

IN THE HIGH COURT OF TANZANIA03

(IN THE DISTRICT REGISTRY)

AT MWANZA

LAND APPEAL NO.08 OF 2021

(Arising from the District Land and Housing Tribunal in Application No. 03
of 2019 Originating from Bukoli Ward Tribunal in Land Case No. 07 of 2018)

MAJUTO MAIGE APPELLANT

VERSUS

FAMILIA YA KASIM KAFULWA RESPONDENT

JUDGMENT

Date of Last order: 28.04.2021

Date of Judgment: 30.04.2021

A.Z.MGEYEKWA, J

This is the second appeal. At the centre of controversy between the parties to this appeal is a parcel of land described as Plot No. 82, Block B located at Bukoli, Geita. The decision from which this appeal stems is the judgment of the Bukoli Ward Tribunal in Land Case No. 07 of 2018.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to

appreciate the present appeal. The respondent filed a suit at the trial tribunal for, *inter alia*, land ownership. The respondents claimed that they are the lawful owner of Plot No.82 Block B located at Bukoli within Geita Region. The Mwabaluhi Ward Tribunal decided in favour of the respondents. Dissatisfied, the appellant filed an appeal to the District Land and Housing Tribunal for Geita at Geita in Land Application No.03 of 2019. His appeal was unsuccessful.

Believing the decision of the District Land and Housing Tribunal for Geita was not correct, the appellant lodged this second appeal on three grounds of complaint seeking to assail the decision of this court. The grounds are as follows:-

1. That, the District Land and Housing Tribunal for Geita at Geita erred in *law and facts that it failed to evaluate the evidence tendered before it by the Appellant.*
2. That, the District Land and Housing Tribunal for Geita at Geita erred in *law and facts that some key witnesses such as The District Land Officers were not involved to confirm the allocation of land in dispute, since the land in dispute is the surveyed area, whereas the appellant claims the land in dispute to be plot No. 86 block "B" while the respondent claims to be Plot No. 82 Block "B".*

3. *That, the District Land and Housing Tribunal for Geita at Geita erred in law and fact to the fact that the respondent who introduced himself as the son of late Kassim, wrongly uses the family name to claim and appears before the trial Ward Tribunal and District Land and Housing Tribunal while the respondent's father (Kasim) is alive hence the respondent has no locus stand.*

When the appeal was placed before me for hearing on 28th April, 2021, the hearing was conducted via audio teleconference whereas the appellant and the respondents were remotely present.

The appellant started his onslaught by seeking to consolidate all three grounds. He argued that he was dissatisfied with the decision of the District Land and Housing Tribunal. He claimed that the first tribunal failed to analyse the evidence on record. He lamented that the disputed Plot belonged to the appellant and they have tendered documents at the trial tribunal to prove their ownership. The appellant claimed that they have constructed a house in the disputed land since 1965 and there are family graves and his relatives are residing therein.

The appellant continued to argue that Kasim is alive. In his view, it was wrong for the respondent to stand as the son of Kasim while his father is alive. He lamented that Kasim has wrongly used the family name therefore he has no *locus standi*.

On the strength of the above submission, the appellant beckoned upon this court to adopt his grounds of appeal and allow the appeal.

Responding, the respondent was straight to the point he stated that Plot No. 82 Block B is located in the appellant's plots and he admitted that in 1964 the appellant was lawful owners of the disputed plot. The respondent added that in 1984 the village council allocated the said plot to his father. He stated that his father is alive but when the matter started his father was away. The respondent further state that at the trial tribunal they tendered documents related to Plot No. 82, Block B. The respondent went on to state that his father started construction in the disputed plot and the appellant did not restrain him. He added that the appellant's graves are in the other plots.

In conclusion, the respondent stated that the trial tribunal visited *locus inquo* to certify itself therefore its decision was right. He urged this court to dismiss the appeal.

In his brief rejoinder, the appellant reiterated his submission in chief and claimed that they have constructed a house in Plot No. 82 Block B. He claimed that he put some building material in the said disputed plot as a result the respondent restrained him to proceed with construction. He

urged this court to order the trial tribunal to certify itself whether the respondents were allocated the disputed plot.

After a careful perusal of the record of the case and the final submissions submitted by both parties, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in the case of **Hemedi Said v Mohamedi Mbilu (1984) TLR 113**, which requires, "*the person whose evidence is heavier than that of the other is the one who must win*". In determining the appeal, the central issue is whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Geita.

In my determination, I will consolidate the first and third grounds because they are intertwined. The appellant is complaining that the first appellate court did not consider the evidence on the record, as a result, he decided in favour of the respondent and the respondent had no *locus standi* he wrongly used the family name to claim the disputed land.

The circumstance of the case, facts, and evidence will lead this court to determine the matter before it. It is in the record that the dispute between the parties originated from Bukoli Ward Tribunal where both parties had an opportunity to summon witnesses to testify before the trial

tribunal. The respondent testified to the effect that the disputed land Plot 82 Block B located at Bukoli within Geita Region belongs to their father while the appellant claimed that his father occupied the suit land since 1965. The respondent claimed that Plot No. 82 Block B was allocated to his father one Kasim by the village council.

Examining closely, it is clear that the respondent instituted the dispute in the name Kasim Kafulwa family. It should be known that there is no legal institution called family. It was proper for the respondent to institute the said suit including all the members of the family had to be impleaded whether in person or in a representative capacity. Order I Rule 1 of the Civil Procedure Code Cap.33 [R.E 2019] provides that:-

“ All persons may join in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate suits, any common question of law or fact would arise.”

Applying the above provision of law, the respondent could have join in one suit as plaintiffs in whom the right to relief alleged to exist in each plaintiff arise out of the same subject matter. The son of Kassim Kafulwa filed a suit at the trial court in family name, thus, the question of law arises

is family among the legal institution entitled to file a suit? Mr. Kasim Kafulwa is alive and the Plot No. 82 Block B is alleged to be in his name. In case other family members are not owners of the said plot then their father was in a better position to institute the said case. I am in accord with the appellant that the respondents had no *locus standi* to institute the said suit in the first place. The issue of *locus standi* have been discussed in various cases by the Court of Appeal of Tanzania and courts of other jurisdiction. In the case of **Attorney General v Malawi Congress Party and Another**, Civil Appeal No. 32 of 1996 The Court of Appeal of Tanzania had this to say:-

"...Locus standi is a jurisdictional issue. It is a rule of equality 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 sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."

Similarly, in the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi [1996] TLR 208**, the court held that:-

*"... a plaintiff or applicant must show not only that the court has the power to determine the issue but also that **he is entitled to bring the matter before the court.**" [Emphasize added].*

Based on the authorities, the trial and first appellate court ought to have realized that the respondents had no *locus standi* to institute the said suit at Bukoli Ward Tribunal in a family name. The only person who had interest over the disputed land was their father; Kassim Kafulwa.

Having done so, I find that these two grounds of grievance have merit. The entire proceedings in the trial and first appellate tribunal crumble and I hereby set aside the decisions of the trial and first appellate tribunal. This matter is accordingly pushed back to where it was immediately before the institution of the suit. From there, the respondent may wish to reinstitute a case. Order accordingly.

Dated at Mwanza this date 30th April, 2021.




A.Z.MGEYEKWA

JUDGE

30.04.2021

Judgment delivered on 30th April, 2021 via audio teleconference whereby the appellant and the respondents were remotely present.


A.Z.MGEYEKWA

JUDGE

30.04.2021

Right of Appeal fully explained.