

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

**(CORAM: MWARIJA, J.A., KWARIKO, J.A., And MWAMPASHI, J.A.)**

**CIVIL APPEAL NO. 153 OF 2019**

**PETER MPALANZI ..... APPELLANT**

**VERSUS**

**CHRISTINA MBARUKA ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
at Iringa)**

**(Kihwelo, J.)**

**dated the 19<sup>th</sup> day of May, 2015  
in  
Land Appeal No. 16 of 2013**

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**JUDGMENT OF THE COURT**

13<sup>th</sup> & 23<sup>rd</sup> September, 2021.

**MWAMPASHI, J.A.:**

This is a third appeal arising from a decision of Magulilwa Ward Tribunal in Application No. 3 of 2008. The respondent, Christina Mbaruka sued the appellant, Peter Mpalanzi, complaining that the latter who had since 1983, allowed her to occupy and use a four (4) acres land (the suit land), was now forcing her to leave and vacate the suit land despite having built her two permanent houses and planted various permanent crops and trees therein. She thus prayed to be declared the rightful owner of the suit land.

After hearing evidence from both sides, the Ward Tribunal decided for the respondent. The reason for deciding in the respondent's favour was that the respondent had lived there since 1983 and that she had, with the appellant's knowledge, built permanent houses and planted permanent crops upon the suit land.

At this stage, we find it important to note that the evidence for the respondent and on which the Ward Tribunal's decision was based, came from her husband one Amosi Ngaga. This witness testified that the suit land was, in fact, entrusted to him by the appellant on an agreement that he would occupy and use it while taking care of the appellant's 100 acres farm. He also told the Ward Tribunal that as he and the respondent were, by then, living in another village, it took him two years to persuade her wife, the respondent, to shift from their village and join him at the suit land.

The decision of the Ward Tribunal aggrieved the appellant who successfully appealed to the District Land and Housing Tribunal for Iringa (the DLHT) whereby the decision by the Ward Tribunal was overturned. The DLHT found that the mere fact that the respondent had been using and occupying the suit land for many years and the fact that she had built

permanent houses and planted permanent crops in it, could not, under the circumstances of the case, pass title to her.

When the matter reached the High Court in Land Appeal No. 16 of 2013, the decision of the DLHT was overturned and the Ward Tribunal's decision was restored. The High Court found that the respondent had acquired ownership of the suit land on account of the doctrine of adverse possession. Among the issues raised in the High Court was the issue that the respondent had no *locus standi* to sue the appellant. This issue was brushed aside by the High Court on the ground that it had been sneaked in through the back door, not by a notice of objection and also that it had not been raised at the lower tribunals.

Being aggrieved by the High Court decision, the appellant has lodged the instant appeal on the following two grounds;

1. That, the learned appellate Judge erred both in law and fact by basing his decision on the doctrine of adverse possession failing to take into account that the respondent's husband one Amos Ngaga was just a tenant with an agreement of supervising the suit land.

2. That, the learned appellate Judge erred both in law and fact when he decided the matter in favour of the respondent who is a third party and/or has no *locus standi* on the subject matter.

At the hearing of the appeal, it was only Mr. Alfred Kingwe, learned advocate, for the appellant who appeared. Since according to the affidavit of the process server, the respondent had been duly served with the notice of hearing but she had refused service, Mr. Kingwe sought and was granted leave for the hearing to proceed in the absence of the respondent in terms of Rule 112(2) of the Tanzania Court of Appeal Rules, 2009 as amended.

Having adopted written submission he had earlier filed, Mr. Kingwe began with the second ground of appeal arguing that the Ward Tribunal and the High Court erred in entertaining the respondent's complaints while the respondent had no *locus standi* to institute the complaints over the suit land. He submitted that there is evidence in abundance showing that the appellant did not entrust the suit land to the respondent but to her husband, one Amos Ngaga. Mr. Kingwe referred the Court to page 4 of the record of appeal where the respondent's husband is on record testifying before the Ward Tribunal that the suit land was given to him by the appellant on licence and on an agreement that he would occupy and

use it while taking care of the appellant's farm. It was also insisted by Mr. Kingwe that there is also evidence to the effect that after Amos Ngaga had settled at the suit land, the respondent refused to join him until after two years.

