

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 48 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 179 of 2019 which originated from the decision of the Nyegina Ward Tribunal in Application No. 10 of 2017)*

**NYABISE EKORORO NYAMKUMWA ..... APPELLANT**

**VERSUS**

- 1. MARIMBE MAGITA ..... 1<sup>ST</sup> RESPONDENT**  
**2. ALEX MABHUSA ..... 2<sup>ND</sup> RESPONDENT**  
**3. MADOMO NYAMURYA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*8<sup>th</sup> October and 6<sup>th</sup> November, 2020*

**KISANYA, J.:**

The appellant herein, unsuccessful sued the respondents in Nyegina Ward Tribunal on a claim of a piece of land. She then lodged an appeal to the District Land and Housing Tribunal (the appellate tribunal) in Appeal No. 179 of 2019. The appellate tribunal dismissed her appeal on the reason that, she had no *locus standi* to sue. It was held that, having inherited the disputed land from her grandmother, the appellant was required to institute the suit after obtaining the letters of probate administration.

Still aggrieved, the appellant has filed this second appeal. She recorded the two grounds of appeal: One, the appellate tribunal erred in holding that she had no *locus standi*, and two, the appellate tribunal erred for not stating clearly the opinion of assessors.

Upon studying the proceedings, the Court noticed that the members of the trial tribunal who heard the application are not reflected in the proceedings of the trial tribunal and that, their votes or opinion on the matter were not recorded. Although the said issues were raised in the first appeal and dismissed, the Court probed the parties to address it on whether the trial tribunal was properly constituted and its decision made by majority of members present as required by the law.

At the hearing, the appellant appeared in person to prosecute her appeal. On the other side, the respondents enjoyed the service of Mr. Thomas Makongo, learned advocate.

In her submission, the appellant argued that, she had *locus standi* to institute the suit. She contended to have instituted the suit as owner of the disputed land and that, she had been using it during the life time of his late father. In relation to the second ground, the appellant claimed that, the opinion of assessors who sat with the chairman of the appellate tribunal was not stated in the judgment.

As regards the issue raised by the Court, the appellant was of the view that, the trial tribunal was not constituted properly. She contended that, the claimant's case was heard by four members while eight members were present during the defence case. She went on to submit that the members did not vote for the trial tribunal to make its decision. Therefore, the appellant prayed for the Court to allow the appeal and quash the decision of the appellate tribunal.

Mr. Makongo replied that, the appellant had no *locus standi*. The learned counsel was of considered view that, the appellant was required to institute the suit after obtaining the letters of probate administration on the reason that, she deposed to have inherited the land from her father. He went on to fault the appellate tribunal for dismissing the appeal in lieu of nullifying the proceedings due to the

foresaid defect. Countering the second ground of appeal, Mr. Makongo argued that, the opinion of assessors of the appellate tribunal was considered and stated in the judgment.

As to the issue raised by the Court, Mr. Makongo was in agreement with the appellant that, the trial tribunal was not properly constituted and that, its decision was not reached in accordance with the law. The learned counsel submitted that, the names of members of the trial tribunal ought to have been reflected in the proceedings to see whether the required coram was observed. He stated further that, it is not clear as to whether the decision was based on votes of the majority members. Therefore, Mr. Makongo moved the Court to nullify the proceedings of the trial tribunal and appellate tribunal.

Rejoining, the appellant stated that, the disputed land was not part of the estates of his later father.

In the light of the parties' submission and having examined the evidence on record, I am of the opinion that, the issues worth of consideration are: whether the appellant had *locus standi* to institute the suit; whether the trial tribunal was properly constituted; and whether the decision of the trial tribunal was reached in accordance with the law. These issues go to the root of the case on the propriety and legality of the proceedings, decision and order of the trial tribunal.

Starting with the first issue on *locus standi*, the law is settled that, a party bringing any suit in a court of law is required to show how his interest or right in the subject matter is being or about to be interfered with or infringed. See **Lujuna Shubi Balonzi Senior vs the Registered Trustees of Chaman cha Mapinduzi** (1990) TLR 203. Therefore, it must be demonstrated or shown that, the claimant or plaintiff has legal title over the subject matter. A trial instigated by a person who has no *locus standi* is a nullity.

As stated herein, the appellate tribunal decided that, the appellant had no *locus standi* to sue. It reasoned that, the appellant adduced to have inherited the disputed land from her father and hence required to present the letter of probate administration before filing the suit. This is reflected in the appellate tribunal's judgment where it was stated:

*"Secondly, as the appellant alleged that she inherited the suitland from her father, in my opinion, the appellant was supposed to have process letters of administrator before filing the matter in the Ward Tribunal.*

*Having found that the appellant was not seized with any power to sue, I dismiss the appeal before me."*

With respect to the Hon. Chairman Tribunal of the appellate tribunal, I have gone through the pleading (complaint) lodged by the appellant. The same displays that the appellant claimed to be the lawful owner of the disputed land. She did not institute the suit to claim the disputed land as part of the estate of his late father in order to have the letters of probate administration before lodging her claim. The complaint's filed by the appellant reads:

*Mnamo mwaka 2016 mwezi wa tano **nilifika shambani kwangu** eneo la Kitongoji Ryamugune Kijiji- Mkirira Kata hii ya Nyegina nikakuta sehemu ya shamba langu hilo imelimwa na watu wakililima **nilipowauliza mbona mnalima eneo langu** waliondoka. Ninachomdai Marimbe Magita, Alex Madhusi na Madomo ni **kulivamia hilo shamba na kuliteka huku wakizuia nisiendeleo kulimiliki sehemu ya shamba langu, hivyo nataka Baraza liwaondoe na kunikabidhi shamba hilo.***

*Saini yangu/ mdai Nyabise.* (Emphasis supplied).

Furthermore, the appellant deposed how she acquired the disputed land after instituting and winning the case on it. She adduced as follows:

*"Ilipofika mwaka 1990 nilikwenda kwa familia ya Nyamkurumiwa nikawaeleza kwamba twende tudai lile shamba wakakataa, mimi nikaenda kulidai mahakamani, na nikapewa haki. Ilipofika tarehe 11/1/2000 mtaalam alikwenda kupima shamba hilo ndipo nilipokabidhiwa na mtaalamu tarehe kwamba kuanzia tarehe 11/1/2000 hilo shamba ni mali yangu..."*

In view of the above, I am of the humble opinion that, the appellate tribunal erred in holding that the appellant had no *locus standi* to sue. She did not testify to have inherited the disputed from her grandmother as held by the appellate tribunal. Thus, the appellate tribunal was required to consider whether evidence adduced by the appellant was sufficient to prove ownership of the disputed land. It is for that reason that, the Court finds merits in first ground of appeal.

The second issue is whether the trial tribunal was properly constituted at the hearing of the application. This issue rests on the composition of the ward tribunal. In terms of section 11 of the Land Disputes Courts Act, Cap. 216, RE 2019 (LDCA) read together with section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002, a ward tribunal is properly by not less than four and not more than eight members out of whom three members are women. This is a legal issue which is required to be observed whenever the ward tribunal meets. In that regard, it is expected the proceedings to show us the members present at every time the ward tribunal met to hear the matter. In absence of the coram or names of the members present, it cannot be assumed that, the ward tribunal was properly constituted. The appellate court will have no option other than nullifying the proceedings for failure to comply with the mandatory provision of the law on composition of the ward tribunal

The issue whether the trial tribunal was properly constituted was raised in the appellate tribunal. It was decided in affirmative when the Hon. Chairman held as follows:

*"Having considered the submission by both parties, it is my considered view that the Ward Tribunal was properly constituted as the following members determined the matter quite within the ambit of the law, namely, **Keya Katore, Nyangasa Bharo, Mwenge Benard, Pilly Charles, Anastazia Paulo, Nyafuru Ndege and Masatu Eunyo.**"* (Emphasis supplied).

It appears that, the appellate tribunal's decision was based on the names of members who visited the locus in quo and participated in decision making. This is because the above names feature in the judgment which was delivered on 17/06/2019 and the proceedings on a visit to a locus in quo on 09/05/2019. However, it is on record that, the ward tribunal heard the witnesses called by the parties on 27/02/2017 and 8/5/2017. Members present on 27/2/2017 and 8/5/2017 are not known. In the circumstances, it cannot be taken that members who visited the locus in quo and members whose names appear in the judgment are the one who heard the matter. Therefore, I agree with the appellant and Mr. Makongo that, the proceedings of the trial tribunal were vitiated because members of trial tribunal who heard the matter are uncertain and hence, not known as to whether the trial tribunal was properly constituted.

The third issue relates to the decision made by the trial tribunal. It is provided for under section 4(3) of the Ward Tribunal Act (supra) that, the decision of the ward tribunal is based on votes of majority members present. In the event of equality of votes, the chairman has a casting vote in addition to his original vote. In order to ascertain or detect whether the decision was made by the majority of


members present, the vote or opinion of each member on the matter before the tribunal is required to be reflected in the proceedings or judgment.

The records in the case at hand are unclear on the vote or opinion made by the members of the trial tribunal. Therefore, it is not known as to whether the decision was reached by the majority of members named in the judgment. The said omission vitiated the proceedings of the trial tribunal and the appellate tribunal together with judgments and orders made thereto.

In the result, the Court exercises its revisional powers under section 43(1)(b) and (2) of the LDCA to nullify the proceedings and quash the judgments and subsequent orders made by the lower tribunals. If parties are still interested to pursue the matter, they are at liberty to institute a fresh case. The makes no order as to costs because this appeal has been disposed of basing on the issue raised by the Court, *suo motu*. It is so ordered.

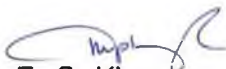
Dated at MUSOMA this 6<sup>th</sup> day of November, 2020.



  
E. S. Kisanya  
JUDGE  
6/11/2020

Court: Judgment delivered this 6<sup>th</sup> day of November, 2020 in the presence of the appellant and all respondents. B/C Mariam-RMA present.

Right of further appeal is well explained.

  
E. S. Kisanya  
JUDGE  
6/11/2020