

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC LAND APPEAL NO. 37 OF 2017

(Arising from the decision of District Land and Housing Tribunal of Arusha District at Arusha Land Appeal No. 01 of 2017 and Original Ward Tribunal of Laroi Ward in Application No. 1 of 2016)

MARIAM SAID CHURA APPELLANT

VERSUS

SABAYA LOLUTU BUNG'ANDO.....RESPONDENT

MAIGE, J.

JUDGEMENT

This is an appeal against the judgment and decree of the District Land and Housing Tribunal for Arusha as per Hon. Mdachi, Chairman ("the first appellate tribunal") allowing an appeal against the decision of the Laroi Ward Tribunal ("the trial tribunal") on account that the appellant herein did not have the necessary *locus standi* to pursue the claim.

It is worthy of note that in his petition of appeal to the **first appellate tribunal**, the decision of the **trial tribunal** was challenged both on technical ground and on merit. On the merit, the decision of the **first appellate tribunal** suggests that the Hon. Chairman dismissed the complaint to be devoid of merit after commenting on the evidence adduced at the **trial tribunal**. On the technical issue, the honourable chairman was saying that because she was not in possession of letters of administration in respect of the estate of the late Said Chura, the alleged owner of the **suit property**, she was incompetent to institute the claim.

In the instant appeal, the appellant through her counsel Dr. Mchami faults the **first appellate tribunal** in holding that the appellant did not have the mandate to institute the claim. Relying on the authority of this Court in SAMSON MWAMBENI VS. EDSON JAMES MWANYIGILE, (2001) TLR No.1, the counsel submits that by virtue of being the biological daughter of the late Said Chura, the appellant had an independent interest on the suit property which would entitle her to institute a claim to protect the property even in the absence of letters of administration. Mr. Keleo, learned advocate for the respondent had a different understanding. It was his humble view that in the absence of letters of administration, the appellant was not the right person to pursue the claim. In essence that is what the counsel submitted for and against the appeal when the matter came for hearing.

In the course of composing the judgment, I faced some legal obstacles which had to be resolved before I would consider the merit of the appeal. Therefore, when the matter came for judgment, I requested the parties to comment on the issues. Mr. Kileo did not, for undisclosed reason, appear. The respondent who appeared in person did not make any comment. The first legal issue which I wanted them to address was whether the Hon. Chairman having satisfied himself that the appellant did not have the mandate to pursue the claim, would have properly and correctly considered the merit of the appeal? The second issue was whether, in the absence of a specific decree in the judgment reversing the decision of the **trial tribunal**, the judgment of the **first appellate tribunal** was not a defective judgment. The submissions of Dr. Mchami on the first issue was that it was not proper. Having established that the appellant had no *locus standi*, the counsel submitted, he would have ended up there rather than deciding the merit of the appeal in favour of a person who was the wrong party. On the second issue, he submitted that the judgment was incomplete and it could not reverse the decision of the **trial tribunal**.

On my part, I entirely agree with the learned counsel. As said above, the disposal of the appeal was on account of lack of mandate on the part of the appellant to initiate the claim at the **trial tribunal**. That apart, in the judgment of the **first appellate tribunal** that the factual finding of the **trial tribunal** on the ownership of the **suit property** was adjudicated upon when

the presiding chairman was considering the first three grounds of appeal. He dismissed them to be without merit. The effect of this is to confirm the factual finding of the **trial tribunal** that the respondent has no valid interest on the **suit property**. The factual finding in so far as the **suit property** is concerned may be conclusive as against the respondent notwithstanding the holding that the appellant lacked *locus standi*. It sounds to me to be the position of law that, once a claim is dismissed for want of *locus standi*, the Court becomes incompetent to determine the merit of the claim. In determining the merit of the appeal in favour of a person which it had held to be incompetent, the **first appellate tribunal** constructively denied the respondent his right to be heard in defense against the proper claimant.


The second question is straightforward and self explanatory. Reversal of the decision of the lower court where an appeal is allowed, is one of the essential ingredients of a decision on appeal. Without such a decree being specifically pronounced in the judgment, it is trite law, a mere pronouncement as in the instant decision that the appeal is allowed, does not *ipso facto* reverse the decision of the lower court. To that extent therefore, the judgment of the **first appellate tribunal** was incomplete.

The cumulative effect of the two issues above is to render the judgment and decree of the **first appellate tribunal** null and void. For those reasons therefore, I will as I hereby do, invoke my revisional powers under section 43

(1) (b) of the Land Disputes Courts Act and by way of revision, nullify and set aside the judgment and proceedings of the **first appellate tribunal**. The file is remitted to the **first appellate tribunal** so that the appeal can be heard afresh by a different chairman. Since the issues have been raised by the Court on its own motion, I will not give an order as to costs.

Right to appeal is duly explained.

It is so ordered.


SGD: I. MAIGE
JUDGE
19/10/2018



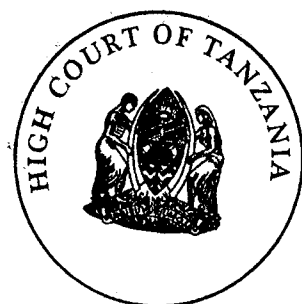
DATE: 19.10.2018


Coram: Hon. Maige, J

For the appellant: Dr. Mchami

Respondent: present in person

Order: Judgment delivered, the judgment.




SGD: I. MAIGE
JUDGE
19/10/2018

