

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)  
AT MTWARA**

**LAND APPEAL NO. 42 OF 2019**

*(Originating from Land Application No. 49 of 2018 in the District Land and  
Housing Tribunal)*

**ALLY J. MKOKOYA ..... APPELLANT**

**VERSUS**

**MOHAMED BAKARI MATEPWE .....RESPONDENT**

**JUDGEMENT**

*Last Court Order on: 10/11/2020*

*Judgement on: 27/11/2020*

**NGWEMBE, J:**

The appellant Ally J. Mkokoya, after being aggrieved with the judgement of the District Land and Housing Tribunal for Lindi, preferred this appeal. The appellant's memorandum of appeal is grounded with three grievances namely:-

- 1. The tribunal erred in law and in fact by failure to take into consideration the matter being res judicata basing on the technicality that the decision of Chunyuu ward tribunal which had already tried the matter was not tendered during hearing;*

2. *The trial chairperson erred in law and fact by ignoring the strong evidence of DW2 who real knew the land in dispute in details with no conflicts compared to the applicant's witness that was full of biasness; and*
3. *The trial chairperson erred in law and fact by basing the decision on the evidence of PW1 and PW2 that was inconsistent and contradicting each other.*

On the hearing date, the appellant sought legal representation from learned advocate Rainery Songea of Phoenix Advocates, while the respondent appeared in person. Consequently, the court ordered the parties to address the court in this appeal by way of written submissions, which order was complied with by each part.

In this appeal, the first ground (the doctrine of res judicata) is purely a point of law, which I find it fundamental to be determined first before considering the remaining two grounds of appeal.

In arguing this ground, the counsel for the appellant submitted forcefully, that the dispute was finally determined and conclusively decided by Chunyu Ward Tribunal. Since the ward tribunal adjudicated the dispute conclusively, then the District Land and Housing Tribunal had no jurisdiction to re-hear the matter by exercising its original jurisdiction instead of adjudicating it under appellate jurisdiction.

In this point, the respondent vehemently argued that, there was no evidence, if at all, the alleged Ward Tribunal, adjudicated the dispute

conclusively. The appellant failed to substantiate the allegations of *res judicata* by tendering copies of the alleged decision of the Ward Tribunal and if possible even the proceedings. He referred this court to the judgement of **Maniraguha Gashumba Vs. Sam Nkundiye, Civil Appeal No. 23 of 2005** where the Court of Appeal of Uganda held that, the plea of *re-judicata* can only be supported by production of a valid judgement of the first court and not by oral evidence. He rested by a prayer that the first ground lacks merits same be dismissed forthwith.

In considering this ground, the doctrine of *res judicata* is a well celebrated doctrine to every legal practitioner. Once a Court or Tribunal of competent jurisdiction determines and conclusively decides on a matter holding the disputants in loggerheads, unless reversed on appeal or on revision, otherwise, shall remain closed forever. Parties thereto or their privies are precluded to re-litigate or question later on its correctness of such earlier decision.

The doctrine also operates as an estoppel to the parties to re-litigate on the same matter in any subsequent suit. Therefore, the doctrine of *res judicata* aims in putting to an end such particular cause of action on which, the former litigation between parties was founded.

The rationale of having the doctrine in our jurisdiction is two folds; **one**, the interest of general public is that, there must be an end to litigation, the Latin Maxim is called "*rei publicae ut sit finis litium*" **two**, no man should be twice sued or prosecuted twice on one and the same set of facts, if there

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has been a final decision of a competent court; the Latin Maxim is called "*nemo debet bis uocali, si constat curiae quod sit pro una et eadem causa*". The fundamental qualifications of the doctrine which all must collectively and vividly be established to whoever intends to rely on the doctrine of *Res Judicata* are four, namely; **One**, a judicial decision was pronounced by a court of competent jurisdiction; **Two**, the subject matter and the issues decided are the same as the issues in the subsequent suit; **Three**, the judicial decision was final; and **Four**, the previous decision was in respect of the same parties litigating under the same title.

