

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPEAL NO. 144 OF 2020

DALMAS JONYO APPELLANT

VERSUS

GRACE CHARLES RESPONDENT

*(Appeal from the judgment of the District Land and Housing Tribunal for
Mara at Musoma in Appeal No. 239 of 2019)*

JUDGMENT

27th April and 14th June, 2021

KISANYA, J.:

This appeal has its genesis from Land Application 5 of 2018 which was filed by Grace Charles (the respondent) at the Bugwema Ward Tribunal. She complained that Dalmas Jonyo (the appellant) had trespassed onto her plot land measuring twenty acres. The Ward Tribunal decided the land dispute in her favour. Aggrieved, the appellant unsuccessfully challenged the said decision at the District Land and Housing Tribunal through Land Appeal No. 239 of 2019. Still aggrieved, the appellant has lodged this second appeal.

In attacking the decision of the District Land and Housing Tribunal, the appellant is armed with four grounds which can be summarized as follows:

1. That the District Land and Housing Tribunal erred in law and fact in not considering that the respondent lacked *locus standi* to claim for the land of the late Anyuul.
2. That the District Land and Housing Tribunal erred in law in upholding the decision of the Ward Tribunal while the value of the disputed land was more than three million shillings.
3. That the District Land and Housing Tribunal erred in law in upholding the decision of the Ward Tribunal while the respondent failed to prove how she acquired the disputed land from the late Anyuul (her grandfather).
4. That the District Land and Housing Tribunal misdirected itself on point of law by disregarding the appellant's evidence which was heavier than that of the appellant.

In the course of composing the judgment, I resolved to address the first and third grounds jointly. I am of the view the said grounds are capable of disposing of this appeal in its entirety. In that regard, I will only make reference to submissions made by the parties in respect of the said grounds.

It is pertinent to take note that both parties appeared in person when this appeal was called on for hearing on 27th April, 2021.

Submitting in support of the appeal, the appellant adopted the petition of appeal. He also contended that the respondent was not lawful owner of the disputed land. According to him, the disputed land belonged to his late father. Therefore, the appellant urged me to allow the appeal.

The respondent resisted the appeal. She adopted her reply to the petition of appeal and went on to submit that the disputed land was hers. The reply to petition of appeal which the respondent adopted was to the effect that, the disputed land belonged to her late grandfather who passed it to her late father in law and then to her late husband who left it to her. In other words, the appellant averred that she had the *locus standi* to sue after inheriting the disputed land from her late husband. She therefore invited me to dismiss the appeal with costs.

I have keenly considered the competing arguments on the issue under consideration namely, whether the respondent had *locus standi*. The term *locus standi* can be simply defined as the right or capacity to bring an action or appear before the court of law. Unless a person demonstrates how his interest in the matter filed before the Court is likely to be or being violated, he has no *locus standi* or right to bring it in the court of law. This stance was stated by this Court (Samatta, J.K. as he then was) in **Lujuna Shubi Balonzi vs Registrar of Chama cha Mapindunzi** (1996) TLR 203. In

another case of **Godbless Jonathan Lema vs Musa Hamis & 2 Others**, Civil Appeal No. 47/2012, CAT at Arusha (unreported), the Court of Appeal of Tanzania cited with approval the case of **The Attorney General vs. The Malawi Congress Party and Another**, Civil Appeal No. 22 of 1996, in which the Malawian Supreme Court of Appeal had this to say on the test of *locus standi*:-

"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."

Guided by the above position, I was inclined to peruse the proceedings of the Bugwema Ward Tribunal to determine whether the respondent had *locus standi*. It is on record that the oral complaint lodged by the respondent was reduced in writing by the secretary of the Ward Tribunal under section 17 of the Land Disputes Courts Act [Cap. 216, R.E. 2019] (the LDCA). For better understating of the discussion at hand, I find it necessary to reproduce the said complaint. It reads:

*MADAI: KUDAI ARDHI/ SHAMBA HEKARI 20 THAMANI TSH
3,000,000/=*

HABARI ZA MADAI KWA KIFUPI

1. Kwamba nakumbuka mwaka 1975 niliolewa na CHARLES PAULO nikawakuta wanaishi na mdogo wake pamoja na mama mkwe ambaye mpaka sasa yuko hai.
2. Kwamba hilo shamba tulikuwa tunalitumia kwa kulima.
3. Kwamba kufikia mwaka 1984 mme wangu akafariki shamba likabaki mikononi mwa mama mkwe na tukaendelea kulitumia kwa kulima tukiwa na shemeji yaani mdogo wa mme wangu.
4. Kwamba tena kufika mwaka 1998 shemeji yangu nae akafariki na shamba likabaki mikononi mwa mama mkwe na tukaendelea kulitumia na mke wa shemeji yangu pamoja na mama mkwe wangu.
5. Kwamba kufika 2014 mdaiwa akaingilia shamba letu hilo na kuanza kulima kwa nguvu na kuvuka mpaka wake na kuingia kwenye shamba letu.
6. Kwamba mwaka 2014 huo nikaanza kulalamika kwenye uongozi wa kijiji na uongozi wa kijiji ukanituma kwenye baraza la ardhi la kijiji kwa ajili ya suluhu lakini mdaiwa hakuwea kufika kwenye baraza hilo.
7. Kwamba kutokana na kitendo cha mdaiwa kuvuka mpaka wake na kuingilia ardhi/shamba langu, naliomba baraza la ardhi Kata ya Bugwema kuamuru mdaiwa kuondoka katika ardhi/shamba langu ili niendeleo kulitumia.