It was further argued by Mr. Kingwe that the point on *locus standi* was raised in the DLHT where it was not decided and when it was again raised in the High Court it was disregarded on reasons that it had not been properly raised and also that it had not been raised in the lower tribunals. He contended that it was an error on the part of the High Court not to consider the *locus standi* issue which being a point of law, can be raised at any stage of the proceedings.

From the submission made by Mr. Kingwe in support of the second ground of appeal in regard to the point on *locus standi* and also from our examination and observation of the record, we find that the appeal can be disposed of on this ground alone.

Simply defined *locus standi* is the right or legal capacity to bring an action or to appear in a court. In **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, Samatta, J (as he then was) had the following to say on *locus standi*:

*"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions."*

*Locus standi* is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it- see **Godbless Lema v. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 (unreported).

Further, *locus standi* is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised. In the instant case, the High Court Judge, was, with respect, wrong when he brushed aside the issue of *locus standi* once raised before him. The issue ought to have been considered by the High Court regardless of having been improperly raised or raised at a late stage. In **Chama cha Wafanyakazi Mahoteli na Mikahawa Zanzibar (HORAU) v. Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019 (unreported), the High Court

Judge struck out a notice of preliminary objection in which one of the issues raised was on *locus standi*. When the matter reached this Court, it was observed, among other things, that:

*"We observed that, although the learned High Court Judge struck out the respondent's notice of preliminary objection for being improperly moved, **still the issue regarding appellant's locus standi was very vital and we think, the High Court ought to have considered it.** This is due to the fact that, the appellant's claims could not be established by a person who is not entitled to claim before the court".*

[Emphasis supplied]

In the case at hand, although in her claim before the Ward Tribunal the respondent claimed that the suit land was entrusted to her by the appellant, the truth, according to the evidence appearing on page 3 of the record of appeal, is that the same was not entrusted to her but to her husband, Amosi Ngaga. That, the suit land was not entrusted to the respondent but to Amosi Ngaga was not only admitted by the appellant but it also came from Amosi Ngaga himself. In his testimony he told the Ward Tribunal how he and the appellant agreed for him to occupy and use the suit land while taking care of the appellant's farm. As also alluded on earlier, Amos Ngaga's evidence is to the effect that it took him two

years to persuade the respondent to shift from the village at which they were living to the suit land.

Apart from the evidence from the respondent's husband, that the suit land was not entrusted to the respondent but to him, there is also evidence to that effect from Puliki Habari Ngairi whose evidence which was taken by the DLHT as additional evidence appears on page 35 of the record of appeal. The evidence from Emmanuel Kitosi and Anoton Mugabe at pages 38 and 39 of the record of appeal, is also to the same effect.

The fact that the suit land was not entrusted to the respondent but to her husband Amosi Ngaga and also the fact that the respondent was not part to the agreement between the appellant and Amosi Ngaga on the occupation and use of the suit land is what makes the respondent lack *locus standi* to sue over the suit land. The occupation and use of the suit land by the respondent and her husband Amosi Ngaga, is rooted into the agreement between the appellant and Amosi Ngaga. If there is any dispute over the suit land then it is Amos Ngaga who has *locus standi* to sue, not the respondent.

For the reasons we have given above, we find that the respondent had no *locus standi* to sue the appellant over the suit land and the Ward



Tribunal did therefore err in entertaining the claim by the respondent. We therefore allow the appeal on that ground, quash the proceedings and set aside the decrees of the Ward Tribunal, the DLHT and the High Court. Due to the nature of the relationship between the parties, we make no order as to costs.

**DATED** at **IRINGA** this 22<sup>nd</sup> day of September, 2021.


A. G. MWARIJA  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

A. M. MWAMPASHI  
**JUSTICE OF APPEAL**

The Judgment delivered this 23<sup>rd</sup> day of September, 2021 in the presence of Mr. Alfred Kingwe, learned counsel for the Appellant and in the absence of the Respondent duly served, is hereby certified as a true copy of the original.



  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**