

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MBEYA**  
**AT MBEYA**

**MISC. LAND APPEAL NO. 21 OF 2020**

(From the District Land and Housing Tribunal for Mbeya, at Mbeyaa, in Land Appeal No. 60 of 2019, Originated in Mahongole Ward Tribunal, in Land Case No. 72 of 2019).

**TUNTUFYE MWAMBAGI**

**(Administratrix of the Late**

**Japhet Mwambulule Mwambagi)**

.....**APPELLANT**

**VERSUS**

**ADIJA KISALE .....RESPONDENT**

**JUDGMENT**

**08/4 & 30/6/2021**

**UTAMWA, J:**

The appellant in this appeal was one TUNTUFYE MWAMBAGI (Legal Administratrix of the Late Japhet Mwambulule Mwambagi). She appealed against the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the DLHT) in Land Appeal No. 60 of 2019. The matter originated in Mahongole Ward Tribunal (the ward tribunal).

The brief background of this matter according to the record goes thus: the appellant initiated proceedings before the Ward Tribunal against



the respondent, ADIJA KISALE for a piece of land. The ward tribunal decided in favour of the appellant. Aggrieved by that decision, the respondent appealed to the DLHT. In its turn, the DLHT allowed the appeal by nullifying the proceedings of the ward tribunal through a judgement dated 21/11/19 (hereinafter called the impugned judgment). It also quashed and set aside the resulted judgment. The appellant was not contented by the impugned judgment, she thus, appealed against it. The appeal is based on three grounds of appeal which can however be, condensed into two as follows:

1. That, the DLHT chairman erred in law when he held that the appellant had no *locus standi* to claim the suit land which originally belonged to the late Japhet Mwambagi.
2. That, the DLHT failed to analyse the evidence adduced before the ward tribunal as a result, it reached at the wrong conclusion.

Owing to the above grounds of appeal, the appellant urged this court, to reverse the impugned judgment and restore the decision of the ward tribunal. He also prayed for an order of costs. The respondent resisted the appeal at hand.

In hearing the appeal, the appellant was represented by Mr. Ezekiel Mwampaka, learned advocate while the respondent 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.

My adjudication plan is to start determining the first ground of appeal. This is because, if it will be upheld it will dispose of the entire



appeal without even testing the second ground of appeal. I will thus, consider the second ground of appeal only if need will arise.

In supporting the first ground of appeal, the appellant's counsel essentially submitted that, though the appellant had not tendered a letter of administration, the evidence she gave before the ward tribunal showed that, she had a will left by her late father Japhet Mwambulule Mwambagi. He also submitted that, before the appellant instituted the case, she had already been appointed an administratrix of the estate of the late Mwambagi.

The counsel for the appellant further submitted that, since the ward tribunal and the DLHT are not bound by strict procedure of the law as per section 13 of the Land Disputes Courts Act, Cap. 216 R.E. 2019, and since the appellant attached a letter of administration to the reply to petition of appeal before the DLHT, it would have recognized it and decided that the appellant was really the administratrix of the estates of her late father. He also submitted that, the letter of administration which the appellant attached to the reply to the petition of appeal indicated that, it was issued on 10/09/2018 and she instituted the case before the ward tribunal in March, 2019. She therefore, had *locus standi*. He thus, urged this court to allow the appeal, set aside the impugned judgment and declare the appellant a lawful owner of the disputed land. He also prayed for costs.

On the other side, the respondent submitted regarding the first ground of appeal that, the DLHT was correct when it decided that the appellant had no *locus standi*. This was because, the appellant did not prove by any documentary evidence that she was administratrix of the



estate of the late Japhet Mwambagi. She also contended that, the appellant would have tendered the letter of administration as the only proof of having *locus standi*. However, she only gave oral testimony that, she was given the disputed land by her late father.

The respondent further argued that, though the ward tribunal and the DLHT are not bound by strict procedures of the law, they are bound by the rules of natural justice. She further argued that, attaching the letter of administration to the reply to petition of appeal before the DLHT was an afterthought. This is because, the letter of administration was supposed to be tendered before the ward tribunal or before the DLHT by following the required procedures. She thus, prayed for this court to dismiss the appeal with costs.

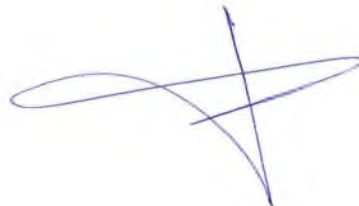
In his rejoinder submissions, the appellant's counsel essentially reiterated the contents of his submissions in chief. He however added that, since the respondent is a lay lady, she misdirected herself by contending that, the attaching of the letter of administration to the reply to petition appeal was wrong. According to him, section 34 (1) (a), (b) and (c) of Cap. 216 allow the DLHT to receive new evidence which was not tendered at the ward tribunal. He further argued that, the DLHT is deferent from other common courts; it is therefore, supposed to decide disputes on merits without being bound by procedural rules. To buttress his contention, he cited the decision by the Court of Appeal of Tanzania (the CAT) in the case of **Mwaitenda Ahobokile Michael v. Interchick Company Ltd, Civil Application No. 218 of 2016 CAT, at Dar es Salaam** (unreported). In this case, the Court emphasized on the courts to decide cases on merits



without being strictly bound by procedural rules. The appellant's counsel thus, insisted his prayers made in his submissions in chief.

