

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TABORA**

MISC LAND APPEAL NO. 11 OF 2019

(Arises from Decision of District Land and Housing Tribunal for
Nzega in Land Appeal No. 73 of 2017 which originated from
Nkiniziwa Ward Tribunal in Application No. 2 of 2017)

JOSEPH LUBUBU.....APPELLANT

VERSUS

ATHUMAN SHABANI.....RESPONDENT

JUDGMENT

Date of Last Order: 19/7/2021

Date of Delivery: 24/9/2021

AMOUR S. KHAMIS, J:

This is a second appeal whereby the appellant, Joseph Lububu was sued by the respondent, Athuman Shabani at the Nkiniziwa Ward Tribunal over a piece of land alleged to be property of the respondent's father. The appellant during ward Tribunal proceedings alleged to be owner of the suit land for he acquired it before Operation Vijiji.

Upon hearing the evidence of both parties, the Trial Tribunal was satisfied that the land in dispute belonged to the appellant and declared him to be the lawful owner thereof.

Aggrieved by decision of the Ward Tribunal, the respondent, Athuman Shabani successfully appealed to the District Land and Housing Tribunal whereby decision of the ward Tribunal was quashed and set aside.

Joseph Lububu was dissatisfied and thus lodged this appeal advancing seven grounds of appeal namely:

- 1. That the trial Tribunal erred in law and fact in failing to evaluate the evidence before it thus misdirecting itself in consideration thereof consequently arriving in wrong decision.*
- 2. That the Appellate tribunal erred in law and fact by awarding the land in dispute to the respondent as no any change of ownership were ever made either by Government nor by any means of Disposition.*
- 3. That the Appellate tribunal erred in law and fact to declare the respondent is the lawful owner of the disputed land as they were no any proof that the*



Government ever allocate the disputed land to the respondent.

- 4. That the Appellate tribunal erred in law and fact to declare the respondent is the lawful owner of the disputed land by not considering that the respondent had no Locus Stand to sue.*
- 5. That the Appellate tribunal erred in law and fact to declare the respondent lawful owner of the disputed land as they were no proof if at all he was administrator or executor of the diseased estate.*
- 6. That the Appellate tribunal erred in law and fact to declare the respondent lawful owner of the disputed land as there were no proof of the said clan transformation or any proof of re allocation by Operation Vijiji.*
- 7. That the Appellate tribunal erred in law and fact without considering that they were no any evidence from trial record that in 1974 respondent father was the owner of the disputed land and or acquired by allocation through operation Vijiji.*

In this appeal, Mr. Emmanuel Musyani, learned advocate represented the appellant whereas Athuman Shabani, the respondent, was unrepresented.



Pursuant to the order of this Court dated 19/5/2020, the appeal was disposed by way of written submission. I am grateful to both parties for complying with the schedule set and file submissions on time.

In support of the appeal, Mr. Emmanuel Musyani, started with the fourth ground that the appellate tribunal erred in law and fact to declare the respondent as a lawful owner of the disputed land and faulted it for not considering that he (the respondent) had no Locus Standi to sue.

He contended that both lower Tribunal had no jurisdiction to entertain the matter instituted by a person lacking Locus Standi and argued that the question of locus standi touches on the jurisdiction of the Court.

The counsel asserted that record of the trial Tribunal showed that the respondent's claim was for recovery of the disputed land alleged to be property of his late father. He contended that the respondent did not produce any letter of administration of the estate of his deceased father to justify institution of the suit.

Mr. Musyani was of the firm view that being an elder brother to the family was not sufficient to confer capacity to sue on behalf of the deceased. Such capacity, he argued, could only be acquired upon grant of letters of administration.

In that regard, the counsel contended that the respondent lacked locus standi to sue as an administrator of the estate and submitted that the suit was incompetent for want of a capacity to sue.

He referred this Court to Section 71 of the Probate and Administration of Estates Act, Cap 352, R.E. 2002 and submitted that the capacity to act as representative of the deceased takes effect upon the grant of the probate or letters of administration.

The learned counsel argued that the respondent did not allege or prove that he was administrator or heir of the deceased throughout trial and insisted that the respondent lacked locus standi to sue or defend the estate of the deceased.

The appellant's counsel argued that the appellate tribunal was wrong to declare the respondent as owner of the disputed land basing on shake evidence which never proved the case on the balance of probabilities.

He added that there was no evidence on record to prove that in 1974, the respondent's father was owner of the suit land or acquired it through operation vijiji as alleged by the respondent.

He argued that where a claim of land is based on allocation from the Village Council, as in the present appeal, then a party relying on that allocation was bound to furnish credible and

reliable evidence of the alleged allocation. He asserted that the respondent ought to have produced decision of the Village Council which allocated the disputed land to his father.

Finally, the appellant's counsel moved this Court to reverse decision of the appellate Tribunal and allow this appeal with costs.

By way of reply, the respondent asserted that the land in dispute belonged to his late father and that upon his death, the land was transferred to him by resolution, of a family or clan meeting.

The respondent contended that he was entitled to ownership of the disputed land by virtue of a family resolution and not as administrator of the estate of his late father.

As to the proof of allocation, the respondent submitted that his father was lawfully allocated the land during operation Vijiji in the year 1974.

He submitted that his father continued to use and occupy the suit land until 1992 when he died and the same was passed over to him via traditional arrangements.

The respondent argued that if at all the appellant had any claim over the land, he should have raised it during the 45 years of his father's occupation or in 27 years of the respondent's occupation from the death of his father.

The respondent also contended that the issue of change of ownership from any person to him was baseless. He argued that the subject matter was a village land held through customary laws and was transferred to him through customary process which was proved in the two tribunals below. The respondent submitted that it was baseless to argue that the suit land was not transferred to him by legal means and moved this Court to dismiss this appeal with costs.

In rejoinder, Mr. Emmanuel Musyani reiterated his submissions in chief and insisted that the respondent had no locus standi to sue or defend the estate of his late father without prior appointment as administrator of the estate.

I have considered the grounds of appeal, the entire record of this appeal as well as the submissions presented by both sides. In tackling the appeal, I will start with the issue of locus standi as submitted by the counsel for the appellant on the fourth ground of appeal.

It should be noted that, in order to maintain proceedings successfully before a Court of law, a litigant must show not only that the Court has power to determine the dispute but also that he is entitled to bring the matter before the Court.

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In the case of **LUJUNA SHUBI BALLONZI SENIOR V REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI (1996) TLR 203 (HC)** when it was held that;

“Locus standi is governed by common law according 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;”

Upon my perusal of the record of this appeal, I noted that the gist of this matter is on ownership of the land in dispute. According to the evidence on record, the respondent's claim was that the suit land belonged to his late father and passed over to him upon the father's death.

It was not disputed that after death of the respondent's father members of the clan passed over the land to the respondent as an elder son of the deceased.

Records further shows that the respondent initiated proceedings in the ward tribunals against the appellant in order to protect such inheritance and recover the disputed land from the appellant.

That being the case, the respondent was foremost required to establish this capacity to sue on behalf of the estate of his late father.

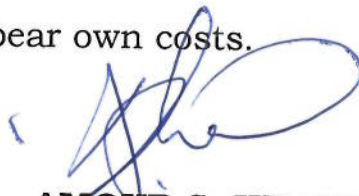
However, no letters of administration was shown to have been issued to the respondent in respect of his father's estate which rendered his capacity to sue null and void ab initio and rendered the entire proceedings to nullity.

In light of the above, I join hands with the counsel for the appellant that Athuman Shabani who was the complainant in the ward tribunal and appellant in the District Land and Housing Tribunal, had no locus standi to sue on behalf of his late father.

Since this ground of appeal has disposed of the entire appeal, I find no need to proceed with the other grounds of appeal.

In the circumstances, the entire proceedings of the trial ward tribunal and subsequent appeal to the District Land and Housing Tribunal are hereby quashed and the decisions or orders made thereon are set aside. Parties are at liberty to initiate proper proceedings in a competent forum subject to the applicable laws and procedures. It is so ordered.

Each party to bear own costs.



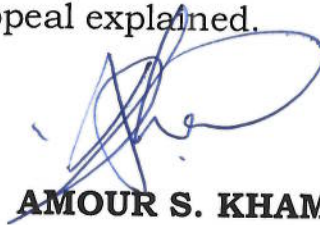
AMOUR S. KHAMIS.

JUDGE

24/9/2021

ORDER:

Judgment delivered in chambers in presence of the respondent in person and Ms. Esther Mchele, learned advocate for the appellant. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

24/9/2021