Judge Mnyera in the case of **Marato s/o Matiku Vs. Wankyo Sanawa [1987] TLR 150**, when was confronted in similar legal issue had this to say:-

*"Where grounds relied in the later petition are the same as those dismissed previously, then the petition is res judicata"*

In the same vein, the full bench of the Court of Appeal in the case of **Esso (T) LTD Vs. Deusdedit Rwebandiza Kayage [1990] TLR 102 (CA)** arrived in the same holding related to *res judicata*.

In the circumstance of this appeal, the question is how does the doctrine of *res judicata* apply in this appeal? Whether the parties in this dispute ever had similar dispute in any competent land Tribunal or Court in this country? Whether the land in dispute had ever been a subject for litigation in any tribunal before instituting it at the District Land and Housing Tribunal? Whether any competent tribunal ever heard and decided on the landed



properties in dispute? These questions are fundamental for the doctrine of *res judicata* to operate.

In this appeal, the pleadings in the District Land Tribunal, none of the disputants disclosed the fact that the dispute was previously decided by the Ward Tribunal. Above all in the whole evidences of the appellant and respondent, none of them disclosed the existence of the Ward Tribunal's decision. Perusing inquisitively on the evidences adduced in court by DW2 at page 11 upon answering inquiries from assessors, he disclosed that the respondent was at one time sued at Ward Tribunal.

In this appeal, the ground on *res judicata* was not disclosed as required by law to the District Land Tribunal. Therefore, this point may be viewed as a new point being raised on appeal, which was not an issue at trial.

Perusing further on the whole proceedings of the tribunal, another serious legal issue is vividly observed, that is, *locus standi* or capacity of the respondent (appellant) to be sued. It is on record that the appellant from the beginning is not the owner of the suit land, but his wife by virtual of inheritance.

When the appellant was asked on cross – examination during trial, had this to say; *my wife has no any problem but as a man I represent her*. Went further to testify, that:- *"the suit land is inherited from my father in law, the same was given to my wife, she was distributed to my wife by his grandfather. I am only representing my wife, I represent her"* This piece of evidence is corroborated by DW2 Abdllah Bakari Namachi of 75 years old,

who disclosed at page 10 of the proceeding to say:- "*I was the one with other relatives who distributed the suit land to the wife of respondent, but the respondent is a representative of her wife*" In page 11 when was asked by Mr. Jumaa – Assessor, said "*the suit land belongs to wife of respondent.*" When the same inquiry was made by Mrs Lipende – Assessor, he said "*after death of Simba Ulanga the suit land was given to respondent's wife...*" if all these pieces of evidence were testified during trial and were testified by competent and reliable witnesses, then whether the applicant at the tribunal sued a competent person? Whether the appellant had any *locus standi* to be sued and appeal in this fountain of justice?

Notably, *Locus standi* in any civil suit or suit of civil nature or Land matter, is always treated as cornerstone upon which, a suit or dispute is built. The applicant must demonstrate that he/she has *locus standi* over the disputed matter, likewise the respondent/defendant has a duty to inform the court or tribunal that the applicant/plaintiff has sued a wrong person. This position was well stated in the case of **Attorney General Vs. the Malawi Congress Party and another, civil appeal no. 22 of 1996**, the Malawian Supreme Court of Appeal provided the test for *locus standi* by holding that:-

*"Locus Standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say 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".*





The reasoning of Malawian Supreme Court, is similar to ours, since the same is now settled that *locus standi* is a right to bring an action or to be heard in a given forum. Therefore, a person without *locus standi* has no right to bring any action in a court of law. **Justice Samatta JK** (as he then was) took pain to amplify and provide a comprehensive guidance on *Locus Standi* in the case of **Lujuna Shubi Balonzi Vs. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203**, where he said:-

*"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court: Courts do not have power to determine issues of general interest: They can only accord protection to interests which are regarded being entitled to legal recognition. They will thus not make any determination of any issue that is academic, hypothetical, premature or dead. Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application. Of course, provided the interest is recognised by law, the smallness of it is immaterial. It must also be distinctly understood, I think. That not every damage or loss can be the subject matter of court proceedings".*

This position is based on the principle of law that courts must always be certain of the identity of the parties, so as to avoid entertaining fictitious or dishonest persons and so entitlement of rights goes to the rightful persons

and liability likewise, goes to the proper liable person. This position is supported by the judgement in the case of **Unilife Group Investment Vs . Biafra Secondary School and another, Civil Appeal No. 144 (B) of 2008, at Dar es Salaam**, (unreported). **K. J. Motors and 3 others Vs. Richard Kashamba and others, (CAT) Civil Appeal No. 74 of 1999, at Dar es salaam** (unreported) and **Christina Mrimi vs. Coca cola Kwanza Bottlers Ltd, Civil Appeal No. 112 of 2008**, (unreported).

