

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

MISC. LAND CASE APPEAL NO.33 OF 2020

SHABANI ISSA..... APPELLANT

VERSUS

RAMADHAN KHASIMU.....RESPONDENT

**(Appeal from the decision of the District Land and Housing
Tribunal at Bukoba in appeal No. 132 of 2018)**

JUDGMENT

19 & 30 July, 2021

MGETTA, J:

This is a second appeal. Ramadhani Khasimu brought a suit at Ward Tribunal of Kaibanja, Bukoba Rural (henceforth the trial tribunal) against Shabani Issa. He was successful. Aggrieved by the decision of the trial tribunal, Shabani Issa, the appellant appealed to the District Land and Housing Tribunal at Bukoba (henceforth the district tribunal) which on 12/12/2019 dismissed his appeal. Aggrieved by the district tribunal decision, he again preferred an appeal to this court by lodging a petition of appeal on 16/1/2020 complaining:

1. That, the district tribunal grossly erred in law by not quashing and setting aside the entire proceedings and the judgment of the trial tribunal after finding that, the respondent had no *locus standi* to file a suit against the appellant at the trial tribunal purporting to

claim the land owned by this deceased father one Khasimu Abdallah Mkaka.

2. That, the district tribunal chairman further failed to consider the unanimous opinions opined by the Assessors and proceeded to determine the Appeal basing on the adduced testimonies.
3. That, given the circumstances of non-possession of the letter of administration, the district Tribunal misconceived the principles of law entering into the judgment basing on the records of the trial tribunal.

At the hearing of the appeal, Mr. Lameck John Erasto, the learned advocate appeared for the appellant; and, Mr. Mathias Rweyemamu, the learned advocate, appeared for the respondent.

On the first ground of appeal, Mr. Lameck submitted that the respondent had no locus stand to institute the suit at the trial tribunal. He claimed at the trial tribunal that he was instituting the suit on behalf of his late father, that the appellant encroached into his father's land in which he dug the trench. He was not administrator of the deceased estate neither possess letter of administration. However the trial tribunal decided the case in his favour.

On appeal, noticing that the appellant had no locus stand, still the district tribunal agreed with the decision of the trial tribunal. What the district tribunal ought to do after seeing that the respondent had no locus stand was to quash and set aside the decision of the trial tribunal.

In reply, Mr. Rweyamamu submitted that, the procedure was followed. He cited **section 18 (2) of Land Disputes Court Act Cap 216** which provides for who has the right to sue at the trial tribunal. He submitted further that Kassimu Mkaka was respondent's father and that land also belonged to him. So long as he acted on behalf of his late father, he had *locus standi* to do so.

Agreeing with the submission of Mr. Rweyamamu that, according to the provision of **section 18 (1) of Cap. 216**, any person can represent another by institute and prosecute a suit on behalf at the trial tribunal, but only that that another person being represented is still alive. **Section 18 (1) of Cap. 216** does not apply where a person being represented is already dead. It is a misconception on the part of Mr. Rweyamamu to rely his submission on **section 18 of Cap 216** on this issue while a person represented is already dead. The section comes into application where the person, being represented is still alive. For a dead

person he who have *locus standi* to institute a suit on his/her behalf is a person holding a letter of administration to administer deceased estate not only in respect of this suit but also in other properties left by the deceased. So long as the respondent had no letter of administration, obviously he had no *locus standi* to represent his late father.

Without going around the bush, I am in agreement with Mr. Lameck that the proper decision ought to be handed down by the district tribunal after finding that the respondent had no locus stand was to require the respondent to go and apply and obtain a letter of administration from a Primary Court before going back again to the trial tribunal to institute a fresh suit for the determination of his complaint. The case could not stand because the respondent instituted it without having *locus standi*.

At page 12 of the typed judgment, the district tribunal chairman saw that the respondent had no *locus standi*, but yet he proceeded to determine the appeal on merit. The district tribunal chairman found that:

"Although the respondent had no locus standi, but he could not have remained silence for the conducts of the appellant without taking any legal action against the trespasser. In

addition to this, the appellant cannot benefit for his acts on the ground that the respondent has no locus standi"

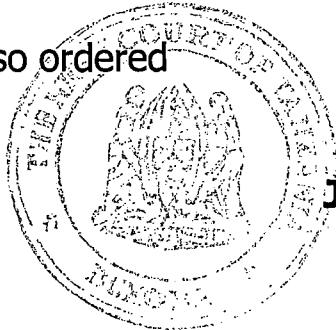
That finding was a total misconception and misdirection of the law. In law, a person bringing a matter in the tribunal or any court must show that his right has been interfered. In this case the respondent is neither owner of the suit land nor administrator of the deceased father who owned the suit land. In the case of **Lujuna Shubi Ballonzi, senior v. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203**, this court held and I quote that.

"(i) Locus standi is governed by common law accordingly to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with"

Assuming that the respondent won the case over the suit land, that means that the suit land becomes his own property, his father had already died. Other beneficiaries of the deceased estate will not benefit from that land as he who won the case in courts in law becomes the lawful owner. That situation may create a dispute amongst the beneficiaries of the deceased estate.

By and large, I thus answer the first ground of appeal in the affirmative that the respondent had no *locus standi* to sue the appellant at the trial tribunal. The appeal is accordingly allowed with costs. The decision and orders emanating therefrom are quashed and set aside.

It is so ordered



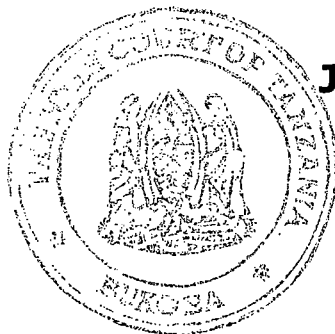
J. S. MGETTA
JUDGE
30/7/2021

COURT: The judgment is delivered today this 30th day of July, 2021 in the presence of Ms. Erieth Barnabas, the learned advocate for the appellant and in the presence of the respondent in person.



J. S. MGETTA
JUDGE
30/7/2021

COURT: Right of appeal to the court of appeal is fully explained.



J. S. MGETTA
JUDGE
30/7/2021