

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

**LAND CASE APPEAL NO. 43 of 2020**

*(Arising from Bukoba District Land and Housing Tribunal in Application No. 03/2018)*

**FREDRICK BYABATO..... APPELLANT**

***VERSUS***

**ERICK KANYAGA.....1<sup>ST</sup> RESPONDENT**

**YUSTO EVARIST.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**10/12/2021 & 24/12/2021**

**NGIGWANA, J.**

Before the District Land and Housing Tribunal (the DLHT) for Muleba at Muleba, Fredrick Byabato (the Appellant) filed a land case against the respondents claiming that, without his consent, they forcefully entered into his land and created a new livestock pathway, something that caused his growing vegetations to be destroyed. He prayed the DLHT to order them to use the old livestock pathway that was closed by Yahya Jovent, Augustine Protace and Maximillian Protace.

At the end, the application was dismissed with costs for want of merit hence this appeal.

Briefly, the background of this dispute as narrated by the appellant shows that, initially the land belonged to Elena Gaudensia. The appellant

bought that land on 1/1/1998. At the time of sale, the livestock were not passing through his land. This was supported by his witness, Mustapha Banobi. Later on, the old land/pathway which livestock used to pass through was blocked by Yahya Juvent and Augustine Protaz. That in 2015, the meeting was convened, the 1<sup>st</sup> respondent being the Sub-village Chairman and the 2<sup>nd</sup> respondent being the Pastoralists' Chairman, ordered the livestock pathway to be created through the appellant's land. That in the exercise of creating and cleaning the pathway, the appellant's vegetations were destroyed, causing loss to him. By the order made by the respondents, the appellant decided to sue them so that the tribunal may restrain them from using his land as a livestock pathway.

In his testimony before the trial tribunal, the appellant stated that though he was the one who bought that land, now the land is under the possession of his son, Eugenius Fredrick. His allegation was supported by his son, Eugenius Fredrick who added that initially there was a pedestrian pathway but they expanded it to become a livestock pathway.

That allegation was refuted by the respondents in their testimonies. They contended that they did not create a new pathway, it was there from time immemorial, before the appellant had bought that land. That,

in 2015 the meeting was convened under the chairmanship of Nicholas Kabakama who is/was the Village Chairman of Bulamula where his sub-village is a part. At that meeting it was resolved that the pathways that were occupied by grasses be cleared. Many ways were cleared including the Suitland.

In its judgment, the DLHT dismissed the application on the reason that the appellant had no locus standi to sue because he was no longer the owner of that land, the land is owned by his son, Eugenius Fredrick, therefore, could not claim to be the lawful owner of that land.

The findings of the DLHT aggrieved the appellant hence this appeal. In his appeal, he raised five grounds of appeal which can be summarised as follows; **One**, that the matter was supposed to be struck out after finding that the appellant had no locus stand instead of determining it on merit; **two**, the whole trial was a nullity as there was a change of assessors; **three**, at visiting the locus in quo, parties who were not witnesses under oath were invited to testify thereat; **four**, the assessors did not give their own decision and **five**, failure to substitute the proper and necessary parties after the matter was determined on merit.

At hearing of the appeal, the parties were represented by the learned counsel; Mr. Mathias Rweyemamu, appeared for the appellant while Mr. Kabunga appeared for the respondent. When the matter was tabled for

hearing, Mr. Mathias Rweyemamu decided to abandon the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grounds of appeal, remaining only with the 1<sup>st</sup> ground.

Submitting on the remained ground, Mr. Mathias stated that the appellant gave the Suitland to his son, PW2, hence has no longer a locus standi in that land. He argued that the Chairman having found that, ought to have struck out the case. He cited the case of **Frank Edward Bashamula vs The Secretary General WAMATA (TZ) and 2 Others**, Land Case No. 1 of 2005 to cement his submission. He urged the appeal be allowed with costs.

In reply, Mr. Kabunga stated that when testifying, the appellant himself stated that the Suitland is under the possession of his son who conceded the same. He refuted the argument of Mr. Mathias that the matter ought to be struck out. He stated that the matter could not be struck out because it was heard on merit whereby finally it was found that the appellant had no right over the disputed land. He contended that the case by Mr. Mathias was distinguishable. He argued, dismissal was the proper order as the matter that is heard on merit cannot be struck out. He urged the appeal be dismissed with costs.

In rejoinder, Mr. Mathias argued that locus stand is the matter of law, the matter was incompetent before the trial tribunal and any proceeding arising from there is equally a nullity.

Having heard the submission of both sides, the issue before me is whether the matter was rightly dismissed by the DLHT. The DLHT after found that the suit land was given to PW2 by the appellant, it dismissed the application for want of merit. That order is the point of appeal before this court.

What is gathered from the proceedings of the DLHT, it is evident that when testifying, the appellant stated that he gave that land to his son, (PW2) who supported the same when testifying. The issue of locus standi was realised during the hearing of the application, it was not raised by the parties before the commencement of the hearing. For that case, I think, the trial tribunal could not stop the hearing of the matter to determine the issue of locus standi. The tribunal was right to hear the matter to an end and deliver its decision on the application filed before it.

Upon careful scrutiny of the evidence on record, I subscribe the findings of the DLHT that the appellant had no locus standi to file the suit against the respondents because he is no longer the owner of that land.

In law not every person can institute a case in court. It only the one whose right has been interfered has mandate to bring the matter to court. Where the dispute is on land matter like the instant appeal, it is the owner of that land who is eligible to file the suit before the

competent court or tribunal. That stance of locus standi was considered in **LUJUNA SHUBI BALLONZI, SENIOR vs THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI** [1996] TLR 203 (HC) it was said thus:

*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.*

In the appeal before this court, as the appellant had already transferred the ownership to PW2, he had no longer any right over the Suitland. It was PW2 who had locus standi to sue.

I would have stopped there, but I find it pertinent to add one thing. The appellant sued the respondents for creating a livestock pathway in his land. He sued them due to their positions they held/hold in the locality they live. The 1<sup>st</sup> respondent was sued for his position as the Sub-Village Chairman and the 2<sup>nd</sup> respondent as the Chairman of pastoralists.

Even if the appellant could have locus standi to file the case against the encroachers, it was not the respondents who, on their own decided to clear and create the pathways, that was the resolution of the Village government. Therefore, the respondents were wrongly sued in their own capacity. If at all they participated in the process of cleaning and

creating pathways, they were executing the resolution passed by the Village government under the Chairmanship of Nicholas Kabakama.

In the upshot, this appeal is devoid of merit, therefore, it is hereby dismissed with costs. The Judgement of the trial tribunal is hereby upheld.



E. L. NGIGWANA  
JUDGE  
24/12/2021

Judgment delivered this 24<sup>th</sup> day of December, 2021 in the presence of the appellant in person, 2<sup>nd</sup> respondent in person, Mr. Gosbert Rugaika B/C but in the absence of the 1<sup>st</sup> respondent.



E. L. NGIGWANA  
JUDGE  
24/12/2021