

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR-ES-SALAAM**

(CORAM: MUGASHA, J.A., KWARIKO, J.A. And KENTE, J.A.)

CIVIL APPEAL NO. 12 OF 2018

**OMARY YUSUPH
(Legal Representative of the late YUSUPH HAJI..... APPELLANT**

VERSUS

ALBERT MUNUO.....RESPONDENT

**(Appeal from decision of the High Court of Tanzania (Land Division)
at Dar-es-salaam)**

(Ngwala, J.)

dated the 30th day of August, 2012

in

Land Appeal No. 113 of 2012

RULING OF THE COURT

20th & 25th October, 2021

MUGASHA, J.A.:

This is a third appeal originating from the Ward Tribunal of Mburahati where one Halima Omari commenced a case against the respondent on a claim that, he is not a lawful owner of House No. 583 situated on Block AA Makurumla within the Municipality of Kinondoni. The house shall be referred to as the house in dispute or the suit premises.

The facts underlying this appeal as gathered from the record of appeal are such that; Halima Omary (deceased) and Haji Yusuph (deceased) were husband and wife. In the year 1971 Yusuph Haji entered

into an agreement of purchasing the suit premises from the National Housing Corporation (NHC) under a tenant purchaser arrangement. Before the purchase was concluded, in 1983 the late Yusuph Haji leased the house to one Albert Munuo, the respondent who continued to pay rent until 1997 when Yusuph Haji died. Thereafter, Halima Omary (deceased) approached the respondent seeking to be paid rent which he partly obliged for some time but later declined claiming that he had purchased the house in dispute from her deceased husband. When Halima Omary followed up the matter in the Ministry responsible for lands, she found that the respondent had paid land rent of the respective plot in his own name, she issued him a notice to vacate the suit premises. Then, Halima Omary convened a family meeting in which Mwanaisa Yusuph Haji was nominated and later appointed as a legal representative of the deceased Yusuph Haji, introduced to the NHC and purchased the house in dispute. Subsequently, Halima Omari referred the matter to Mburahati Ward Tribunal, commenced a case against the respondent and sought among others, a relief that the respondent be ordered to vacate the suit premises.

On his side, the respondent denied the claims stating that he was not a tenant and instead, had purchased the house in dispute from the late

Yusuph Haji who died in 1985, changed the title deed and as such, he was astonished to be given notice to vacate the suit premises on 27/2/2012.

After a full hearing, the Ward Tribunal declared Mwanaisha Yusuph Haji (the legal representative of the late Yusuph Haji) as the lawful owner of the suit premises. Aggrieved by the decision of the Ward Tribunal, the respondent unsuccessfully appealed in the District Land and Housing Tribunal for Kinondoni as his appeal was dismissed. Still not satisfied, the respondent appealed before the High Court of Tanzania (Land Division) at Dar es Salaam. This time, the High Court quashed the decisions of the two lower tribunals and declared the respondent as the lawful owner of the house in dispute.

Dissatisfied with the decision of the High Court, the appellant has preferred the present appeal to this Court. In the Memorandum of Appeal, the appellant has fronted five grounds of complaint, however, for reasons to be apparent in due course we shall not reproduce those grounds.

Before the commencement of the hearing, we wanted to satisfy ourselves on the propriety or otherwise of the proceedings before the Ward Tribunal instituted by Halima Omari against the respondent. Upon taking the floor, advocate Richard Rweyongeza who represented the appellant,

intimated to us that although the record shows that both Mwanaisha Yusuph and Halima Omari each was appointed as administrator of the estate of the late Yusuph Haji, it cannot be ascertained as to how Halima Omari became the administrator on 13/10/2009 in the absence of any evidence that Mwanaisha's appointment dated 10/10/08 was revoked or annulled. In this regard, it was Mr. Rweyongeza's argument that, since there is no clue as to the revocation of the appointment of Mwanaisha Omari in order to necessitate the subsequent appointment of Halima Omari, the latter had no *locus standi* to institute a case against the respondent in the Ward Tribunal of Mburahati. On this accord, it was thus Mr. Rweyongeza's submission that, since Halima had no *locus standi* to initiate a case against the appellant herein which is a subject of the present appeal, the entire trial and appellate proceedings up to the High Court were vitiated and deserve to be annulled.

On the way forward, Mr. Rweyongeza urged us to invoke revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act [CAP 141 RE.2019], to nullify the proceedings and set aside the judgments in question with a direction that the matter be commenced afresh by any interested party.