I have considered the submissions by the parties in relation to the first ground of appeal, the record and the law. According to the arguments of both parties, they do not dispute that the appellant claimed to institute the case before the ward tribunal under the capacity of administratrix of the estates of her late father (Japhet Mwambulule Mwambagi). They do not also dispute that, she (appellant) did not produce any letter appointing her as administratrix before the ward tribunal. Now, the major issue to be determined by this court is *whether or not the DLHT erred in holding that the appellant had no locus standi*. According to the arguments by the parties and record, it is clear that, the only instrument which gave the appellant mandate to sue was the letter of appointment. This document was thus, a very significant tool for the respondent's capacity or *locus standi* in the matter at hand. Nonetheless, the same was not tendered before the ward tribunal.


Moreover, it is undisputed that, the appellant attached the letter of appointment with the reply to petition of appeal before the DLHT. The counsel for the appellant contended that, such attachment of the letter to the reply of the petition of appeal is allowed by the law. He added that, the DLHT is not bound by rules of procedures like other courts, thus, it would have decided that the appellant had *locus standi*. The respondent claims that, the letter of appointment was not formerly tendered in evidence before the DLHT. Under such circumstances, this court has to determine



the sub-issue of *whether the appellant was justified in attaching the letter of appointment to the reply of the petition of appeal filed in the DLHT*.

In my view, the circumstances of the case do not attract answering the sub-issue posed above affirmatively on the following grounds: the law instructs that, a party to court proceedings cannot prosecute or defend a matter 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 case of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203**. 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). From the requirement of the law above, it is my concerted opinion that, the attachment of the letter of appointment to the reply of the petition of appeal in the DLHT was indeed, an afterthought of the appellant. I hold so because, the DLHT could not receive the letter as additional evidence as suggested by the counsel for the appellant since the said process of attachment was not a recognized way of adducing additional evidence. The process could not give a better opportunity to the adverse party to challenge the letter. The process thus, prejudiced the respondent.

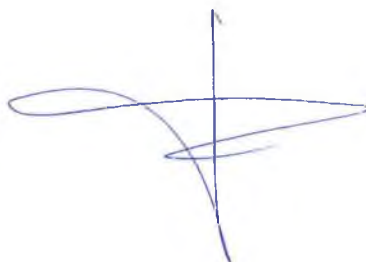
Additionally, the act of the appellant (i.e in attaching the letter of appointment to the reply of the petition of appeal) cannot be saved under section 45 of Cap. 216. These provisions essentially guide that, irregularities committed by a ward tribunal or a DLHT cannot vitiate their respective decisions if the same do not cause injustice to parties. However,





as I have shown above, the process used to present the letter before the DLHT was not a legally recognized way of presenting additional evidence and prejudiced the respondent. The failure by the appellant to tender the letter before the ward tribunal thus, negatively affected her *locus standi* in the matter. That failure also made the competence of the matter and the jurisdiction of the ward tribunal questionable. Indeed, that failure by the appellant deprived the respondent of the right to challenge the letter. She was thus, subjected to an unfair trial.

The appellant's course 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 just mentioned 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 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.



Owing to the findings I have made hereinabove, I answer the sub-issue posed above negatively that, the appellant was not justified in attaching the letter of appointment to the reply to petition of appeal filed in the DLHT as a way of adducing additional evidence. It follows thus, that, the main issue posed above is also negatively answered that, the DLHT did not err in holding that the appellant had no *locus standi*.

Due to the above reasons, I will not test the second ground of appeal since it depended on the upholding of the first ground of appeal, which now, has been dismissed. I therefore, dismiss the entire appeal for want of merits. The appellant shall pay costs to the respondent. It is so ordered.



JHK. UTAMWA

JUDGE

30/06/2021



**Date:** 30/06/2021

**Coram:** Hon. P.R. Kahyoza – DR.

**Appellant:** Present.

**For the Appellant:** Ms. Tumaini Amenye, Advocate.

**Respondent:** Present.

**For the Respondent.**

**B/C:** Patrick Nundwe.

**Ms. Tumaini:** This matter is fixed today for judgement.

**Court:** Judgement delivered in the presence of parties.



P.R. Kahyoza

Deputy Registrar

30/06/2021.