

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**MISC. LAND APPEAL NO. 35 OF 2020**

(Arising from Land Appeal No. 74 of 2016 from the District Land and Housing  
Tribunal for Mwanza at Mwanza Originating from Mbugani Ward Tribunal  
Land Case No. 110 of 2016)

**KAMARA ALMAS MOHAMED ..... APPELLANT**

**VERSUS**

**1. BERNADETA KONDOLO**

**2. HOJA MADINDA**

}

**..... RESPONDENTS**

**JUDGMENT**

*Date of last Order: 09.02.2021*

*Date of Judgment: 19.02.2021*

**A.Z.MGEYEKWA, J**

This is a second appeal. It stems from the decision of the Mbugani Ward Tribunal in Land Case No.110 of 2016. In that case, the appellant Kamara Almas Mohamed instituted the suit against the respondents Bernadeta Kondolo and Hoja Madinda claiming that the respondent have transferred the land to two different people. The trial court decided the matter in favour of the appellant. The respondent was not happy with the decision of the

Ward Tribunal. He, therefore, preferred an appeal to the District Land and Housing Tribunal for Mwanza. The first appellate court decided the matter against the appellant and dismissed the appeal.

Believing the decision of the trial tribunal was not correct, the appellant lodged this appeal on three grounds of appeal seeking to assail the decision of the trial tribunal. The grounds of appeal are as follows:-

1. *That the trial and appellate tribunal erred in law by entertaining the matter while the applicant in the trial tribunal had no locus standi.*
2. *The trial and appellate tribunals erred in law by deciding on the ownership in the absence of the interested party who bought the land in dispute.*
3. *That the appellate tribunal erred in fact and law by deciding the respondents as lawful owners.*

In prosecuting this appeal, Mr. Ludovick Joseph, learned counsel, and Mr. Samwel Lazaro Mahuma, learned counsel respectively, and appeared for the appellant and respondent. The hearing was done by way of written submission whereas, the applicants filed the written submission as early as 15<sup>th</sup> December, 2020 and the respondent filed a reply as early as 29<sup>th</sup> December, 2020 and a rejoinder was filed. Both learned counsels filed their written submission and reply within time. However, the appellant filed his rejoinder out of time as per the court calendar the appellant was



ordered to file his rejoinder on 5<sup>th</sup> January, 2021 and he filed the same on 11<sup>th</sup> February, 2021. Therefore, this court will disregard the same.

Ludovick Joseph, learned counsel for the appellant started to kick the ball rolling. He contended that the trial Tribunal stated that the dispute was preferred by the appellant, the land had already been sold to one Juma Rajabu thus the appellant had no *locus standi* to sue the respondents over land ownership. To support his submission he referred this court to page 2 of the trial tribunal proceedings.

The learned counsel for the appellant went on to state that the appellant on his own testimony stated that he had already transferred ownership of the suit-land to a stranger yet both subordinate tribunals did not find this anomaly worth addressing. He faulted the trial tribunal for overlooking the anomalies. He added that the trial court proceedings vitiated the proceedings of both tribunals.

On the strength of the above argumentation, Mr. Ludovick urged this court to quash both tribunals' proceedings for being fatal irregularity.

In reply, on the first ground, the learned counsel for the respondents argued that the appellant is the one who filed the case at the Ward Tribunal and the trial Tribunal decided in his favour. It was his view that for that reason the applicant cannot claim that he had no *locus standi*. He

referred this court to the case of **Maulid Makame Ali v Kesi Khamis Vuai**, Civil Appeal No. 100 of 2004 whereby the Court of Appeal held that where there was a complaint raises on appeal that the respondent had no *locus standi* then the respondent obtained *locus standi* when he sued.

He went on to argue that the issue of *locus standi* is an afterthought since the appellant was required to raise the same at the trial tribunal. To buttress his submission he cited the case of **Sospeter Kahindi v Mbeshi Mahini** Civil Appeal No. 56 of 2007 whereby the Court of Appeal rejected the issue of pecuniary jurisdiction which was raised at the first appellate court. He urged this court to reject the issue of *locus standi* since the one who raises it is the one who instituted the case in the Ward tribunal and is an afterthought.

Submitting on the second ground of appeal, Mr. Samwel argued that there is no any buyer who bought the disputed land from the respondents. Instead, the appellant himself choose to sue the respondents in the ward tribunal and now wants to challenge his acts. He added that the appellant did not have a good title therefore he could not pass it to another person. To bolster his submission he referred this court to the case of **Farah Mohammed v Fatumah Abdallah** (1992) TLR 205 (HC). He went on to argue that the remedy for a buyer is to sue the seller thus the respondents will not be the parties to the case.



It was Mr. Mahuma further submission that section 15 of the Ward Tribunals Act state that the Ward Tribunal is not only not bound by rules of evidence and procedure but also it regulates its own procedure.

