IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

LAND APPEAL NO. 15 OF 2017

(Original Application No. 06/2016 in the District Land and Housing Tribunal for Simanjiro at Simanjiro)

YACOBO OSURTUT ..... APPELLANT

VERSUS

SIPITEKI KIPAHA ..... RESPONDENT

JUDGMENT

05/02/2020 & 25/03/2020

GWAE, J.

In the District Land and Housing Tribunal of Simanjiro at Simanjiro (DLHT), the appellant herein above duly filed a land dispute against the respondent on the **22nd April 2016**. He alleged that the respondent unlawfully entered into his six (6) acres of farm out 40 acres located at Loiborsoit village within Simanjiro District.

In dismissing the applicant's now appellant's application, the DLHT's chairperson among other things had these to say;

> "I am in the agreement of their good opinions that, the application has no merit, I have taken reasonable amount to make analysis on the evidence given by the parties to the lawsuit and learn that, the claimant has never been appointed to be appointed to be an administrator of Osurtut's estate who was

the owner of the disputed land. He has no locus standi to institute a suit against anyone....."

Following the trial tribunal judgment delivered on 28th March 2017, the appellant felt aggrieved, hence the present appeal containing a total of seven grounds of appeal however, the appellant argued only three grounds of appeal as reproduced herein under;

i. That, the trial tribunal erred in law and facts by declaring that the applicant had no locus standi to institute a lawsuit against any one as the appellant was not appointed the administrator of Orsurtut's estate who was the owner of the disputed land.
ii. That, the trial tribunal erred in law and facts by disregarding the appellant's evidence adduced during trial
iii. That, the trial tribunal erred in law and facts when it held that the applicant had failed to substantiate his claims

At the hearing of this appeal, parties' advocates namely; **Ms. Edna Mndeme** and **Mr. Andrew Maganga** for the appellant and respondent respectively sought and were granted leave to dispose of this appeal by way of written submissions. I am going to thoroughly consider the parties' written submission in the course of determining the grounds of appeal herein above.

As to the **1st ground of appeal**, I am quite aware that, the issue of locus standi is very vitally important as far as institution of cases in courts of law is concern, the orthodox common law position regarding locus standi in private litigation is essential except when it is a constitutional litigation or

any other matter of public interests (See **Magambo J. Masato and 3 Others v. Esther Amos Bulaya**, Civil Appeal (CAT-full bench).

The necessity of having locus standi in lodging civil action by a litigant was judicially stressed in **Lujuna Shubi Ballonzi Senior v. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, this court (Samatta, J as he then was) made an attempt to define the term locus standi as follow;

> "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. The High Court has the power to modify the applied common law so as to make it suit local conditions."

(See also **Lujuna Shubi Balonzi Senior v. Registered Trustees of CCM** (1996) TLR 2013 and Mrs. **Halima Mchora v. Robert Edward Hindi and two others,** Land Case No. 322 of 2014 (unreported-H.C)

In our case, both appellant and respondent found vigorously claiming to have inherited the suit land from their respective late fathers as clearly established by their testimonies, which for the sake of clarity is quoted herein under;

> AW1.
> "The said Sitoko died and his land and properties were left to Sipetek Kipaha....to my knowledge, Yakobo inherited his land from his late father one Osurtut, the said Sitoki died in 2014
> **AW2**
> "The respondent is administering the properties of the late sitoko kipaha so he has used that umbrella to invade the land of the late Osurtut Armas which is now under yakobo osurtut
> **AW3**

"..During my leadership it is when we allocated the disputed land to the Osurtut who is the applicant's father

RW3:

"Sitok Kipaha is my young brother

He died (he is deceased), he left two wives and three sons. He is the rightful owner of the suit land

We haven't been appointed an administrator of the applicant's father estate

RW2

"The legal owner of the suit land is the father of the applicant

RW1

The father of the applicant or the applicant's father, Mr. Osurtut was issued the land in 1997...Sitok died and left two wives and two sons (Morani) who are using the suit land... the land which is in dispute is his father's land, I am not even nearby the suit land"

Taking into consideration of the evidence adduced by the parties as briefly reproduced herein, I am persuaded that, both parties had no locus standi as correctly found by the learned chairperson since even the respondent was being sued but through his late brother, **Sitoko Kipaha** who was married to two wives. The parcels of lands were originally allocated to the late Osurtut (appellant's father) and the late Sitoko between 1986 and 1986.

I am alive of the principle of an overriding objective and provision of section 45 of the Land Disputes Courts' Act Cap 216 Revised Edition, 2002 on which a decision or finding cannot be faulted on minor errors or omissions. In our instant case neither the appellant nor respondent had letters of administration. This requirement would be dispensed of by making necessary orders, if circumstances permit to do so, however in this

case the evidence adduced leaves a lot to be desired particularly the land in dispute as well as the parties' locus standi. The parties are not in agreement of what precisely part of land is in dispute, is it on cattle path (pario) or the respondent had encroached the pario as well as part of the appellant's parcel of land? And what size of the land in dispute? Is it six acres as alleged by the appellant or 22-25 paces as testified by the PW5 (See also testimony of PW3-AW3- **"To my knowledge Sipiteki is not a neighbor to the farm of Yacob).** In **Nizal v. Gulamali** (1980) TLR 29, the Court of Appeal held among other things that;

> "Where it is necessary or appropriate to visit a locus in quo the court should attend with parties and their advocates, if any, and such witnesses as may have to testify in that..."

In our case, the trial tribunal and parties' advocates did not see such necessity of visiting locus in quo but when I consider evidence adduced the by the parties not in isolation, I am prepared to hold that there was a need of visiting the locus in quo in order to justly and finally determine the dispute between the parties.

Having determined the 1st ground of appeal and having found the necessity of visiting the locus in quo by the trial tribunal in order that, the land in dispute could be clearly ascertained. I hereby quash the proceedings and decision of the trial tribunal and set aside the decision thereof and I further direct the parties, if any still wishes to pursue the matter, he may do so after he has been granted letters of administration and stand as an administrator of estate. In case the dispute between the parties is re-instituted, the trial tribunal shall visit the locus in quo unless

the suit land will be clearly known by the parties. In the circumstances of this case and nature of the decision, each party shall bear the costs of this appeal and those at the trial tribunal.

Order accordingly

M. R. GWAE
JUDGE
25/03/2020