On the other hand, in the wake of the concern raised by the Court advocate Ambrose Malamsha who represented the respondent, at the outset, prayed to withdraw the preliminary objections against the appeal which we granted and marked the preliminary points of objection withdrawn. That aside, like his counterpart, Mr. Malamsha was also of the view that in the event Halima had no *locus standi* to commence a case against the respondent, the entire proceedings from the Ward Tribunal up to the High Court were a nullity and as such, the respective judgments should be set aside and the trial should commence de novo.

Having carefully considered the record before us and the submissions of the parties, the question to be decided is whether Halima Omari had *locus standi* to lodge a case before the Ward Tribunal which is a subject of the present appeal whereby Omary Yusuph is currently appearing as legal representative of the deceased Yusuph Haji following the death of Halima Omary. We are aware that *locus standi* is all about directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted which among the initial matter to be established in a litigation matter. That said, it is a settled principle of law that for a person to institute a suit he/she must have *locus standi* and this was emphasized

by the High Court in the case of **LUJUNA SHUBI BALLONZI, SENIOR VS REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI** [1996] TLR 203 (HC) where it was stated that:

*"Locus standi 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**"*

[Emphasis supplied]

Apart from fully subscribing to the cited decision, it is our considered view that the existence of legal rights is an indispensable pre-requisite of initiating any proceedings in a court of law. In this particular case, since Yusuph Haji had passed away, according to the law it is only the lawful appointed legal representative of the deceased who can sue or be sued for or on behalf of the deceased which is stipulated under the provisions of section 71 of the Probate and Administration Act [CAP 352 R.E.2002] gives the following direction as it stipulates as follows:

"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, until such

*probate or letters of administration shall have been
revoked or annulled.*

In view of the settled position of the law as to who is mandated to commence a suit on behalf of the deceased, a follow up question in the present matter is who ought to have initiated the proceedings before the Ward Tribunal as the legal representative of the deceased against the respondent. It is glaring that, Halima Omary who initiated proceedings against the respondent before the Ward Tribunal, in her statement of claim intimated that Mwanaisha Yusuph Haji was on 10/10/2008 appointed as a legal representative of the late Yusuph Haji following her appointment as the administrator of estate vide Probate Cause No. 246 of 2008 before the Primary Court of Buguruni. It is evident that this fact was brought to the attention of the Ward Tribunal by Halima Omari as reflected at pages 3A, 3B, 3C,3D and 3F of the record appeal. It was further disclosed that the deceased Yusuph Haji signed the sale agreement with NHC. And, through the letter dated 13 March, 2012 the NHC stated that, they identified Mwanaisha Yusuph Haji as a lawful owner of the disputed house. In the premises, it is crystal clear that from what was pleaded by Halima Omari, the Ward Tribunal of Mburahati was aware that Mwanaisha Yusuph was the administrator of estate of the deceased Yusuph Haji. In this regard, it

is Mwanaisha Yusuph Haji who ought to have initiated a case against the appellant and not Halima Omar who was the wife of the deceased. Besides a clear disclosure by Halima that it is Mwanaisha who was the administrator of estate of the deceased we could not land on any evidence showing that her appointment was annulled or revoked so as to necessitate the subsequent appointment of Halima Omari as an administrator of the late Yusuph Haji 's estate on 13/10/2009 vide the same Probate Case No. 246 of 2008 before the Primary Court of Buguruni.

In view of what we have endeavoured to discuss, it cannot be safely vouched that Halima Omari had *locus standi* to commence a case on behalf of the deceased against the respondent. This, as correctly submitted by the learned counsel, vitiated the proceedings before the Ward Tribunal the subject of subsequent appeals before the District Land and Housing Tribunal and the High Court. Thus, the respective proceedings and resulting judgments cannot be spared. That apart, the anomaly in question as well, adversely impacts on the present appeal because Omary Yusuph who is appearing as legal representative of the deceased took over from the late Halima Omari who had no *locus standi* to institute a case on behalf of her deceased husband. Apparently, it is unfortunate that the anomaly

missed the eyes of both the District Land and Housing Tribunal and the High Court or else it could have been redressed timely before this appeal was pursued.

On the way forward, we invoke revisional jurisdiction under section 4 (2) of the AJA, nullify the entire proceedings before the two tribunals and the High Court, quash and set aside the respective judgments and direct that any action in respect of the suit premises on behalf of the deceased be commenced by or against the administrator of estate of the late Yusuph Haji.

DATED at DAR ES SALAAM this 22nd day of October, 2021.

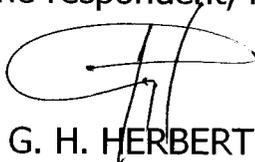
S. E. A. MUGASHA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The ruling delivered this 25th day of October, 2021 in the presence of Mr. Theodory Primus, learned counsel for the appellant and Mr. Ambrose Malamsha, learned counsel for the respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL