IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: LILA, J.A., LEVIRA, J.A., And KAIRO, J.A.)

CIVIL APPEAL NO. 193 OF 2019

WILLIAM SULUS ..... APPELLANT

VERSUS

JOSEPH SAMSON WAJANGA ..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Mwanza

(Mlacha, J.)

Dated the 17th day of June, 2017
in
Misc. Land Case Appeal No. 53 of 2015

.....

JUDGMENT OF THE COURT

2nd December, 2022 & 9th March, 2023

KAIRO, J.A.:

At the Ward Tribunal of Nyasura, Bunda District, the respondent successfully sued the appellant claiming that he invaded into the land of the clan/family which earlier belonged to his father, the late Samson Wajanga (herein to be referred as the suit land).

Aggrieved, the appellant appealed at the District Land and Housing Tribunal for Mara at Musoma (the DLHT) which reversed the decision of the Ward Tribunal in favour of the appellant. The respondent was not amused and thus lodged the appeal to the High Court which overturned the decision of the DLHT in appeal No. 67 of 2014 and restored the

holding of the Ward Tribunal. The appellant was dissatisfied with the decision of High Court, hence this appeal being the third one. At first, the appellant raised two grounds of appeal but decided to abandon one and remained with the following:

1. *The High Court Judge erred in law and fact in setting aside the decision of the District Land and Housing Tribunal for Mara at Musoma and restored the decision of the Ward Tribunal for Nyasura at Bunda District when he held that the respondent had locus standi to sue the appellant.*

The facts leading to this appeal as gathered from the record of appeal are that; the respondent instituted land application No. 7 of 2013 at Nyasura Ward Tribunal at Bunda District claiming that the appellant had invaded and trespassed into the suit land.

Before the trial tribunal, it was the respondent's evidence that his late father, Samson Wajanga, Peter Sotera, and Nyamtondo Wajanga were siblings and each inherited a piece of land from their late grandmother. Later, the respondent's father shifted to Mwanza and Ukerewe where he finally passed away in 2009. The respondent who was left using the suit land got misfortunes and was sent to jail from 1999 to 2009. Meanwhile Nyamtondo Wajanga sold her piece of land

and went to live at Kyabakari leaving behind Peter Sotera who seemed to be occupying the suit land.

When the respondent came back from jail and went to their village in 2011, he found the suit land was invaded and being used by the appellant. On making enquiry, it transpired that the respondent's uncle, Peter Sotera had sold the suit land to the appellant. The respondent thus sued the appellant claiming back the sold suit land.

In his defence, the appellant stated that he legally purchased the suit land from Peter Sotera who also conceded when testifying to have sold it to him, but claimed that the suit land belonged to him (Peter Sotera). As such, he legally sold it to the appellant.

After hearing the parties, the trial tribunal was convinced that Peter Sotera sold the land which did not belong to him, but to the respondent's father. The sale was therefore nullified and the land was declared to belong to the late Samson Wajanga and the appellant was ordered to claim the purchase price from Peter Sotera, if he wished.

The appellant was aggrieved and appealed to the DLHT vide Land Appeal No. 62 of 2014. He raised the issue of *locus standi* among others to the effect that the respondent instituted the suit at the Ward Tribunal without being appointed to administer the estate of the late Samson Wajanga nor did he have any other representative capacity to

sue on behalf of his alleged family. The DLHT did not deal with the *locus standi* issue raised. Instead, it delivered its judgment in favour of the appellant after making a finding that the land in dispute belonged to Peter Sotera and thus, the suit land was properly sold to the appellant.

The respondent was not happy with the said outcome and lodged at the High Court Land Appeal No. 53 of 2015 to challenge it.

In his submission at the High Court, the appellant queried the competence of the respondent in instituting the suit at the Ward Tribunal claiming the land of his late father without having been appointed to administer the said estate. Thus, had no *locus standi* to sue in the circumstance.

Addressing the *locus standi* issue, the learned Judge observed that the issue was not raised at the lower tribunals and considered it to be an afterthought. The second appellate court was also of the view that the issue did not form the basis of the DLHT's decision and thus it was supposed to be brought in a cross appeal. The court further found that the respondent's *locus standi* stemmed from being both a beneficiary of the disputed land suing as a member of the family of the late Samson Wajanga and also as an administrator of the estate of his late father. The High Court Judge eventually dismissed the argument and proceeded to determine the appeal on merit and found in favour of the respondent,

thereby restoring the decision of the trial tribunal. Dissatisfied, the appellant lodged this appeal armed with one ground of appeal as earlier intimated; that the respondent had no *locus standi* all along.

When the appeal was called upon for hearing before us, the appellant was represented by Mr. Emmanuel Sayi, learned counsel while the respondent appeared in person, unrepresented. Both parties have filed their written submissions for and against the appeal and they both adopted them as part of their oral submissions.

In his submission to support the, Mr. Sayi contended that the respondent had no locus standi to institute the suit against the appellant at the Ward Tribunal. He elaborated that, according to the respondent's testimony, he was suing the appellant for trespassing into his late father's land. The respondent also claimed that, the land in dispute belonged to his family composed of three siblings namely; Samson Wajanga (his late father), Peter Sotera and Nyamtondo Wajanga who each was allocated a separate piece of land by their grandmother. He argued that the said testimony is not clear under what capacity the respondent sued the appellant.

In his further elaboration, Mr. Sayi contended that, the respondent's testimony is confusing as he did not state who was appointed to administer his late father's estate following his death or

whether his estate was administered as required by law. He added that, there is no explanation also on how the suit land changed ownership from personal property after the death of the respondent's father for lack of administration of the estate. As such, the High Court Judge erred to term the suit land as a family land. It was Mr. Sayi's submission that basing on the above arguments, the respondent did not have competency to sue the appellant because he was not appointed as administrator of his late father's estate nor did he have any other representative capacity to sue on behalf of the alleged family. Mr. Sayi went on to fault the High Court's decision arguing that, it was an error for the Judge to find that, the respondent did not produce the letters of administration of his father's estate because he was not asked to do so at the trial tribunal. He contended that, the respondent had a legal duty to prove his *locus standi* before instituting the case. He referred us to the case of **Attorney General and Two Others vs. Elgi Edward Massawe and 104 Others,** Civil Appeal No. 86 of 2002 (unreported) which according to him, the provisions of section 110 and 111 of the law of Evidence Act, [Cap 6 R.E. 2002, now R.E. 2022] which requires the person alleging existence of any fact to prove it, was underscored. It was Mr. Sayi's contention that, in the instant case, the respondent did not produce any evidence regarding his capacity as the administrator of

the estate of his late father before instituting the case. He went on to submit that, though the respondent attached the letters of administration in his written submission at the second appellate court, it was not proper to attach them while the matter was at an appellate stage. Besides, the said letters were granted to him on 6th May, 2014 while the case was instituted at the Ward Tribunal on 19th September, 2013 which means that when the respondent instituted the case, he had no letters of administration. Mr. Sayi thus concluded that, it is not true that the respondent would have produced them if asked to do so at the lower tribunals as reasoned by the High Court Judge, since by that time he had none.

When asked by the Court with regard to the High Court reasoning that the respondent's *locus standi* also stemmed from the fact that he had an interest on the land in dispute being a member of the family, Mr. Sayi responded that, even if he is a family or clan member, again he had no *locus standi* in the absence of any document conferring upon him the family or clan consent like a power of attorney, to represent them.

Mr. Sayi further submitted that the appellant is a bonafide purchaser for value as he bought the land in good faith and belief that it belonged to the vendor. He cited the case of **Suzana S. Waryoba vs. Shija Dalawa**, Civil Appeal No. 44 of 2017 (unreported) and implored

the Court to declare him so. Insisting on his prayer, Mr. Sayi submitted that when the land was sold to the appellant in 2002, the respondent's father was still alive and did not dispute. He went on to argue that the appellant was in occupation and using the suit land for over seven years before the respondent's father died in 2009 but did not sue, which according to him, showed that the deceased had no claim over the suit land. He thus prayed the Court to allow this appeal with costs.

In reply, the respondent submitted that the issue of *locus standi* was never raised at the two tribunals below but at the High Court when the appellant was responding to the grounds of appeal, to which he argued to be improper and prayed the court to consider it as an afterthought and disregard it. It was his contention that the issue of *locus standi* did not form the basis of the DLHT's decision and thus to raise it at the 2nd appellate court as was done by the appellant, was not correct.

According to him, the issue did not arise before the Ward Tribunal because the parties were well known by the residents of Nyasura Ward, including the members of the Ward Tribunal. He went on to argue that the said residents knew him and there was no dispute that the respondent was the son of the late Samson Wajanga, the initial owner of the suit land.

It was his submission that the members of the family/clan of the late Samson Wajanga attended at the Ward Tribunal and some testified but none of them complained at the tribunal that the respondent had no right or authority to sue on their behalf. He thus contended that the appellant's argument in this regard is irrelevant. He insisted that he sued as a member of the family of the late Samson Wajanga to recover the family/clan land as rightly found by the High Court Judge.

In his further argument to justify his capacity to institute the case at the Ward Tribunal, the appellant submitted that he introduced and produced his letters of administration during the hearing at the High Court with no objection from the appellant. He went on to contend that, the said documents were genuine court documents from Bunda Urban Primary Court in Probate Cause No. 22 of 2014, adding that the High Court believed it and acted upon it. He submitted also that the High Court therefore was correct to rely on the document in its decision which decision, according to him, was correct to meet the ends of justice.

He finally insisted that, the purported sale was a nullity as the evidence is loud and clear that the suit land which Peter Sotera sold to the appellant belonged to the late Samson Wajanga and that he sold it without consultation and authorization by the family or clan members, as such, he had no title to pass to the appellant. The respondent invited

us to look and consider the attached copies of the said letters of administration together with minutes of the clan meeting which recommended him to be appointed as the administrator of the estate of the late Samson Wajanga. He concluded by praying the Court to dismiss this appeal with costs.

The respondent had nothing to rejoin apart from reiterating his prayer for the Court to find the appeal without merit and dismiss it with costs.

Having gone through the record of appeal and hearing of parties' rival arguments, we are now in a position to determine this appeal.

At the outset, we wish to begin with the argument by the respondent that it was not proper to raise the issue of *locus standi* at the High Court being the 2nd appellate Court instead of the lower tribunals, and on that account, the Court should disregard it for being an afterthought.

Essentially, *locus standi* is the legal capacity or competency to bring an action or to appear in court. It is a long-settled principle of law that for a person to institute a suit, he/she must have *locus* standi. In **Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi,** [1990] T.L.R. 203, Samatta, J (as he then was) observed as follows on *locus standi* issue:

"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 ...."

This is a cherished legal principal that once a point of law, like the one at issue is raised, the Court has to consider it at the earliest opportunity, regardless of having been improperly raised or raised at a later stage. In other words, it can be raised at any stage of the proceedings even at an appellate stage. In this regard therefore, it was correct for the High Court to determine it as it did. We hasten to add that, the DLHT's decision to brush aside the issue was an error. As such, the appellant was right to raise it as he did. In the circumstances, the invitation by the respondent to disregard it is rejected.

In the case at hand, the respondent sued the appellant for allegedly invading into the suit land which belonged to his late father. Basing on the allegation, it is imperative to look at the legal position/stance regarding who has the legal capacity or *locus standi* to sue on behalf of the deceased property or estate. Sections 71, 99 and 100 of the Probate and Administration of Estates Act [Cap. 352 R.E. 2019] (the Act) serve as guidance. They state:

"Sec.71. 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....."