On the third ground, the learned counsel for the respondents added that the tribunal was right to decide in favour of the respondents since the appellant did not prove that the sale of the disputed land, there was no any witness from the Village leaders who witnessed the sale of disputed plot. He added that the appellant's claims were mere words that were not supported by any cogent document.

Mr. Mahuma went on to argue that the appellant relied upon the Power of Attorney to prove that he bought the disputed plot the which did not suffice. To fortify his submission he cited the case of **Notin Coffee Estates & 4 Others v United Engineering Works Ltd & Another** [1988] TLR 203 whereas the court held that oral contract to transfer the right of occupancy is inoperative and of no legal effect. He also cited the case of **Registered Trustees of Holy Spirit Sister Tanzania v January Kamili Shayo and 136 Others**, Civil Appeal No. 193 of 2016, the Court of Appeal held that oral agreement on transfer of land is unenforceable.

On the strength of the above submission, Mr. Mahuma urged this court to dismiss the appeal with costs.

Rejoining, the learned counsel for the appellant distinguished the cited case of **Maulid Makame Ali v Kesi Khamis Vuai**, (supra). He reiterated his submission in chief and insisted that the appellant had no *locus standi* to institute the suit

Having stated the above, I am now set to confront the grounds of contention as enumerated above, some of which are intertwined, and therefore I will determine them together. The fourth ground will be determined separately.

I now turn to the issues of contention as reproduced above and as clustered. The first and second grounds seek to challenge the decision of the trial Tribunal that the tribunal failed to determine the issue of *locus standi* and non-joinder. The appellant complained that Juma Rajabu was deprived his right to be heard. I am wondering why the appellant is raising these grounds at this juncture while the records reveal that the appellant is the one who institute a suit at the trial tribunal. The issue to prove transfer of ownership from the beginning was upon the appellant.

In my view, if at all one Juma Rajabu was a necessary party to join the case then the appellant himself was required to join him in the suit. It is worthy noting that the choice of who to sue, lies on the plaintiff who has the duty to show the cause of action against the person who she/he sues.



In the matter at hand, the appellant chose the respondents as the proper persons to sue for trespass which was committed by the respondents. The records of the trial tribunal show clearly that the appellant successfully proved the alleged trespass.

Nevertheless, the appellant summoned Juma Rajabu to testify as a witness thus it was not necessarily be made a party to the suit. In his testimony, Juma Rajabu tried to prove that he bought the disputed land from the appellant. Therefore the issue of misjoinder of parties does not arise in this case. Also, the suit cannot be defeated by mere non-joinder of parties. Order 1 Rule 9 of the Civil Procedure Code Act, Cap 33 provides thus:-

*“ ...No suit shall be defeated by reason of the misjoinder or no-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.”*

Though the Civil Procedure Code, does not apply in Ward Tribunals, the principle remains intact that a suit cannot be defeated by the reason of non-joinder of a party. In other words, the matter was not a nullity by non - joinder of the vendor.

On the third ground of appeal, the appellant's Advocate has raised this ground as an alternative that the appellate tribunal misdirected itself to

declare the respondents as lawful owners. In my respectful opinion, the appellate tribunal satisfied itself that the appellant did not prove his ownership. In the case of **Origenes Kasharo Uiso v Jacqueline Chiza Ndirachuza (As Legal Personal Representative of Joachim Ndirachuza)**, Civil Appeal No. 259 of 2017, the Court of Appeal of Tanzania held that:-

*“ The above said we are in agreement with the High Court that the appellant did not prove on the balance of probabilities that good title passed to him from Joyce Peter let alone proving on the same standard that he bought the disputed parcel of land. We think the Judge of the High Court properly analysed both documentary and oral evidence and arrived at a correct conclusion that the disputed land legally belonged to the respondent.”*

Applying the above authority, I am satisfied that the first appellate court decision was correct. The court cannot act upon the Power of Attorney, it is not a relevant document to prove ownership. It would have been prudent if the appellant had produced a title deed or sale agreement to prove that the title shifted from the respondents or to prove that he bought the plot legally taking to account that the witnesses whom he summoned to court to testify did not prove that the appellant was the lawful owner.



In the upshot, I find no merit in the appeal. I proceed to dismiss the appeal without costs. In consequence thereof, I quash and set aside the decision of Mbugani Ward Tribunal and uphold the decision of the District Land and Housing Tribunal for Mwanza.

It is so ordered.

Dated at Mwanza this date 19<sup>th</sup> February, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

19.02.2021

Judgment delivered on 19<sup>th</sup> February, 2021 in the presence of Mr. Ringia, learned counsel for the appellant and Mr. Mahuma, the learned counsel for the respondent.

  
A.Z.MGEYEKWA

**JUDGE**

19.02.2021

Right to Appeal explained.