THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPEAL NO. 16 OF 2020.

(From the District Land and Housing Tribunal for Kyela, at Kyela, in Land Appeal No. 35 of 2019, Originated in Ngonga Ward Tribunal, in Land Case No. 2 of 2019).

BARTON MWAMBOLA.....APPELLANT

VERSUS

STEVENE MWAIKASU.....RESPONDENT

JUDGMENT

25. 2 & 25.5.2021.

UTAMWA, J:

The appellant in this appeal is one BARTON MWAMBOLA. He appealed against the decision of the District Land and Housing Tribunal for Kyela, at Kyela (the DLHT) in Land Appeal No. 35 of 2019. The matter originated in Ngonga Ward Tribunal (the ward tribunal).

The brief background of this matter according to the record goes thus: the respondent STEVENE MWAIKASU initiated proceedings before the Ward Tribunal against the appellant for a piece of land. The ward tribunal decided in favour of the respondent. Aggrieved by that decision, the appellant appealed to the DLHT. In its turn, the DLHT dismissed the appeal with costs through a judgement dated 29/06/2020 (hereinafter called the impugned judgment). The appellant was not contented by the

impugned judgment, he appeals against it to this court. The appeal is based on the following four grounds of appeal:

1. That, the appellate Chairman erred in law and facts when he failed to consider the raised legal issue on the respondent's lack of *locus standi* to sue which vitiated the entire proceedings.
2. That, the appellate Chairman misdirected himself in law and facts when he failed to analyse and settle the relevant issue of dispute between the appellant and the respondent.
3. That, the appellate Chairman erred in law and facts in holding that the respondent adduced evidence on how he inherited the suit land from his late father.
4. That, the appellate Chairman erred in law and facts for holding that, the sale agreement which substantiated the appellant's claim was not tendered.

Owing to the above grounds of appeal, the appellant urged this court, to do the following: to nullify the proceedings and judgment of both tribunals, quash and set them aside and declare the appellant the owner of the disputed land. He also prayed for an order of costs. The respondent resisted the appeal at hand.

During the hearing of the appeal at hand, both parties appeared without legal representation. The appeal was argued by way of written submissions following the agreement by the parties and the directive of this court.

In supporting the first ground of appeal, the appellant essentially submitted that, the DLHT erred in rejecting to determine the issue of *locus standi* of the respondent which he raised in his written

submissions. He contended that, an issue of that nature can be raised at any time of the proceedings or at the appellate tribunal. It can even be raised by the court *suo motto*. The respondent in the matter at hand had no *locus standi* since he did not tender any letter of administration to substantiate his claim that he inherited the disputed land from his late father. The appellant cited the decision of this court in the case of **Ramadhan Mumwi Ng'imba v. Ramadhan Jumanne Sinda, Misc. Land Appeal No. 8 of 2012 HCT at Dodoma** (unreported). In that case it was underscored that, since the respondent was not the administrator of his deceased father's estate he lacked *locus standi* to sue in that behalf.

Regarding the second ground of appeal, the appellant submitted that, according to the evidence adduced by the parties before the ward tribunal, the appellant and the respondent are neighbours owning adjacent pieces of land. The source of conflict between them is that, each party claims that, the other is encroaching his land. However, the DLHT laboured much in challenging the document used by the appellant in purchasing the land which was not an issue. The action (of dealing with irrelevant issue) led to the miscarriage of justice to the appellant. To him, the DLHT was supposed to evaluate the evidence adduced before the ward tribunal on the squabble over a sand-dune (*Tuta* in Kiswahili) which the appellant claimed to be the demarcation.

Submitting in regard to the third ground of appeal, the appellant argued that, the DLHT erred in holding that, the respondent inherited the disputed land though she produce neither evidence of the probate matter nor the letter of administration to prove that fact.

Concerning the fourth ground of appeal, the appellant contended that, the DLHT misdirected itself when it deliberated and challenged the document which he tendered to prove that he had purchased the disputed land from one Paison Ngumbe Mwakisu. The challenge to the contents of the document led to the wrong decision by granting the disputed piece of land to the respondent.

On his part, the respondent opposed the first ground of appeal on the reasons that, the appellant did not raise the issue of *locus standi* before the DLHT. He cannot thus, raise it in this second appeal. He also challenged case laws cited by the appellant in the sense that, they are not applicable in the matter at hand and the same is a new ground.

