respondents.

It seems to us that with the claim manifested in their Plaint that they are legal administrators of the estate of a deceased person, the High Court should not have concluded at that preliminary stage without further evidence that the appellants had no cause of action and *locus standi* in the Land Case No. 26 of 2010.

For the above reasons, we allow the appeal and we accordingly quash and set aside the Judgment of the High Court delivered on 26/9/2011. We direct that the record be remitted to the High Court so that it may continue with determination of Land Case No. 26 of 2010. Since the

appellants did not press for costs we make no order as to costs. Ordered accordingly.

DATED at ARUSHA this 7th day of March, 2013.

M.C. OTHMAN
CHIEF JUSTICE

J.H. MSOFFE
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

Z.A.MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL