

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. LAND APPEAL NO. 52 OF 2021

*(Arising from the District Land and Housing Tribunal for Ngara at Ngara in Land appeal No. 12 of 2019
and original Land Case No. 4 of 2019 from Ntobeye Ward Tribunal)*

SELEMAN GWAMASUNZU.....APPELLANT

VERSUS

YASINI DANIEL GWAMASUNZU..... RESPONDENT

JUDGMENT

Date of Judgment: 30.09.2021

Mwenda, J.

This Appeal was filed in this court on 22nd April 2021 by Mr. Seleman Gwamasunzu (the Appellant) disputing the decision of the District Land and Housing Tribunal for Ngara at Ngara in Land Appeal No. 12 of 2019.

When this appeal was scheduled for hearing the respondent appeared in person while the appellant enjoyed the legal service of the learned counsel Mr. Sekundi B. Sekundi.

With regard to the 1st ground of appeal the learned counsel Mr. Sekundi submitted that, the respondent had no Locus Standi because the plot in dispute

was his father's land and not his. According to him the respondent's father had all rights to sale or do whatever he deemed fit to do. He said that at page 6 of the typed proceedings, the respondent agreed that the land in dispute belongs to his father and therefore his father has the right to do anything. He also submitted that, there is nowhere in record where the respondent was appointed to be the administrator of the estate of his late father.

With regard to the 4th ground of appeal, the counsel for the appellant submitted that the respondent sued the wrong party. He said that in the sale agreement the respondent agreed that his father's signature was appended and for that matter there was sale agreement between the respondent's father and the purchaser and the appellant was a mere witness and not a purchaser. He said that being the case the respondent wrongly sued the appellant.

On the 2nd ground of appeal the learned counsel submitted that, there was sale transaction in which Juma Gwamasunzu acted on behalf of Daniel Gwamasunzu. He said Daniel Gwamasunzu testified that the said transaction was concluded by receiving Tshs 20,000/= which was the remaining balance they signed the contract before witnesses the said contract was signed on 19/05/1996. The learned counsel submitted that there was principal and agent relationship where Daniel Gwamasunzu empowered Juma Gwamasunzu to sale the land on his behalf.

He said since Daniel signed the contract as the owner, he acknowledged is relieved receiving Tshs 20,000/= then his agent (Juma) is relieved from any liabilities. He cemented his argument by referring to **Section 148 of the Law of Contract Act [CAP 345 R.E 2019]** and the decision on Court of Appeal of Tanzania in the case of **Ombeni Kimaro vs. Joseph Mishili t/a Catholic Charismatic Renewal Civil Application No. 33 of 2017.**

On the 3rd ground of appeal the learned counsel for the appellant submitted that on the issue of limitation of time in that even if the respondent was a proper party to sue, time to do so had already expired since conclusion of the sale was in 1996 and this case was filed in 2019. He said time had elapsed and he ought to have sought extension to do so from the minister responsible for constitution and legal affairs.

In reply to the appellant submissions, the respondent submitted that it is true that the Land in Dispute was the property of Daniel Gwamasunzu and his family. He said that, Daniel shifted to Mwanza and left behind his 5 children. He said in 1998 he was engaged in an accident and had a longtime treatment where his brother was taking care of him. He stated that during his sickness they decided to handle the land in dispute to Selemani Gwamasunzu as care taker. He went further by submitting that, In 2019 January when they returned back home, they found the land already sold. They asked Seleman Gwamasunzu about that issue

and answered them that he knows nothing. They then decided to sue him as he was the one who was taking care of the land.

The respondent also submitted that, before the Ward Tribunal the purchaser testified on behalf of the appellant and he said he bought the Suitland from Daniel Gwamasunzu through Juma Gwamasunzu. According to him, it is true that he was not the heir of the said property but he said he brought the clan members to testify that the land in question belongs to his father and his family.

He went further by submitting that, the allegations that Selemani and Juma were allowed to sale the land, has no proof as Daniel was neither involved nor give any instructions for sale. On issue of time limitation, the respondent submitted that the said land was sold in 1998 but the buyer said he bought in 1996 and from the record the appellant said it was sold in 1993.

In rejoinder the counsel for the appellant submitted that, he prays for this court to quash the decision of the Ward Tribunals and allow the appeal with costs and they still insist that the land was sold by the respondent's father. He said further it is not possible for respondent to be out of home for about 20 years and there is no evidence showing that during the period of 20 years the respondent was sick and undergoing treatments.

The learned counsel also submitted that he is praying for this court to consider the respondent's behavior as he is misleading this court. He said that, even if his father died in 2004 it is obvious that he heard that his father sold the land and there is nowhere his father had put that land under anybody's control.

He concluded by submitting that, the respondent had no Locus standi as his father owned the land and had all the rights to sale it.

After having summarized the submission by both parties and going through the records, the issue for determination in this appeal is whether this appeal has merit.

During submissions by the parties, one issue discussed at length is the respondent's lacking locus standi to sue and defend this matter. This court found it prudent to analyze this issue as it is capable of concluding this appeal.

It is trite law that, a person bringing a matter in the tribunal or any court must show that his right has been interfered. In the case of **Lujuna Shubi Ballonzi, vs. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203**, it was held and I quote:

"(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”

In this matter the respondent agreed that the land in dispute is his father's property. He however failed to produce evidence to show how the said land come into his possession. He failed to prove that he is the heir or was empowered by clan council to sue on its behalf.

Assuming that the respondent won the case over the suit land, that means the suit land becomes his own property as his father had already died. for that matter other beneficiaries of the deceased estate will not benefit from that land as he who won the case in courts becomes the lawful owner.

Since the respondent had no locus standi, I don't see any reasons for discussing the other grounds of appeal. I thus find merits in this appeal and it is hereby allowed with costs. The Judgments and orders emanating the from Land Appeal No. 12 of 2019 and Land Case No.4 of 2019 are quashed and set aside.

It is so ordered.



A.Y. Mwenda

Judge

30.09.2021

Judgment delivered in chamber under the seal of this court in the presence of Mr. Mohamed Fundikira learned counsel for the appellant and in the presence of Mr. Yasini Daniel Gwamasunzu the respondent.




A.Y. Mwenda

Judge

30.09.2021