Arguing against the second ground of appeal, the respondent submitted that, the DLHT decided on the issue which was the basis of the dispute between them. He contended that, he proved his claim on the required standard by producing evidence which was heavier than that of the appellant. The DLHT could not resolve the issue in favour of the appellant since he did not adduce any cogent evidence.

In regard to the third ground of appeal, the respondent contended that, the DLHT was correct in confirming the decision of the ward tribunal by underlining that, he inherited the disputed land under the Nyakyusa customs. He contended further that; the inheritance did not need to be proved by adducing the letter of administration.

Concerning the fourth ground of appeal, the respondent argued that, under the auspice of the case of **Nitin Coffee Estate Ltd and 4 Others v. United Engineering Works Ltd and Another, (1988) TLR 203,** the sale of land under a right of occupancy cannot be proved

by oral evidence. He also argued that, the appellant tendered the affidavit in the ward tribunal as a proof of sale agreement. However, it had no authenticity for the court to act on. It was also his contention that, the DLHT correctly challenged it.

The respondent therefore, urged this court to dismiss the entire appeal and uphold the decision by the DLHT. He also prayed for this court to condemn the appellant to pay costs. The appellant did not wish to make any rejoinder submissions.

I have considered the grounds of appeal, the submissions by the parties, the record generally and the law. I opt to firstly consider and determine the first ground of appeal and in case need will arise, I will also examine the rest of the grounds. This plan is based on the following reasons: that, the first ground of appeal touches a crucial point of law on the issue of *locus standi* of the respondent in instituting the matter at hand before the ward tribunal. It thus, challenges the competence of the matter itself and the jurisdiction of the ward tribunal. It follows thus, that, under this plan, in case the first ground of appeal will be upheld, it will be capable of disposing of the entire appeal without even considering the rest of the grounds of appeal.

Now, according to the arguments by both parties, they do not dispute that, the appellant in fact, raised the issue of *locus standi* before the DLHT. However, the DLHT did not determine it on the ground that, it was not part of the grounds of appeal before it, and that, it was only raised at the stage of submissions. Now, in the appeal at hand, the appellant challenged that course taken by the DLHT, but the respondent supported it. The major issue before me is thus, *whether or not the*

DLHT was justified in abstaining from considering the issue of locus standi raised by the appellant.

In my view, the circumstances of the case do not attract answering the issue posed above affirmatively on the following grounds: indeed, my perusal of the ward tribunal's record confirms that, when the respondent testified before the ward tribunal (on the 9th January, 2019) he put it clear that, the disputed land belonged to his late father. It was later inherited by his brother one **Ambumbulwisye Mwaikasu** who also died in 1964. His clan members thus, entrusted the land to him (*kwa kunikabidhi* in kiswahili). The respondent did not however, expressly show that he was the administrator of the estate of his late father or brother. He did not also claim that he was the actual heir of the land as part of the estate of his late father. Furthermore, he did not demonstrate that he was suing on behalf of the members of the family who had allegedly entrusted the land at issue to him. He in fact, did not come out clearly as to what it meant, by the land being entrusted to him. It was thus, important, under such circumstances of this case, for his *locus standi* to be firstly ascertained.

Furthermore, it is in fact, true, as rightly held by the DLHT that, the law guides that, in appeals parties are confined to their grounds of appeal and they cannot raise new grounds of appeal at the time of hearing the appeal. However, this is a general rule which has exceptions like any other general rule. The exception to the general rule just highlighted above is that, a point of law, especially the one touching the jurisdiction of the court can be raised at any stage of the proceedings even at the appellate stage, irrespective of the fact that it is not among the grounds of appeal. Such a point can be raised even by the court *suo*

motu since an issue of jurisdiction is a fundamental issue; see the holding by the Court of Appeal of Tanzania (CAT) in the cases of **Richard Julius Rukambura v. Issack Ntwa Mwakajila and another, CAT Civil Application No. 3 of 2004, at Mwanza** (unreported) following its previous decision in **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and 20 others, CAT Civil Appeal No. 8 of 1995** (unreported).

It follows thus, that, since in the matter at hand the issue of *locus standi* raised by the appellant before the DLHT was a legal issue challenging the competence of the matter and touched the jurisdiction of the ward tribunal as I hinted earlier, the DLHT was enjoined to consider and determine it though it was not part of the grounds of appeal before it (the DLHT). What the DLHT ought to have safeguarded was only the right of the parties to be heard on that issue since it was raised in submissions. Upon given equal opportunities to the parties to address it, the DLHT could thus, make its ruling in answer to the issue. It was important for the DLHT to take this course because, the law instructs that, a party to court proceedings cannot prosecute or defend a mater into which he lacks *locus standi,* a court of law also lacks powers to entertain such proceedings. Otherwise, the proceedings become a nullity; see the holding of this court in the caser of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203**.

