

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: MWARIJA, J.A., KEREFU, J.A And ISMAIL, J.A.)**

**CIVIL APPEAL NO. 513 OF 2021**

**MARTIN ITAMBU (As an Administrator of the  
Estate of the late YUSTINA ITAMBU NJIKU).....APPELLANT**

**VERSUS**

**SHABANI DEDU.....RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania  
at Dodoma)**

**(Mansoor, J.)**

**dated the 30<sup>th</sup> day of June, 2020**

**in**

**Land Appeal No. 99 of 2019**

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**JUDGMENT OF THE COURT**

**(EX-PARTE)**

6<sup>th</sup> & 16<sup>th</sup> February, 2024

**MWARIJA, J.A.:**

This appeal arises from the decision of the High Court of Tanzania at Dodoma in Land Appeal No. 99 of 2019. In that appeal, the respondent, Shabani Dedu challenged the decision of the District Land and Housing Tribunal for Singida (the Tribunal) in Land Application No. 128 of 2019 (the application). By the application, the appellant, who was the administrator of the estate of her late mother, Yustina Itambu Njiku, sued the respondent, Shabani Dedu, seeking an order declaring

him (the appellant) the lawful owner of eight acres of land situated in Mughumbu Hamlet, Mampanda Village in Ntundu Ward, Ikungi District in Singida Region (the suit land). The suit land was estimated to be worth TZS 8,000,000.00. He also claimed for general damages of TZS 5,000,000.00, costs of the application and any other reliefs which the Tribunal would deem fit to grant.

The respondent disputed the claim that the suit land belonged to the appellant. He contended that, the same formed part of his 50 acres' land which he acquired in 1965 by clearing a virgin land for cultivation and pastoral use.

Having heard the evidence of two witnesses for the appellant (the applicant in the Tribunal) and six witnesses for the respondent, the Tribunal found it established that the suit land, which was previously owned by the appellant's late father, belonged to the respondent. He was thus declared the rightful owner thereof.

The respondent was aggrieved by the decision of the Tribunal and therefore, appealed to the High Court. He raised four grounds of appeal. In the second ground, he challenged the appellant's capacity to prefer the claim as the administrator of the estate of her late mother. The ground is to the following effect:

*"That, the Honourable District [Land and Housing] Tribunal erred in fact and law to entertain and determine the matter while knowing that the applicant [had] no any claim of right over the disputed land [as he did not have a locus standi]."*

After hearing the learned counsel for the parties on that ground, the learned first appellate Judge found that, the appellant did not have a *locus standi* to claim the suit land. She agreed with the submissions made by the respondent's counsel that, from the evidence, the appellant claimed his late father's land while he did not have the capacity to do so for want of letters of administration appointing him the administration of his deceased father's estate.

The learned first appellate Judge found further that, although the appellant was the administrator of the estate of his late mother, there was no evidence establishing, **first**, that his late mother owned the suit land jointly with his late husband (the appellant's father) in terms of the provisions of s. 161 (1) of the Land Act, Chapter 113 of the Revised Laws and **secondly**, that ownership of the suit land had ever been transferred to her.

Despite its finding that the appellant did not have a *locus standi* to claim the suit land, the High Court proceeded to consider the third and

fourth grounds of appeal which challenged the findings of the Tribunal that the appellant had not proved his case. Upon re-evaluation of the tendered evidence, the learned first appellate Judge concluded that:

*"Basing on the above, the case for the appellant was stronger compared to that of the respondent. The appellant was able to discharge his burden of proof by proving ownership of the land compared to the evidence of the respondent which was full of contradictions and inconsistencies."*

She therefore, reversed the decision of the Tribunal and declared the respondent the rightful owner of the suit land. Dissatisfied with the decision of the High Court, the appellant preferred this appeal which, according to the memorandum of appeal, is predicated on three grounds of appeal.

At the hearing of the appeal, the appellant was represented by Mr. Cheapson Luponelo Kidumage, learned counsel. On his part, the respondent, who was duly served on 31/1/2024, did not enter appearance. As a result, hearing of the appeal proceeded in his absence under rule 112 (2) of the Tanzania Court of Appeal Rules, 2009.

Before he commenced his submissions in support of the appeal, Mr. Kidumage informed the Court that, he had decided to abandon the

second and third grounds of appeal. He thus argued the first ground only which is to the following effect:

*"That, [after] the honourable 1<sup>st</sup> appellate court [had] rightly found that the person who instituted Land Application No. 128 of 2018, out of which Land Appeal No. 99 of 2019 arose had no locus standi, it erred in fact and law when it proceeded to decide on merits the Land Appeal before it and as such wrongly arrived at the impugned decision."*

In his brief but focused submissions on that ground, Mr. Kidumage argued that, after the High Court had found that the appellant did not have a *locus standi*, it should not have proceeded to determine the appeal. Instead, it ought to have quashed the proceedings of the Tribunal, set aside the Judgment and direct the appellant to seek the necessary remedy after complying with the applicable provision of the law. On the effect of the irregularity complained of by the appellant, the learned counsel cited the case of **Godbless Jonathan Lema v. Mussa Hamis Mkanga and 2 others**, Civil Appeal No. 47 of 2012 (unreported).

From his submissions, the learned counsel for the appellant did not have any qualms about the learned Judge's finding that the appellant did not have a *locus standi* to claim the suit land. The point of discord by Mr.

Kidumange was the determination by the High Court, of the appeal on merit after its finding that the appellant did not have the capacity to sue.

We respectfully agree with the learned counsel that, after having held that the appellant did not have a *locus standi*, the High Court ought not to have determined the appeal on merit. Because *locus standi* is a jurisdictional issue, the Tribunal lacked the requisite jurisdiction to try the application. The same was not maintainable for having been filed by a person who did not have interest in the suit land.

In the circumstances, the only remedy was to quash the Tribunal's proceedings and set aside the judgment. - See for instance, the cases of **William Sulus v. Jospeh Samson Wajanga**, Civil Appel No. 193 of 2019, **Chama cha Wafanyakazi Mahoteli na Mikahawa Zanzibar (HORAU) v. Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019 and **Peter Palanzi v. Christina Mbaruka**, Civil Appeal No. 153 of 2019 (all unreported). In the latter case, after the Court had found that the respondent did not have *locus standi* to sue the appellant, it proceeded to decide that;

*"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 decree of the Ward Tribunal, the DLHT [District Land and Housing Tribunal] and the High Court”.*

That position is similar to the one pertaining in the case at hand.

On the basis of the foregoing reasons, we allow the appeal and consequently, quash the proceedings of both the Tribunal and the High Court and set aside the resultant Judgments. The appellant is at liberty, subject to compliance with the requirements of the law, to pursue his rights over the suit land, if any. Costs to the respondent.

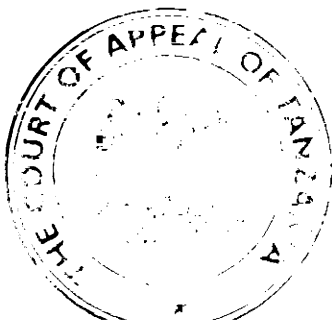
**DATED at DODOMA** this 16<sup>th</sup> day of February, 2024.

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

R. J. KEREFU  
**JUSTICE OF APPEAL**

M. K. ISMAIL  
**JUSTICE OF APPEAL**

The Judgment delivered this 16<sup>th</sup> day of February, 2024 in the presence of Mr. Cheapson Kidumage, learned counsel for the Appellant and in the absence of the respondent, is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**