THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPEAL NO. 73 OF 2019

(From the decision of the District Land and Housing Tribunal of Kyela at Kyela, Application No.23 of 2019)

HUSSEIN MAPUNDA ..... APPELLANT

VERSUS

ALFRED MWANDALI .....RESPONDENT

JUDGMENT

Date of last Order: 29/04/2020

Date of Judgment: 27/05/2020

A. J. Mambi, J

This appeal originates from an appeal filed by the appellant namely **HUSSEIN MAPUNDA.** Earlier in the District Land and Housing Tribunal of Kyela, the Tribunal made the decision in favour of the respondent. The appellant appealed against the decision of the District Land and Housing Tribunal basing on two grounds of appeal as follows:

1. That the appellate tribunal erred in law and fact when it dismissed the case with cost on the mere ground of lack of cause of action instead of striking it out.
2. That the appellate tribunal erred in law and fact when it hold that the appellant had no cause of action.

In his submission, the appellant Counsel briefly argued that the District Land and Housing Tribunal was not fair when it dismissed the mater while he had cause of cation.

In response, the respondent briefly submitted that he does not agree with the grounds of the appellant since the grounds have no merit. He argued that respondent before the District Land and Housing Tribunal was right in its decision. He argued that the appellant had no *locus standi.* He argued that since locus standi is the legal issue which is paramount, then this court should dismiss the appeal by the appeal.

I have carefully gone through the grounds of appeal and reply by the respondent. I have also keenly gone through all records from the District Land and Housing Tribunal. In my observation and considered view, the main issue at hand is whether the Tribunal was right in holding that the respondent was the rightful owner of the disputed land or not. The records show that the Trial Tribunal made its decision in favour of the respondent since the appellant failed to show cause of action since he was referring someone else (Washington Mwakipisele) to be the one handled the land in dispute.

Since the main ground of appeal ad even the decision of the trial Tribunal is centred on the cause of action or *locus standi,* I wish to first address the issue of cause of action and locus standi as raised by all parties. In this regard, the key legal issue is whether the appellant had cause of action at the trial District Land and Housing Tribunal or not. According to Osborn's coincide law dictionary, cause of action means the fact or combination of facts which gives rights to a right of action. Briefly, the "cause of action" is the heart of the complaint, which is the pleading that initiates a lawsuit. A cause of action can arise from an act, a failure to perform a legal obligation, a breach of duty, or a violation or invasion of a right. It can be regarded as a set of predefined factual elements that allow for a legal remedy. This means that all the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts. The position of the law is that where the plaintiff does not and without adequately states the cause of action his case can be dismissed at the outset.

Other scholars as indicated under the California Law Review Volume XVI SEPTEMBER, 1928 number 6 have explained cause of action that in every civil action the plaintiff is asking the sovereign power through its judicial machinery to come to his aid and require certain conduct of the defendant. This desired conduct is ordinarily designated as the relief sought. This relief is given only to those in whom the law recognizes a certain right thereto- a remedial

right. This remedial right is a creature of the law and arises out of some certain relation of the parties and their conduct with reference thereto. Reference can also be made to Order VII Rule 11 (a) of our Civil Procedure Code, Cap 33 [R.E.2002] which provides that where the plaint discloses no cause of action, the court has to reject it. In other words where the plaint does not disclose a cause of action or the plaintiff doses not disclose his cause of action, the court has the power to dismiss or struck it. See ***B.M. MBASSA VERSUS THE ATTORNEY GENERA, NO. B.7492 SGT. MILTON TANDARI and NO. D.3841 PC SAMSON MALIMI, CIVIL APPEAL NO. 40 OF 2003.***

The records from the trial Tribunal and evidence are clear that the appellant did not show how his interest if any was affected by the respondent. In other words the appellant in his plaint failed to disclose his cause of action and indeed the Trial Tribunal was right in it is decision. I wish also to refer the famous author of books in civil procedure namely Mulla who in his persuasive commentary addressed the concept on "cause of action". In his famous book on civil Procedure, 13th Edition, which gives synopsis of various decision that has been adopted with approval in our jurisdiction Mulla, observes that.

> *"A suit is always based on a cause of action. There can be no suit without a cause of action and "cause of action having accrued to the plaintiff.* ***"A cause of action" means every fact, which, it traversed it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court (W).*** *In other words, it is a bundle of facts which taken with the law*

applicable to them gives the plaintiff a right to relief against the defendant. ***It must include some act done by the defendant*** *since in the absence of such an act no cause of action can possibly accrue (x). It is not limited to the actual infringement of the right sued on but* ***includes all the material facts on which it is founded*** *(y).* ***It does not comprise evidence*** *necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree (z). Everything which if not proved would give the defendant a right to an immediate judgment must be part of the cause of action (a). It is, in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit (b). But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for the plaintiff It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour (c)". (Alphabets refer to the Author's footnotes".(emphasis are mine).*

Now since the appellant had no cause of action it meant he had no locus standi. Indeed the issue of *locus standi* is the matter of jurisdiction issue and it is rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In other words *locus standi* is the right or capacity to bring an action or to appear in a court. That person with locus standi can appear to be heard in court, or to address the Court on a matter before it. This means that it is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Lord Justice James, a distinguished English Judge, laid the principle down in 1880 in the

Ex P. Sidebotham **case[1880) 14 Ch D 458, [1874-80] All ER 588]** to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights. This decision became the *locus classicus* on the subject and was often applied.

In her book entitled "*Locus Standi*", an Australian jurist Leslie Stein defines it as:

> *"...**the existence of a right** of an individual or group of individuals ... to have a court enter upon an adjudication of an issue ... before that court by proceedings instigated by the individual or group."*

In one of the persuasive decision, Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** **[1966] 1QB 380 at 400-1** once explained that:

> *"The court will listen to anyone whose interests are affected by what has been done."*

In another persuasive decision that is ***Saskatchewan Ltd. v Sask. Liquor and Gaming Authority*** (604598) the Saskatchewan Court of Appeal adopted the following words in regards to *locus standi*:

> *"**A place of standing; standing in court.** A right of appearance in a court of justice ... on a given question. "Roughly speaking, this place of standing, enabling a person to appear before and be heard*

by a court in relation to a given question, may be acquired in one of two ways: ***as of right, in reliance upon one's own private interests in the question (private interest standing);*** *or with leave of the court in reliance largely upon the public's interest in the question (public interest standing)."And standing may exist, or be granted, in both civil and criminal proceedings, proceedings of one sort and another involving claims of various kinds, including a claim that a law is unconstitutional."(emphasis supplied with).*

I am of the settled view that in order to maintain proceedings successfully, a plaintiff or applicant must not only show that the court has power to determine the issue but also that he is entitled to bring the matter before the court. Looking at the records from the District Land and Housing Tribunal and evidence, there is no doubt that the appellant had no locus standi since he failed to disclose his action under the pleading.

This means that it is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Briefly the term *locus standi* has been explained as the matter of jurisdiction issue and it is rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In other words *locus standi* is the right or capacity to bring an action or to appear in a court. That person with locus standi can appear to be heard in

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In this regard, it is trite law that any party who wishes to knock at the door of the court to claim his rights he must disclose the facts in his claim under the pleadings that he has cause of action or locus standi. I wish to reiterate that the cause of action is the heart of the complaint, which is the pleading that initiates a lawsuit. The records further show that the land was being undisturbedly used by the respondent for a long time until the appellant came to claim that the land once belonged to him through someone else. The question is if he (appellant) knew that the land belonged to him, why he just remained silent for more than such a long time) without claiming his land?. Now if the appellant had no locus standi at the District and Housing Tribunal it is obvious he as well has no locus

standi in this court which means he had no any cause of action. It is trite law that the court would not listen, of course, to a mere busybody who was interfering in things which did not concern him, but it will listen to anyone whose interests are affected by what has been done. The appellant has failed to show if he has any interest to the disputed land and if he has how such interests have been affected by what has been done by the respondent.

It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities. This simply means that he who alleges must prove as indicated under section 112 of the ***Law of Evidence Act, Cap 6 [R.E2002],*** which provides that:

> *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person".*

The court in ***NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZANIA & 4 OTHERS, Comm. CASE NO 59 OF 2003( ) HC DSM,*** observed that:-

> *"The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side".*

Therefore, since the appellant was claiming that the land belonged to him and the respondent is not the owner of the land, it is the duty of the appellant to disclose all the facts under his plaint but he did not do so at the trial Tribunal. Worth at this juncture making reference to Lord Denning in a persuasive case of ***R v Paddington,***

***Valuation Officer, ex-parte Peachey Property Corpn Ltd* [1966] 1QB 380 at 400-1** had once observed that:

> *"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

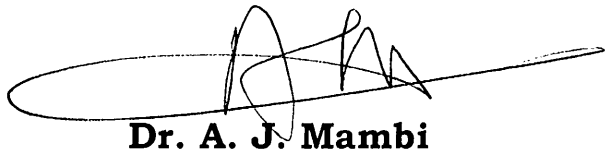
Similarly in another persuasive decision the court underscored the same position. This was laid down by Lord Justice James, a distinguished English Judge, laid the principle down in 1880 in the ***Ex P. Sidebotham case [1880) 14 Ch D 458, [1874-80] All ER 588]*** who observed that:

> *"to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights".*

It appears also the appellant as I observed had no *locus standi* as the sole owner on the land in dispute since he failed to show sole ownership apart from just claiming it belonged to him.

Therefore, since the appellant is claiming that the land belonged to him and the respondent is not the owner of the land, it was the duty of the appellant to disclose his interest under the plaint and prove his claim at the Tribunal but he did not do so. Since I have hold that the appellant has no locus standi, it means that he is not the legal owner of the disputed land as held by the Tribunal.

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so and , I have no reason to fault the findings reached by the District Land and Housing Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. The decision of the District Land and Housing Tribunal is upheld and it is hereby declared as done by the decision of the District Land and Housing Tribunal that the respondent was the lawful owner of the suit land. In the event I make no orders as to costs. Each party to bear its own costs.



Dr. A. J. Mambi

Judge

27.05. 2020

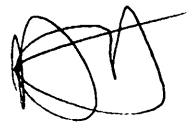
Judgment delivered in Chambers this 27th day of May, 2020 in presence of both parties.

Dr. A. J. Mambi

Judge

27.05. 2020

Right of appeal explained.



Dr. A. J. Mambi

Judge

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