KIASI KINACHODAIWA:- Ardhi/shamba hekari 20

Ada ya baraza ni Tsh. 13,000/=

Sahihi ya Mdai: SGND

*Nathibitisha kuwa maelezo niliyotoa hapo juu ni ya kweli
tupu.*

*GRECE CHARLES
Mdai*

*Shauri limepokelewa leo tarehe 19/07/2018 kwa
kufunguliwa.*

*B.MINYAMAGAINI
SGND "*

[The underlined supplied]

It is trite law that parties are bound by their own pleadings. As far as the matter before the ward tribunal is concerned, I am of the view that the complaint duly signed by the complainant is a pleading. The respondent did not plead to have inherited the land from her late husband. Paragraph 2 of her complaint is to the effect that upon the demise of her husband, the disputed land passed to her mother in law and that she (the respondent) and her brother in law had the right to use it. Further to that, paragraph 4 of the complaint shows that the disputed land passed to the respondent's mother in law when her brother in law passed away in 1998 and that she (the respondent) and the wife of her late brother in law had the right to use the said land. In view of the complaint lodged before the ward tribunal, I find that the respondent had no *locus standi*. The proper person to institute the land complaint was her mother in law.

It is noteworthy that the issue of *locus standi* was raised on a first appeal at the DLHT and dismissed for want of merit. The chairman of the DLHT held that:

"...I see that the respondent, Grace Charles had a legal capacity to institute the case in the ward tribunal, as the previous owner of the land was her husband one Charles Paulo who had been occupying the disputed land far back from 1975. In my opinion, the right to the Suitland devolved upon the respondent, Grace Charles after the death of her husband, the said Charles Paulo.

In my view, had the Hon. Chairperson considered the respondent's complaint before ward tribunal, he would not have arrived at that decision.

Even if I was to consider the respondent's evidence, the same displays that the disputed land belonged to the family of her late husband. The relevant part of the respondent's testimony is quoted below:-

*... ndipo tukabaki sisi ambao ni mimi na mme wangu na baadaye mme wangu naye akafariki **tukabaki wanawake na mama mkwe wangu** ndipo mwaka 2015 **mdaiwa akavamia mashamba yetu** na kuanza kulima na ndipo tukamwambia aachie hayo mashamba watoto wetu walime akakataa na mashamba hayo aliokuwa amevamia ... **na mpaka sasa mdaiwa amekatalia mashamba yetu anaendelea kulimia.**"(Emphasize supplied).*

It is my considered opinion that the above evidence suggests that the disputed land belonged to the respondent's family. The law is settled that person has no locus to sue on behalf of the family unless the proceedings is instituted under representative suit. See for instance, this Court (Mtulya, J.,) in **Johaness Elias vs Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019 (unreported) cited the decision of the Court of Appeal in **Ramadhani Mumwi Ng'imba vs Ramadhani Jumanne Sinda** (supra), where it was held that:

"Now, the issue of family representative cannot arise since the disputed property is alleged to belong to the deceased person...since the respondent is not administrator of his deceased father's estate, he lacks locus standi to sue in that behalf...lack of locus standi to sue vitiated the proceedings before the Ward Tribunal making the same incompetent..."

In our case, the respondent stated the disputed land belonged to her late father in law. As alluded earlier, her late father in law left behind a wife (the respondent's mother in law) and two sons (the respondent's husband and brother in law) who were using the same land. The respondent's mother in law is still alive. On the other hand, although the respondent's brother in law passed away, his wife is alive. Therefore, the respondent's mother in law and the wife of her late brother in law have also interest in the land left by the respondent's father in law. Therefore, the court cannot if the disputed

land was left to the respondent's mother in law as pleaded in the complaint, she is the one with *locus standi*. In alternative, a person duly appointed by her can institute the case on her behalf. On the hand, if the respondent's father in law did not leave the disputed land to his wife, the person with locus to sue on the property left by him is an administrator of his estates. No evidence suggesting that the respondent was duly appointed by her mother in law to institute the case on her behalf or appointed as administratrix of the estates of her late father in law.

Consequently, in line with what I have discussed, I hold that the respondent had no *locus standi* to institute the land complaint at the Bugwema Ward Tribunal. As a result, the proceedings before the Bugwema Ward Tribunal and those subsequent thereto, including this appeal were nullity for being incompetent. Accordingly, the proceedings of both lower tribunals are hereby nullified and the judgment and orders arising thereto quashed and set aside. Having considered the evidence on record that parties are relatives, I order each party to bear its own costs.



DATED at MUSOMA this 14th day of June, 2021.


E. S. Kisanya
JUDGE

Court: Judgment delivered this 14th day of June, 2021 in the presence of the respondent and in the absence of the appellant. B/C Simon present.

Right of further appeal to the Court of Appeal is well explained.




E. S. Kisanya
JUDGE
14/06/2021