

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF KIGOMA**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. LAND APPEAL NO. 11 OF 2021**

(Arising from Land Appeal No. 87/2019 from the District Land and Housing Tribunal – Kigoma before F. Chinuku – Chairperson, original Land Case No. 22/2019 of Bukuba Ward Tribunal.)

**PAULO YAKOBO..... APPELLANT**

**VERSUS**

**HAMIS KIMWAGA MINANI..... RESPONDENT**

**J U D G M E N T**

2<sup>nd</sup> March. & 8<sup>th</sup> April, 2021

**I.C. MUGETA, J.**

The appellant seeks to challenge the decision of the Kigoma District Land and Housing Tribunal which overturned the decision of the Ward Tribunal. The following are the brief facts leading to this appeal as can be discerned from the evidence at the Ward Tribunal of Bukuba. The appellant leased the land from Hamis Kayobha Kabuye. While working on that land, he was interfered with by the responded who claimed to own it by purchase from Hamis Kayobha. The appellant referred the dispute to the Ward Tribunal where Hamis Kayobha was summoned to testify. He testified that he leased part of the land to the appellant while the other part he sold it to the respondent. Finally, the appellant won by an order that the part that

he leased does not belong to the respondent. The respondent was aggrieved and he appealed to the District Land and Housing Tribunal of Kigoma where the whole land was declared his property. The appellant was dissatisfied with the decision, hence, this appeal on the following grounds: -

- 1. That, the appellate tribunal erred in law and fact by declaring the respondent the lawful owner instead of quashing the decision of the trial tribunal for being nullity having ruled out that the appellant had no locus standi to sue.*
- 2. That, the appellate tribunal erred in law and fact by not considering and evaluating the fact that the said premises (sic) in dispute is quite different from the one sold to the respondent by Hamis Kayoba.*
- 3. That, the appellate tribunal erred in law and facts by not evaluating clear the evidence adduced by the appellant in the ward tribunal and hence reached in the wrong verdict.*

During the hearing the appellant was represented by Mr. Eliuta Kiviyiro, Advocate while the respondent was present in person unrepresented.

Addressing the first ground of appeal, the learned counsel for the appellant submitted that the District Land and Housing Tribunal erred to declare that the land belongs to the respondent despite holding that appellant lacks *locus standi* to sue. To support his submission, he cited

the case of **Lujuna Shambi Balozi vs The Registered Trustee of CCM** [1996] TLR 203 where it was held that the parties to a suit must have *locus standi*. The District Land and Housing Tribunal, he submitted, ought to have nullified the proceedings.

On the second ground, the learned advocate submitted that the District Land and Housing Tribunal failed to appreciate the evidence of the appellant that the dispute land is different from the one sold to the respondent by Hamis Kayoba who appeared before the Ward Tribunal and reveal that the respondent trespassed into land not sold to him. He further argued that the same was supported by the witnesses of the respondent who testified that they are not aware of the land the respondent bought.

With regard to the third ground of appeal, the learned counsel argued that the District Land and Housing Tribunal failed to analyze the evidence of the appellant, hence, reached a wrong decision. The appellant occupied the shamba from 1994 to 2019 when the dispute arose. The respondent didn't use such land which confirms that the land bought is different from the dispute land.

In reply, the appellant raised an objection that the appeal was filed out of time. That the decision was passed on 6/10/2020 but he received the

summons on 18/2/2021. The appellant further submitted that Hamis Kayoba sold to him the whole land and he never informed him that he gave part of it to the appellant. He further submitted that the appellant trespassed into the land in 2019 and not 1994.

In rejoinder, the learned counsel for the appellant submitted that the appeal was filed within the time, on 24/11/2020. He further reiterated that the respondent used the land since 1994.

I shall start with the objection on time limitation which I find to be misconceived. The judgment was delivered on 6/11/2020 and this appeal was filed on 24/11/2020, therefore, within time in terms of section 38 (1) of the Land Disputed Courts Act [Cap. 216 R.E. 2002] which requires an appeal to the High Court originating from Ward Tribunal to be filed within 60 days from the date of the judgment.

Coming to the first ground of appeal, it is surprising that the appellant's counsel raises matters of "*locus standi*" while it is the appellant who filed the case. If this objection is sustained it shall become a short in his own leg. Now, did the District Land and Housing Tribunal hold that the appellant had no *locus standi*? Here is what it stated: -

*"The appellant's case (now respondent) is stronger than the respondent's case who even lacks locus standi".*

From this statement, the issue of "*locus standi*" is referred to as an orbiter dictum. I find that the case was decided on the weight of the evidence. There is no merits in this complaint.

The second and third grounds of appeal can be dealt with jointly. They are concerned with the issue whether the appellate Tribunal evaluated properly the evidence on record. The complaint by the appellant is that his land is distinct from that which the respondent purchased. I have reviewed the evidence, it is my view that the learned Chairman misapprehended the evidence and she erroneously differed with the assessors. The finding of the assessors that the land belongs to the appellant was right.

From the facts which the learned Chairman rightly summarized, the suit land is a property of one Kayobha Kabuye who is the father of Hamis Kayobha who sold the land to the respondent. Hamis Kayobha testified in the Ward Tribunal on the side of the appellant. This is what he said: -

*"Mimi alikuja bwana Paul akawamekuja (sic) kuniyimisha shamba la kulima shamba la mlimani ndio nilimuazima, basi kwa huyo Paul upande wake nimemaliza.*

*Hamis nilimuuzia shamba hilo lilikuwa na migomba kwa thamani ya shs. 150,000/= kati ya hizo nilipewa elfu 15,000/=. Basi pale*

*nilipomuazima Paul, Hamis akawa amemzuia Paul. Kama ningemuazima bondeni ningekuwa ni mgomvi. Basi pale ambapo sikumuuzi (sic) alikuja akapalima, shamba hilo bondeni na mlimani ni mali ya baba yangu. Na sina mtu mwingine tunayezaliwa naye. Kama Paul angeenda kulima bondeni ndipo Paul angelikuwa amekosea”.*

This evidence means that the owner of the farm leased the upper land to the appellant and sold the low land to the respondent. The Ward Tribunal found that the respondent interfered with the appellant’s land and ordered: -

*”Baada ya hapo baraza tumemkabidhi robo tatu za eneo alizoziazimwa na bwana Hass (sic) Kayobha”.*

This is the decision which the District Land and Housing Tribunal set aside and gave the whole land to the respondent. I have held that the District Land and Housing Tribunal Chairman misapprehend the evidence. According to the seller (Hamis Kayobha) the areas are distinct. There is that part which he sold to the respondent and the other part he leased to the appellant. It follows, therefore, that the Ward Tribunal made a fair decision.

In the event, I quash the judgment of the District Land and Housing Tribunal and restore the decision of the Ward Tribunal. Appeal is allowed with costs.



**Court:** Judgment delivered in chambers in the presence of both parties.

**Sgd: I.C. Mugeta**

**Judge**

**8/4/2021**