The rule on *locus standi* was described under the **Lujuna case** (supra) as being governed by common law, but applicable in our jurisdiction. It guides that, a person bringing a matter to court should be able to show that his right or interest has been breached or interfered

with and he is entitled to bring the matter before the court. I also underscored this stance in the case of **Lazaro Kimbindu v. Athanas Mpondangi, High Court (PC) Civil Appeal No. 137 of 2003, at Dar es Salaam** (unreported).

The rationale for the rule of *locus standi* underlined above is, in my settled opinion, that, it avoids a situation where a party who is not entitled to a given right sues in court successfully or unsuccessfully, but afterwards the rightful party sues before the court in his own capacity or under the same title for the same claim. The danger of this situation, if not well checked by courts of law is that, it will cause *inter alia*, a serious injustice to persons who are entitled to some rights and chaos in courts for opening flood gates of needless litigations.

It follows thus that, a court of law must effectively determine an issue of *locus standi* whenever it is raised by either party or whenever it discovers it *suo motu*. Under both such situations, the court has the duty to firstly give opportunity to the parties to address it on the issue before it determines it. The court should not proceed with the hearing of the matter on merits with an uncertainty on the *locus standi* of the parties for fear that, its proceedings may later be declared a nullity by an appellate court.

Moreover, the DLHT in the matter at hand, was enjoined to follow the course I have envisaged above because, it has been our firm and trite legal principle that, courts of law are enjoined to decide cases according to law and the constitution. This is indeed the very spirit underscored under article 107B of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002. The principle was also

underlined in the case of **John Magendo V. N.E. Govan (1973) LRT n. 60**.

Now, owing to the stance of the law shown above, it is my settled view that, the DLHT abdicated its duty when it skipped the issue of *locus standi* raised before it by the appellant. I thus, answer the issue posed above regarding the first ground of appeal negatively that, *the DLHT was not justified in abstaining from considering the issue of locus standi raised by the appellant.* It follows thus, that, the matter proceeded before the ward tribunal and the DLHT itself without any certainty of the respondent's *locus standi.*

Owing to the omissions discussed above, the proceedings and judgments before both the ward tribunal and the DLHT cannot stand in law. They cannot also be saved under section 45 of the Land Disputes Courts Act, Cap. 216 R. E. 2019 (the LADCA). These provisions essentially guide that, irregularities committed by a ward tribunal or a DLHT cannot vitiate their respective proceedings and decisions if the same do not cause injustice to the parties. However, I have shown above that the course adopted by the ward tribunal and the DLHT left uncertainties on the *locus standi* of the respondent. That situation in fact, also makes the competence of the matter and the jurisdiction of the ward tribunal questionable.

The omission committed by the DLHT discussed above cannot also be saved by the principle of overriding objective. This principle essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice. It was underlined by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported) in construing the provisions

of section 45 of the LADCA discussed earlier. Nonetheless, the principle of overriding objective was not meant to absolve each and every blunder committed by parties or adjudicating bodies. Had it been so, all the rules of procedure, including those which are significant in ensuring fair trials, would be rendered nugatory. The principle does not thus, create a shelter for each and every breach of the law on procedure. This is the envisaging that was recently underlined by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the principle of overriding objective amid a breach of an important rule of procedure.

The findings I have just made above regarding the first ground of appeal are capable enough to dispose of the entire appeal. I will not thus, test the rest of the grounds of appeal.

The sub-issue that arises at this stage is therefore, which orders should this court make so as to meet the justice of the case? In my view, for the reasons shown earlier, the decisions made by both the ward tribunal and the DLHT cannot stand. I therefore, allow the appeal, nullify the proceedings of both the ward tribunal and the DLHT. I also set aside their respective judgments. If party is still interested, he may refile fresh proceeding and abide with the law. Each party shall bear his own costs since the ward tribunal and the DLHT were also instrumental in committing the irregularity at issue. It is so ordered.

JHK. UTAMWA

JUDGE

25/05/2021

25/05/2021.
CORAM; JHK. Utamwa, J.
Appellant: present in person.
Respondent: present in person.
BC; Ms. Patrick Nundwe, RMA.

Court: judgment delivered in the presence of both the appellant and the respondent in court, this 25th May, 2021.

JHK. UTAMWA.
JUDGE.
25/05/2021.