

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND CASE APPEAL NO. 17 OF 2020

*(C/F Appeal No. 52 of 2019 Moshi District Land and Housing Tribunal,
Original Shauri No. 01/2019, Old Moshi Mashariki Ward Tribunal)*

ABEL E. MOSHI APPELLANT

VERSUS

YUNIS A. MOSHI RESPONDENT

19th May & 18th June, 2021

JUDGMENT

MKAPA, J.

This is a second appeal after Abel E. Moshi the appellant, lost in **Appeal No. 52 of 2019** before the District Land and Housing Tribunal of Moshi, (district tribunal). Briefly, the relevant facts are that before the Old Moshi Mashariki Ward Tribunal (trial tribunal) in **Shauri No. 01/2019** the respondent sued the appellant for trespassing into the suit land which she claimed to have inherited from her deceased parents who were buried in the same place. The trial tribunal decided in favour of the respondent.

Aggrieved by the trial tribunal's decision the appellant appealed to the district tribunal in **Appeal No. 52 of 2019**. For yet another time lucky was not on his side the district tribunal

dismissed the appeal for want of merit hence the instant appeal containing the following grounds of appeal;

1. That, the district tribunal seriously erred in law and fact in refusing to declare that the respondent is a tress passer to the suit land.
2. That, the district tribunal erred in law and fact for failure to state to whom the suit land belongs.
3. That, the district tribunal erred in law and fact in failing to evaluate the evidence on records thus reaching into a wrong conclusion.
4. That, the chairperson of the district tribunal erred in law and fact in failing to reach a conclusion that the suit land belongs to the appellant.

When the appeal was called for hearing parties consented to argue by way of filing written submissions and the court so ordered. Mr. Pius Ndanu learned counsel appeared and represented the appellant while the respondent appeared in person and unrepresented.

Submitting in support of the appeal Mr. Ndanu submitted that, the appellant is in possession of the suit land since 1946 to date. That the late Amani Ndelahiyo Moshi respondent's father was just an invitee. Mr. Ndanu contended that the trial tribunal erred in deciding in favour of the respondent without evaluating the



conflicting evidence adduced at the trial. He went on arguing that the appellant's long possession of the suit land customarily amounts to deemed right of occupancy. He relied on section 2 of the Land Registration Act, Cap, 334, R.E. 2002 which defines owner of the land in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered. Furthering his argument the learned counsel submitted that Mr. Awed Ndelahiyo Moshi who is represented by Mr. Abel Moshi by a special Power of Attorney is the rightful owner of the suit land after he had acquired it as a virgin land from Mangi Abraham and invited the respondent's father (his brother). It was Mr. Ndanu's view that an invitee cannot claim good title and claim adverse possession by the person who had invited him.

It was Mr. Ndanu's further argument that the respondent lacked *locus standi* to entertain this matter after she had claimed that the suit land belonged to her late father yet failed to adduce evidence of being appointed as administrator of the deceased estate. He finally prayed for the Court to quash the decision of the District Land Tribunal and declare the respondent as trespasser to the suit land since it was her late father who was invited to the suit land.



Opposing, the respondent submitted that the appellant's submission is misleading and has introduced new facts which were not pleaded since the commencement of this case. She went on explaining that from the beginning the dispute involved the respondent and one Abel A. Moshi and not Awed Ndelahiyo Moshi as averred by the counsel for the appellant. That, the claim that the suit land belonged to the late Awed Ndelahiyo is a new fact which cannot be entertained at this appellate stage.

The respondent informed the court that she inherited the suit land from her late father who was buried in the suit land as confirmed by the clan meeting held on 2nd June, 2002. She vehemently denied the applicant's allegations that her late father was a mere invitee as a misconception. That, her late father was the legal owner of the suit land thus she had *locus standi* as a daughter of the deceased to institute the case against the appellant who was a trespasser. She finally prayed for this court to dismiss the appeal and uphold the district tribunal's decision.

The appellant filed rejoinder in which the contention of the respondent have been denied and the contents of the ground of appeal have been reiterated while maintaining his prayer for the court to allow the appeal.




Having heard both parties' arguments and gone through the records the question that arises is whether the appeal is meritorious.

It is worth noting at the very outset that this being the 2nd appeal, I will be guided by the principle laid down in **Amratlal Damodar and Another V A.H. Jariwalla** [1980] T.L.R. 31 where the court held that;

"Where there are concurrent findings of the facts by the two courts, the court of appeal as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure."

Prior to determining the merit or otherwise of the grounds of appeal in light of the above authority, I find it necessary to discuss on the issue of jurisdiction of the trial tribunal in determining the matter at hand.

There are numerous court decisions on the requirement for courts (and tribunals with no exception) to be assured of their jurisdictional position prior to commencing a trial. This requirement was summed up in the decision of the Court of Appeal in **Fanuel Mantiri Ng'unda V. Herman Mantiri**



Ng'unda & 20 others (CAT) Civil Appeal No. 8 of 1995

(unreported) in which the Court emphatically held;

"The question of jurisdiction of any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different natureThe question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.....It is risky and unsafe for the Court to proceed with the trial of a case on the assumption that the Court has jurisdiction to adjudicate upon the case."

My thorough examination of the trial tribunal proceedings has revealed that the exact location of the suit land, its size, value, boundaries and general physical address are not disclosed in order for the trial tribunal to have ascertained if it had jurisdiction or not to adjudicate the matter. As adjudicator the trial tribunal had a duty to ascertain its jurisdiction before proceeding to adjudicate upon the matter before it.

In the circumstance I am satisfied that the trial tribunal erred in entertaining the matter without first ascertaining whether it had jurisdiction. Thus the whole proceedings and decision of the trial



tribunal was irregular and the irregularity goes to the root of the case hence fatal.

As regards the issue of respondent's *locus standi* the same should not detain me much. The respondent filed her complaint at the trial tribunal as the heir of the late Amani Ndehiliyo Moshi. She claimed the fact that the ownership of the suit land passed from his late father to her. However, the trial tribunal's proceedings are silent on when the deceased father passed away and whether a probate matter was petitioned and the respondent was granted letters of administration to administer the estate of the deceased father.

It well settled that in order for a person (natural or legal entity) to have a right to appear and be heard before a court, *Locus standi* has to be established. This was underscored in the decisions in **Gervas Masome Kulwa V The Returning Officer and Others** (1996) TLR 320 and **Lujuna Shubi Ballonzi Senior V Registered Trustees of Chama cha Mapinduzi** respectively, (1996) TLR 203.

In the instant appeal it is sufficiently established that no such proof has been established. I am therefore in agreement with the appellant that the respondent lacked *locus standi* to institute the case against the appellant.



The above findings suffice to dispose of the appeal thus I find no reasons to discuss the remaining grounds of appeal. Consequently, the appeal is hereby allowed, both lower tribunals' decisions and proceedings are quashed and set aside. Considering the fact that parties are blood related, I give no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 18th day of June, 2021.




S.B. MKAPA
JUDGE
18/06/2021