

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA

LAND APPEAL NO.42 OF 2019

(From the Decision of the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application Case No. 277 of 2018)

MARY TUYATE.....APPELLANT

VERSUS

GRACE MWAMBENJA1st RESPONDENT

MWABHA ANDREA MWASOTE2nd RESPONDENT

JUDGMENT

Date of last Order: 23/09/2020

Date of Judgment: 23/10/2020

Dr. A. J. Mambi, J

In the District Land and Housing Tribunal of Mbeya in Mbeya, the appellant unsuccessfully made an objection against the respondents. The District Land and Housing Tribunal (in Misc Land

application No. 275 of 2019) made a decision in favour of the respondents

Aggrieved, the appellant appealed to this court basing on six related grounds as on the follows:-

1. That the Honorable Tribunal erred in law and in fact by dismissing application without reasonable justification of doing so.
2. That the Honorable Tribunal erred in law and in fact by using the evidence adduced in the main case to this application while the appellant was not a party of the case.
3. That the Honorable Tribunal erred in law and in fact by ignoring to give the appellant right to be heard and the tribunal to get the good chance of investigating who is the real owner between the appellant and the 1st respondent.
4. That the Honorable Tribunal erred in law and facts by announcing that 1st respondent is the owner of the disputed house and rejected objection application, without giving first right to be heard to the appellant and after hearing the evidence of appellant could be in good position to announce who is the real owner of the disputed house but not in the stage of objection proceeding prayers.
5. That the Honorable Tribunal erred in law and facts by announcing that the 1st respondent is the real owner of the

disputed house while the 1st respondent claim that the house was for her late husband means 1st respondent in main suit lacked jurisdiction to sue because she has no administratrix certificate.

6. That the Honorable Tribunal erred in law and facts to conclude that the execution is not against appellant (applicant) but 2nd respondent. He forgot that in the main case the 2nd respondent told the tribunal that the disputed house is the house of appellant.

During hearing both parties prayed the mater to be argued by way of written submissions and this court ordered parties to do so as prayed. While the appellant was represented by the learned Counsel Ms. Irene Mwaikusa, the Respondents were represented by the learned Counsel Mr. Shitambala.

The appellant Counsel Ms Irene in her written submission submitted that the Trial District Land and Housing Tribunal erred in law by dismissing an application without reasonable justification.

Addressing the second ground of appeal, the learned Counsel averred that it was wrong for the Tribunal Chairman to reject an objection by the appellant basing on the evidence of the main case while the appellant was not part to the main case.

With regard to the third ground of appeal, the learned Counsel argued that the appellant was denied right to be heard. She argued

that the land in disputed belongs to appellant as he was given the disputed plot as the gift from his father.

In reply, the respondent submitted through the learned Counsel Mr. Shitambala briefly submitted that he does not agree with the appellant's grounds of appeal. The respondent further submitted that the appellant had no *locus standi* at the tribunal since she was not party to the main suit.

He further submitted that it is not disputed that the Appellant's father is/was alive at the time this disputed arose. He also argued that the disputed land belonged to the first respondent. He argued that all the disputed land does not belong to the appellant and she has no any interest over the land. He argued that for one to get right over it he must prove his ownership on the balance of probability.

I have considerably gone through the grounds of appeal by the appellant and the reply by the respond. In my considered view, this matter raises the question of *locus standi*. Both the appellant Counsel and the respondents' counsel in their submission indicated the question of *locus standi*. This is due to the fact that the records should not appellant was not part of the main case, the fact which was also admitted by the appellant Counsel. The issue is whether the appellant had *locus standi* at the trial court and even in this appeal and whether the District Land and Housing Tribunal erred in law in holding that she had *locus standi*. The appellant in her

grounds of appeal has submitted that the land belongs to her as part of inheritance from her late husband. On the other hand, the respondent submitted that the land belongs to the first respondent and both the appellant and the respondent inherited the deceased property where each of them was given her share by an administrator. In brief, the respondent submitted that the appellant had no locus standi on the disputed land.