**Halsbury's Laws of England, 4th edition, para 49 at p 52 and the case of Re: I.G. Farben industries AG Agreement [1943] 2 All ER 525** discussed extensor on this issue that in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court against a person capable to comply with the final court order.

Courts do not have powers to determine issues of general claim of interest. The court of law is a court of justice and not an academy of law. To maintain an action before it, a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of a right or interest by a person capable of being stopped by a court of law. A none owner of a suit land cannot be stopped by the court to interfere the ownership of the applicant.

In this appeal, the appellant had no claim of right or interest over the suit land save his wife.

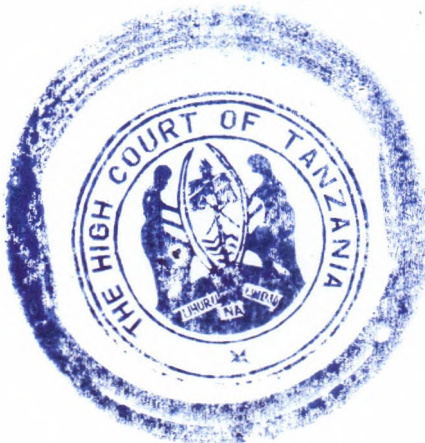




The evidences quoted above, proves that the appellant's wife was the one allocated the suit land upon demise of her parents. Obvious, the respondent had no claim of right over the appellant, save his wife. Therefore, legally and from the beginning the applicant (respondent) sued a wrong party who has no *locus standi* to be sued.

Legally, suing a wrong party means there is no valid suit in court. Thus, from the outset, the applicant (respondent) at the Tribunal sued a wrong person who had no capacity to be sued in the subject matter. Since this appeal is founded on a wrong suit, likewise it cannot stand. In this point alone, I find no reason to proceed with other grounds of appeal. Even if I may consider them, yet they won't change the already arrived conclusion.

For the reasons so stated, I proceed to dismiss this appeal and nullify the whole proceedings and judgement of the District Land and Housing Tribunal. Consequently, either party may wish to start afresh by suing proper and necessary parties to the ends of justice and final determination of the alleged suit land. As such, it is logical to order each party to bear his own costs. **It is so ordered.**



A handwritten signature in blue ink, consisting of a large loop followed by a few strokes.

**P. J. NGWEMBE**

**JUDGE**

**27/11/2020**

**Date: 27/11/2020**

**Coram: Hon. L.R. Kasebele, Ag.DR**

**Appellant: Present in person**

**For Appellant: Advocate Teckla for**

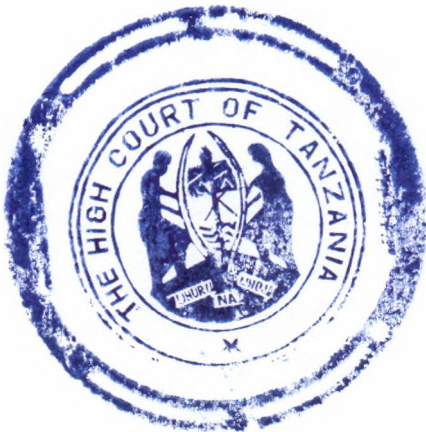
**Respondent: Present in person**

**For Respondent:**

**B/C: Zuena – RMA**

**Parties:** We are ready to proceed with judgement delivery.

**Court:** Produced/delivered today in Chambers Court as prepared by Hon.  
Judge Ngwembe in the present of Parties.



L.R. Kasebele

**Ag. DEPUTY REGISTRAR**

**27/11/2020**