Section 99. "The executor or administrator, as the case may be, of deceased person is his legal representative for all purposes, and all the properties of the deceased person vests in him as such..."

Section 100. "An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living"

Interpreting the quoted provisions, it is the grantee alone of probate or letters of administration who can sue or be sued in place of the deceased person. [See: **Omary Yusuph vs. Albert Munuo,** Civil Appeal No. 12 of 2018, **Swalehe Juma Sangawe** (*as an administrator of the late Juma Swalehe Sangawe*) **And Another vs. Halima Swalehe Sangawe,** Civil Appeal No. 82 of 2021 and **Omary Yusuph vs. Albert Munuo,** Civil Appeal No. 12 of 2018, (all unreported).

In view of the settled position of the law as to who is mandated to commence a suit on behalf of the deceased, the follow-up question in

the present matter is whether the respondent had locus *standi* to institute the claim at the Ward Tribunal against the appellant.

In its decision subject to challenge in this appeal, the High Court found that the respondent's *locus standi* stemmed from two sets of facts/scenarios: -

First; as a legal representative of his deceased father's estate and that he could have produced his letters of administration if the issue of *locus standi* would have arisen in the two tribunals below.

Second; as a heir and beneficiary of the land in dispute so as to revert it to the family being a family land.

The above findings have been echoed by the respondent in his arguments to justify his challenged *locus standi* before the Court arguing that the High Court findings served the interest of justice.

As it were, the said findings were vehemently disputed by the appellant. Basing on the legal standing above stated, the respondent had a duty to prove his competency to sue as far as *locus standi* was concerned before instituting the suit at the Ward Tribunal. The issue for determination therefore is whether the appellant had *locus standi* at the time of instituting the suit against the appellant at the Ward Tribunal.

It is noteworthy that the alleged minutes of the clan meeting recommending for the appointment of the respondent to administer the estate of his late father and the respondent's letters of administration confirming his appointment were not tendered at the trial for clearance and admission. Instead, they were attached to the written submission filed at the High Court, which is improper as rightly argued by the learned counsel for the appellant. The omission rendered the same not to be part of the record of appeal, as such they could not be relied upon as evidence. With due respect, we decline the invitation by the respondent to look at and consider them. In the same spirit, it was an error for the High Court to make its finding basing on uncleared and unadmitted documents. The reason is not farfetched; to afford an opportunity to the other party (appellant in this case) to oppose or support their admission in court, as well as cross examine on its contents where necessary.

Nevertheless, the Court shall discuss them as the parties orally submitted on the same and the High Court based its decision on them, among other reasons.

It was the appellant's contention, which was not controverted by the respondent, that the respondent was granted the alleged letters of administration in year 2014 while the suit in question was instituted in

2013. We are inclined to join hands with the appellant's counsel argument that by the time of instituting the claim at the Ward Tribunal, the respondent was not yet appointed administrator of the estate of his late father. Basing on the stated facts, the finding that had the issue of *locus standi* arose at the Ward Tribunal, the respondent would have produced them, with profound respect to the High Court, holds no water. It is crystal clear that by that time of instituting the claim, the respondent had not obtained them. Besides, it is a settled law that since the respondent was claiming to have *locus standi* at the time of suing through letters of administration, then he had the legal duty to so prove without being prompted or queried on it and would have instituted the claim in his capacity as administrator of his late father's estate. This is the spirit behind a cherished legal principle in our Jurisprudence that he who alleges must prove as stipulated in sections 110 and 111 of the law of Evidence Act, as rightly submitted by the appellant. In this regard therefore, the first finding of the High Court that the appellant was a legal representative of his late father's estate when suing at the Ward Tribunal was erroneous as correctly argued by the learned counsel for the appellant.

