

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

**AT KIGOMA**

**(LAND DIVISION)**

**APPELLATE JURISDICTION**

**MISC LAND APPEAL NO. 33 OF 2021**

(Arising from Land Appeal No. 175/2016 of the District Land and Housing Tribunal – Kigoma before F. Chinuku, Original Land Dispute No. 50/2015 from Kazuramimba Ward Tribunal)

**JENITA MAKOKA ..... APPELLANT**

**VERSUS**

**EZRA ATHUMANI ..... RESPONDENT**

**JUDGEMENT**

10/8/2021 & 3/11/2021

**L.M. MLACHA, J.**

The appellant Jenita Makoba filed an application at Kazuramimba ward tribunal, Kigoma District against the respondent, Ezra Athumani accusing him to have built a house on a family plot without the consent of the family. Each of the parties called witnesses. At the end of the day the appellant won the case. The respondent was ordered to demolish his house within 60 days and leave the plot to the appellant. The respondent appealed successfully to the District Land and Housing Tribunal for Kigoma (the DLHT) in Land Appeal No. 175/2016. Aggrieved, the appellant has come to this court by way of appeal.

The grounds upon which this appeal is based can be put thus;

- 1. That, the DLHT erred in law for failing to order a retrial considering the fact that, it was proved that the seller one VESTO JOSEPH MUZYE was not joined as a necessary party to the suit.*
- 2. That, the DLHT erred in Law in declaring that the Appellant had no locus standi to sue on behalf her mother one BERITA NYAKANGA.*
- 3. That, the DLHT erred in Law in declaring that the appellant had no locus standi to sue contrary to the procedure of instituting claims before ward tribunals.*
- 4. That, the DLHT grossly misdirected itself by deciding the case against the weight of evidence on records.*
- 5. That, the DLHT misconstrued and failed to understand the evidence which showed that the appellant started to live there in 1999 contrary to the evidence of the respondent who bought the same in 2001.*
- 6. That, the judgment and proceedings of land Appeal No. 175/2016 contravenes the mandatory requirement of section 32 of the Cap 216 RE 2019.*

Before going to examine the grounds of appeal and submissions made, a brief background may be useful. The appellant and his witness Godfrey Gervas (52) told the ward tribunal that the suit land is property of Berita Nyakanga who bought it from Mzee Venesto Joseph Mzige in 1999. Mr. Godfrey who was the secretary of the hamlet (kitongoji) told

the tribunal that Mzee vanesto sold the plot to Berita. They thus alleged that the respondent had invaded it hence the request to get him out. The appellant is a daughter of Berita Nyakanga.

The evidence from the respondent show that he bought the plot in 2001 from Mzee Venesto Joseph Mzige and built a house. He lived there since then up to 2015 when the appellant alleged that the plot belongs to her family. He brought Mzee Venesto Joseph Mzige (76) as his witness. The later told the ward tribunal that he sold the plot to the respondent in 2001 and therefore his. He denied to sell the plot to the appellant's mother. During cross examination he told the court that the appellant's mother was his tenant and later a girlfriend (hawara) but they have now parted. He added that even the house where she (Benita) lives, which is adjacent the plot, belongs to him. The respondent had two other witnesses Yotham Kamalawe (47) and Kazimoto Sagika (58) who supported the evidence that he bought the land from Mzee Venesto. They witnessed the sale. The ward tribunal found for the appellant who was declared the owner of the land. He also got orders to break the house.

In reversing the decision of the ward tribunal, the DLHT had this to say:

### **"TUZO**

*Muomba rufani hakuridhishwa na uamuzi wa baraza la kata  
Kazuramimba na hivyo akaleta rufani hii katika baraza hili.*

*Shauri hili linakuja kwa ajili ya uamuzi mbele yangu F. Chinuku, Mwenyekiti wa baraza nikisaidiana na wajumbe Hope Mutabazi na Aziza Kasongo leo tarehe 16 Machi 2021.*

*Baada ya Baraza kusikiliza rufani hii LINAAMURU KWAMBA:*

*(i) Venesto Joseph Muzige alikua mtu muhimu katika mgogoro huu na alifika baraza la kata na alitoa Ushahidi uliothibitisha kwamba yeye aliyemuuzia eneo hilo ni muomba rufani na kwamba hamtambui mjibu rufani.*

*(ii) Muomba rufani amekuwepo kwenye eneo la mgogoro tangu mwaka 2001 alipolinunua, endapo Berita Nyakanga alinunua eneo hilo mwaka 1999 ni wazi angemshtaki muomba rufani mapema na sio kusubiri mpaka mwaka 2015 mjibu rufani alipofungua kesi baraza la kata. Madai ya mjibu rufani baaza la kata yalikuwa yamepitwa na muda, kwani ukomo wa madai ya ardhi ni miaka kumi na mbili.*

*(iii) Mjibu rufani ambaye alikua mlalamikaji katika baraza la kata alidai kufungua shauri kudai kiwanja cha familia. Kwamba eneo hilo ni la mama yake Berita Nyakanga, hakukuwa na uthibitisho wowote kana huyo Berita Nyakanga amemruhusu mjibu rufani kufungua shauri hilo, hivyo mjibu rufani hakuwa na miguu kisheria kufungua kesi dhidi ya muomba rufani.*

*(iv) Baraza la kata lilikosea kuamua shauri kwa kumpa haki mjibu rufani ambaye mwenyewe anakiri kuwa sio mmiliki wa eneo hilo.*

*(v) Kwa kuwa malalamikaji ambaye ni mjibu rufani hii alikuwa sio mtu sahihi kufungua madai baraza la kata, sio sawa baraza hili kutoa amri ya wadaawa kurudia upya kesi.*

*(v) Rufani hii ina mantiki na hivyo inakubaliwa.*

*(vi) Mwenendo pamoja na uamuzi wa shauri la baraza la kata unatenguliwa kwa kuwa mlalamikaji hakuwa mtu sahihi na pia shauri hili lilikua nje ya muda wa kisheria.*

*(vii) Muomba rufani Ezra Athumani ataendelea kumiliki eneo la mgogoro.*

*(viii) Rufani hii inakubaliwa kwa gharama.*

*Imeamriwa hivyo.*

*Imetolewa kwa mkono wangu na LAKIRI YA BARAZA HILI leo tarehe 16 Machi 2021.*

**F. Chinuku**

**Mwenyekiti**

**16/3/2021"**

It is from this background that the appeal was lodged. Mr. Joseph Mathias who represented the appellant made oral submissions to support the Appeal. He started with ground five. He argued that the appellant was the first to stay at the suit premises. She started to stay at the suit premises in 1999 while the respondent came in 2001. Counsel submitted that the respondent bought the land which was already owned by the appellant. He referred the court to **Ombeni Kimario v. Joseph**

**Mishingili t/a Catholic Charismatic Renew**, CAT Civil Appeal No. 33 of 2017, page 16 and said that his client was the lawful owner of the land because she got it earlier.

Submitting in ground one, counsel had the view that the decision of the DLHT was bad in law for failure to join Mr. Venesto Joseph Mzige who was the seller of the land. He said that the seller ought to have been joined as a necessary party and that failure to do so was fatal to the proceedings. He referred the court to **Juma B. Kadala v. Laurent Mkanda** [1983] TLR 103 as his authority.

In grounds two and three, counsel had the view that it was correct for the appellant to sue instead of his mother, Berita Nyakanga because the ward tribunal is not bound by technicalities. He argued that there was nothing wrong because he followed all the procedures and the tribunal accepted. He referred the court to **Osnawi Ramadhani v. Hamisi Ally**, Miscellaneous Land Case No. 24 of 2019 High Court as his authority.

In ground four counsel had the view that the evidence of the appellant had more weight than that of the respondent. He added that the respondent did not tender any evidence to show that the land was surveyed. He went on to submit in support of ground six saying that section 32 of the Land Disputes Court Act was yet to be repealed on

6/3/2021 when the decision was made so it was wrong to write the judgment in Swahili. He said that section 32 was repealed on 30/4/2021 so the judgment was supposed to be written in English. Counsel requested the court to allow the appeal on grounds stated with costs.

The respondent being a layman could not respond to the grounds of appeal as submitted. He made a combined submission. He said that he bought the piece of land (plot) from Mzee Venesto Joseph Mzige and built two houses. He lived there since then to date. In 2002 his wife delivered a baby who died. He buried the baby at the suit premises. He lived peaceful up to 2015 when the street Chairman created a road. The road took part of his neighbour's land. The appellant decided to build a foundation inside his plot, in front of his house. He complained to the street Chairman who convened a meeting and settled the matter. The appellant did not accept the settlement and went to the ward tribunal. The ward tribunal heard them. He called Mzee Venesto as his witness. The ward tribunal disregarded his evidence and gave victory to the appellant. They ordered him to demolish his house. He appealed successfully to the DLHT.

Mr. Joseph Mathias made a rejoinder and joined issues with the respondent. He stressed that the appellant was the first to be in the area.

I had time to read the record, consider the submissions and read the cited cases. I think this appeal can be disposed on grounds 1, 2, 3, and 6 only. I have seen some procedural mistakes which have led me to limit myself to these grounds. I will start with ground six.

Section 32 of the Land Dispute Courts Act, Cap 216 R.E. 2019 had these words: -

*"32. The Language of the District Land and Housing Tribunal shall be either **English or Kiswahili** as the Chairman holding such tribunal may direct **except that the record and judgment of the tribunal shall be in English.**"* (Emphasis added)

It means that people could speak in English or Swahili as the Chairman could direct or allow but the record and the judgment had to be in English. The record includes the proceedings and the judgment of the case.

Section 32 was repealed by the Written Laws (Miscellaneous Amendments) Act No. 1 of 2021 published in the Government Gazette on **30/4/2021** to allow the records and the judgment to be written in *Kiswahili*. It means that, the proceedings and decisions of the DLHT could be written in Swahili from this date. That in effect means that, the judgment of the DLHT made on **16/3/2021** and written in Swahili was




nothing but a nullity. It is as if that judgment did not exist.

Next in my discussion is a joint discussion for grounds 1, 2 and 3. They are all related. They can be discussed together. There is evidence showing that both parties claim ownership of the plot from Mzee Venesto Joseph Muzye. Each claim to buy from this Oldman. He being a seller, in my view, as correctly observed by counsel for the appellant, was supposed to be joined as a co-defendant or one of the applicants at the ward tribunal. That was not done. I think the omission made the proceedings and judgement of the ward tribunal illegal for failure to join a necessary party. What about the locus of appellant? Counsel for the appellant says that the appellant had locus standi because he had permission to proceed. He added that the tribunal is not bound by technicalities. With respect, I think he missed the point. If she was not the owner of the land, she was not supposed to file the case in her name. That is not a technicality but a legal requirement. Failure to file the case in the name of her mother made the proceedings and decision illegal. The appellant daughter lacked locus standi. And in whatever situation she could not get it from the ward tribunal. The case was to be filled by either her mother or by the appellant under a power of attorney on reasons to be stated. The record is silent disclosing no reason as to why the case was filed in the name of the appellant.

Again, if the appellant's mother was the lawful owner of the land, why did she wait for 14 years to file her case. The respondent bought in 2001, built two houses soon thereafter and lived for 14 years up to 2015. The period in between subject the appellant's case to suspicious. It also puts her in a weak position under the Law of Limitation Act for filing the case after twelve years. This indicates or suggests that, there is something hidden under cover, other than what is seen in the records. In fine total, the proceedings and judgments of the lower tribunals are tainted with serious illegalities and must fail.

In view of the irregularities pointed above, in the exercise of revision jurisdiction of this court contained in section 43 (1) of the Land Disputes Court Act, I vacate and set aside the proceedings and decisions of the lower tribunals. I direct that the appellant's mother to file another case if she so wishes, subject to the Law of Limitation Act. Like the DLHT, I direct that the respondent shall proceed to stay at the suit premises until decided otherwise by a court of competent jurisdiction. It is ordered so. I make no order for costs.



  
L.M. Mlacha

**JUDGE**

**3/11/2021**

**Court:** Judgment delivered in chamber in the presence of both parties.

Right of appeal explained.



L.M. Mlacha

**JUDGE**

**3/11/2021**

ORIGINAL