I have keenly gone and considered the records at the District Land and Housing Tribunal and observed that the appellant application was dismissed for lack of *locus standi*. Indeed the appellant had earlier objected the execution of the Decree under Order XXI Rule 57 (1) of the Civil Procedure Code Cap 33 [R.E.2002]. While I am aware of the gist of that Order and the rule but one cannot use that provision of the law at any stage to seek the mercy of the court while he/she failed to use her right to be joined under the main suit or even file the case to secure his/her rights if any. For one to enjoy the remedy and relief under that Order of the CPC, one must satisfy the court or tribunal that he/she has an interest on the disputed property. In my considered view, the right under that order is not automatic and one cannot just stay quiet until the matter has been finalized and is under the execution stage as the appellant did.

In my view before the court or tribunal makes its decision, it must consider if the party suing or appealing has any interest or *locus standi*. For easy reference I wish to highly the doctrine or principle of *locus standi*. Briefly, *locus standi* has been explained as the

matter of jurisdiction issue and it is the 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. This means that, 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. I wish to refer the persuasive decision made by Lord Justice James, a distinguished English Judge. In 1880 Lord Justice James in the **Ex P. Sidebotham case[1880] 14 Ch D 458, [1874-80] All ER 588** laid down the principle 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”.

Reference can also be made to other prominent scholars who have addressed the rationale behind the principle of *locus standi*. 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."

Similarly, Lord Denning another persuasive decision in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** [1966] 1QB 380 at 400-1 once explained 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."

I also wish to refer another persuasive decision where the Saskatchewan Court of Appeal in ***Saskatchewan Ltd. v Sask. Liquor and Gaming Authority*** (604598) explained the principle of *locus standi* as:

*"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).*

Worth also referring the decision of the court in **JOSIHA BALTHAZAR BAISI AND 138 OTHERS VS ATTORNEY GENERAL AND OTHERS** where the Court held that:

“Today’s, locus standi is not viewed in its original narrow meaning; it has been expanded to include” sufficient interest” so that anyone with sufficient interest may seek a remedy on behalf of others who are also injured.”

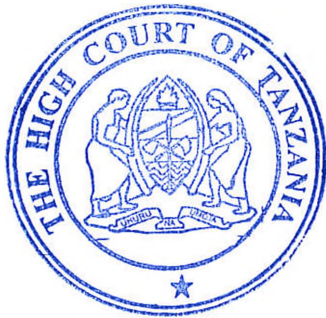
From what can be grasped from the above court decisions is that in order to maintain proceedings successfully, a plaintiff or applicant must not only show that the court has power to determine the issue but also that he/she is entitled to bring the matter before the court. Looking at the facts presented at both the trial tribunal and the District Land and Housing Tribunal, there is no doubt that the applicant who is now the appellant in this court had no locus standi since she did not show if she was neither the owner of the land in dispute. Even in her submission, the appellant is admitting that she was not part of the main suit and she just intervened at the execution stage. If she had the right on the land why she just kept for a long time while the first respondent was staying at the land without claiming her rights if any?. The answer is very clear that by then when the appellant filled her application at the District and Housing Tribunal she had no her *locus standi*. Now if she had no locus standi at the Tribunals, it is obvious she as well has no *locus standi* in this court which means she has no any cause of action. This means she has no right to appeal. I thus agree with the

decision of the District and Housing Tribunal that the appellant had no *locus standi* in the matter at hand. This means that she had no cause of action from the very beginning.

Worth also referred Osborn's coincide law dictionary, which states that cause of action which is the heart of the complaint, means the fact or combination of facts which gives rights to a right of action. Generally, 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 or appellant does not and without adequately states the cause of action his case can be dismissed at the outset.

In the premises, since the appellant has no *locus standi* in this appeal, I don't see any reasons for discussing the other grounds of appeal. In my view where it appears from the beginning she had no *locus standi*. This is as good as saying that there is no proper appeal before the court. Therefore, taking into account the fact that the grounds raised by the appellant have no merit for lack of *locus standi* as the Appellate Tribunal Chairperson properly made his decision, this court hesitates to interfere with the decision and

uphold the District Land and Housing Tribunal decision. In the premises and basing on the above reasoning, I have no reason to fault the findings reached by the Trial Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. I make no orders as to costs. Order accordingly.



A. J. Mambi
Judge
23.10. 2020

Judgment delivered in Chambers this 23rd day of October, 2020 in presence of both parties.

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A. J. Mambi
Judge
23.10. 2020

Right of appeal explained.

A handwritten signature in blue ink, appearing to be "A. J. Mambi", written over a horizontal line.

A. J. Mambi
Judge
23.10. 2020