

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND CASE APPEAL NO. 32 OF 2021

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 62 of 2019 and Original Civil Case No. 16 of 2019 from Buganguzi Ward Tribunal)

FRAISKA JULIUS..... APPELLANT

VERSUS

KAJWAHURA ITURAGIZA.....RESPONDENT

JUDGMENT

Date of Judgment: 08.10.2021

Mwenda, J:

This appeal originates from the decision of the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 62 of 2019, where the respondent appealed challenging the decision of Buganguzi Ward Tribunal Civil Case No. 16 of 2019 which declared the respondent the rightful owner of the suit land.

After the hearing of submissions from both parties, the District Land and Housing Tribunal allowed the appeal and quashed the proceedings and decision of the Ward Tribunal for being irregular.

During the hearing of this appeal, the appellant appeared in person without any legal representation and the respondent enjoyed the services of Mr. Zephreine, learned Counsel.

When invited to argue in support of his grounds of appeal, the appellant prayed this court to adopt and consider her grounds of appeal in deciding this matter. Submitting for the respondent Mr. Zephryne, learned Counsel submitted that the Ward Tribunal had no jurisdiction to entertain the matter as the value of the suit land was beyond Tshs 2.5 million Shillings. He said that amount was a top up to the land they had exchanged as the vendor's land was larger than the respondent's land.

With regard to the appellant submission that the vendor sold the land to the respondent without seeking her consent, the learned advocate submitted that there was no need for seeking her consent as the suit land was the vendor's own property and the sale transaction had blessing of the clan head one Corneli Kwesiga. He concluded that the appellant had no locus standi and prayed this appeal to be dismissed.

In rejoinder, the appellant submitted that the suit land is a clan land and the clan council and appointed her to make a follow up and sue on its behalf.

Having summarized the submissions by both parties and upon perusal of the records, the issue before this court is whether this appeal is meritorious.

In quashing the Ward Tribunal's decision, the Hon. Chairman of District Land and Housing Tribunal relied on the irregularities of the proceedings before the Ward

Tribunal. The Hon. Chairman said that the Ward Tribunal had no pecuniary jurisdiction to entertain the matters, as the value of the land in dispute was above Tshs. Three (3) million. He was also of the view that the Appellant had no locus standi to sue the respondent for want of instrument or letter from the clan council and lastly, that the suit was incompetent for non-joinder of the necessary party one Projestus Julius the seller who alleged to be the lawful owner of the land by virtue of inheritance.

This court went through the records of appeal and found it pertinent to begin with the second grounds of appeal which state:

"That the trial District Land and Housing Tribunal erred in law and fact to quash and set aside the decision of ward tribunal without considering that the respondent purchased the suit land from the appellant's brother one Projestus Julius without the consent of the appellant as legal owner".

What the appellant is trying to advance is that she is the owner of the land in dispute and therefore the respondent was required to seek her consent before disposing it.

At the Ward Tribunal one Daudi Pastory a clan head testified that before the demise of the appellant's father he left a will that the land in dispute should be bequeathed to his female children. He said after his death the said land was entrusted to Projestus Julius (the seller) who was a mere care taker. According to the clan head, the consent ought to be sought before selling it. His evidence was also supported by that of one Deogratus Cleophace Pastory. On his part, Projestus Julius who sold the land to the respondent alleged he owned of the said land by virtue of inheritance.

Since the Respondent is a bonafide purchaser of the land in dispute from Projestus who allege to have acquired it through inheritance, then two things ought to be done by the applicant in order to properly claim the said land. One, she ought to secure consent of either other female heirs who jointly own that land or clan council and two sue the respondent and one Projestus Julius as a necessary party.

Failure by the appellant to acquire consent from the clan council or her fellow female co-heirs she lacks Locus standi to sue in respect of land in dispute. In the case of ***Seleman Gwamasunzu vs. Yasin Daniel Gwamasunzu, Misc. Land Appeal No. 52 of 2021*** (unreported), this court citing a case of **Lujuna Shubi Ballonzi, v. Registered Trustee of Chama cha Mapinduzi [1996] TLR 203** held inter alia 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 rights or interest has been breached or interfered with."

Since the appellant lacks locus standi pursuing this matter without consent of her co-heirs will prejudice them if she wins. This is so because she would be declared the lawful owner with exclusion of others.

That being the case, I find no reasons to deal with other grounds of appeal. This appeal therefore is dismissed with costs. The decision and orders emanating from Civil Case No. 16 of 2019 are hereby upheld.


It is so ordered.




A.Y. Mwenda
Judge
08.10.2021

This judgment is delivered in chamber under the seal of this court in the presence of Appellant Fraiska Julius and in the presence of Kajwahura Ituragiza the Respondent.




A.Y. Mwenda
Judge
08.10.2021