The High Court also made a finding that, the respondent being a legal heir and beneficiary of the suit land, had *locus standi* to claim the

suit land so as to revert it to the family of the late Samson Wajanga. This argument was echoed by the respondent. However, the same was vehemently refuted by the appellant for want of cogent document to show that the alleged family or clan has authorized the respondent to sue on its behalf. The issue for determination before the Court is whether the respondent, being a rightful legal heir, had locus standi to claim the property of his deceased father on behalf of the family.

Indeed, the suit as instituted does not show that he had sued in a representative capacity, nor did it have any document attached with it to show that the respondent had been authorized to sue on behalf of the family as he claimed. Instead, the citation of the suit shows that the respondent instituted the suit in his individual capacity. This can easily be gleaned from the parties to the suit throughout from the Ward Tribunal to the Court. At the Ward Tribunal for example where the suit commenced the parties were *Joseph Samson Wajanga* as a complainant and *William Sulus* as respondent. The parties as above stated verifies that the respondent sued in his individual capacity and not in a representative status as he seems to suggest.

In our view, suing in representative capacity would have saved the day in the circumstances of this case if there was a document showing that the family authorized the respondent to sue on its behalf.

We are aware that the respondent had argued that the family members came to testify at the Ward Tribunal on his part and had no objection against him suing on their behalf. However, suffice to state that throughout their testimony at page 14 of the record of appeal, witnesses Nos 1 and 2 by the names of Nyamtondo Masatu Wajanga and Kadogo Samson Wajanga respectively testified regarding the ownership of the suit land to belong to the late Samson Wajanga and never touched the issue of the respondent being their representative. As such, we do not subscribe to the respondent's argument. That apart, the decree of the High Court at page 75 of the record of appeal which restored the decision of the Ward Tribunal suggests that the respondent's claim of the suit land is justified and the ownership of the suit land is returned to him. We will let the relevant part of said decision of the Ward Tribunal speak for itself for ease of reference. It states:

> ***"UAMZI***
>
> *(a) Baraza la Kata Nyasura linatoa uamzi kwamba mlalamikaji Bwana Joseph Samson Wajanga* ***ana haki ya madai yake hivyo arudishiwe shamba lake*** *kwa niaba ya familia ya marehemu Samson Wajanga kuanzia leo" [Emphasis added]*
>
> *(b) N/A*

(c) N/A

Though the Ward Tribunal decision suggests that the suit land is reverted to the respondent on behalf of the family but, the expression to the respondent in the decision that the Ward Tribunal is returning the suit land to him on behalf of the family, coupled with the fact that he sued in his individual capacity, implies that the suit land now belongs to the respondent while the same was the property of the deceased subject to distribution to rightful heirs. In our view, the situation may result to confusion in future by the respondent ousting other persons who might have the right to inherit the suit land as well.

In the end, we are again of the view that the High Court's finding that the respondent had locus standi emanating from being a beneficiary to sue on behalf of the family is untenable for the above explained reasons, and thus, the High Court erred to so conclude.

Having found that the two scenarios are untenable, we hold that the respondent had no *locus standi* to sue the appellant at the Ward Tribunal when he instituted the suit. It is unfortunate that the anomaly was not attended to at the DLHT, though raised. Besides, in our view, the High Court misled itself in its finding when attended it. Otherwise, the issue could have been long redressed before pursuing this appeal. Thus, the sole ground of appeal raised has merit and we hereby allow it.

As a way forward, we allow the appeal, quash and set aside the respective judgments of the two tribunals and the High Court. Since the respondent claims to have been appointed to administer his late father's estate, he may institute a suit to claim the land of the deceased in his capacity as administrator of the estate if he still wishes in accordance with the law.

In fine, we hereby allow this appeal with no order as to costs as the courts below contributed to the confusion.

DATED at **DAR ES SALAAM** this 3rd day of March, 2023.

S. A. LILA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Judgment delivered this 9th day of March, 2023 in the presence of Mr. Emmanuel Sayi, Counsel for the Appellant and in the absence of the respondent is hereby certified as a true copy of the original.

S.P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL