

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

**AT BUKOBA**

**LAND APPEAL CASE NO. 83 OF 2021**

*(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 140 of 2018)*

**DEOGRATIAS MULOKOZI (Administrator of estate  
of the late Charles Rwezaura)..... APPELLANT**

**VERSUS**

**BRIGHTON DANIEL..... RESPONDENT**

**JUDGMENT**

*Date of Judgment: 11.03.2022*

*Mwenda, J*

In this appeal, the appellant through the legal services of Mr. Anesius Stewart, learned Advocate is appealing against the judgment and Decree of the District Land and Housing Tribunal of Bukoba which declared the respondent as the rightful owner of the land in Dispute. He file three grounds of appeal in contest of the said trial Tribunals decision. Opposing this appeal the respondent hired the services of Mr. Lameck John, learned advocate.

When this appeal came for hearing Mr. Anesius prayed to abandon the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) grounds of appeal thereby remaining with the first ground of appeal. This ground reads as follows:-

***“That the trial tribunal erred in Law and in fact by reaching decision basing on sale agreement which was not witnessed by village authority hence reaching unjust decision on part of appellant (sic)”***

Submitting in support of the first ground of appeal the learned advocate for the appellant stated that the District Land and Housing Tribunal’s judgment relied solely on the sale agreement between Pauline Charles and Brighton Daniel (Exhibit D1).

He said that during the said transaction the village authority ought to have been involved which was not the case. He added that the aim of involving village authority this is to satisfy the parties if the seller is the owner of the property. To support his arguments he cited the case of ***Bakari Mhando Swanga vs. Mzee Mohamed Bakari Shelukindo and three others Civil Appeal No. 389 of 2019*** (unreported) where the court held inter alia that:-

***“...even if we assume that the purported sale agreement was valid, which is not the case, then the same was supposed to be approved by the village council as correctly submitted by the 2<sup>nd</sup> respondent which in our view is in compliance with S.14 (1) of Local***

***Government (District Authorities) Act Cap***

***287 R.E 2002."***

He further submitted that during trial before the District Land and Housing Tribunal the respondent attempted to tender the said sale agreement as exhibit. They however raised objection in that it was procured by forgery because the witness to that agreement (i.e PW2) testified that he never signed/witnessed the said transaction.

He then concluded by submitting that there was no sale agreement between Paulina Charles and Brighton Daniel and for that matter the purported sale agreement was null and void. He thus prayed this appeal to be allowed with costs. Responding to the submissions by Mr. Sterwart, Mr. Lameck John, learned Advocate for the respondent submitted that the District Land and Housing Tribunal did not only rely on the sale agreement between the parties. He said there are other pieces of evidence which was also relied by Hon. Chairman.

He further submitted that PW1 (the appellant) tendered from No. IV, Exhibit P1 which appointed him as administrator of the deceased's estate and death certificate of Charles Rwezaura as Exhibit P2. He said form No. IV shows he was appointed on 23/3/2017 and death certificate was issued on 30/3/2017. To him that is strange as there is no way issuance of Form No. IV can precede that of death certificate.

Mr. Lameck John further submitted that the appellant who stood as PW1 during cross examination before the trial tribunal submitted that he was the administrator of the estate of Charles Rwezaura and that the said land was allocated to one Stephen Rwegoshora. The learned advocate was of view that basing on that position then the Appellant had no locus stand to sue.

With regard to the sale agreement, he further submitted that Paulina Charles (the vendor) while testifying before the trial tribunal, said the respondent was in occupation of land for long time and built a "kiosk" on it but in 2016 when he started to build a permanent house the appellant surfaced and sued him.

The learned advocate stated further that the Hon tribunal's chairman also considered PW2's demeanor in that he was not credible as he pretended to be incapable of reading the contents of the contract. In support to his submission he cited the case of *Marco Gervas vs. Republic [2002] TLR 27* where the court held inter alia that:-

***"trial court which sees and hears a witness is the best judge to assess the credibility of such witness rather than an appellate court that sees only the script of the evidence often translated."***

Again Mr. Lameck submitted that the case of **Bakari Mhando Swanga**(supra) cited by the appellant's advocate is distinguishable as there is nowhere in it where it is indicated that lack of blessings of village authority vitiates the sale agreement. The learned advocate was of the view that since the said contract was signed by parties and witnessed by other villagers then it was a valid agreement. To support his arguments he cited the case of **Mtatiro Muito vs Mwife Marianya [1968] HCD 82**. He wrapped up his submission by submitting that since the appellant alleges that when the parties transacted the late Charles Rwezaura was alive then he (the deceased) was aware of the sale agreement and his failure to take any action is a sign that he was satisfied and/or that the land was not his property. The learned advocate for the respondent concluded by praying this court to see that the appellant had no Locus standi to sue and thereby dismiss this appeal with costs.

In Rejoinder Mr. Stewart submitted that they insist that the decision by the Hon. Chairman of the District Land and Housing Tribunal based solely on the sale agreement which is Exhibit D1. With regard to form No. IV being issued before the death certificate he submitted that the appellant was appointed the administrator relying on other grounds. With regard to submission by the advocate by the respondent that the appellant being the administrator who had already allocated the land to heirs had no locus standi to sue, Mr. Stewart submitted that

the Haya customs permit the administrator to stand up and defend any case arising from any dispute.

With regard to the time spent by the respondent on the land for more than 20 years the learned advocate rejoined that the same was dealt with as the judgment shows the respondent occupied the land only to build a "kiosk" for business upon payment of a certain fees.

With regard to the sale agreement lacking blessings from the village authority he submitted that the Advocate for the respondent did not submit if there was any such blessing. For that matter he prayed this appeal be allowed with costs.

Having heard the submissions by counsels for both sides, the issue is whether the present appeal is meritorious.

From the records and in the cause of making submissions by learned counsels, the issue of Locus standi cropped up. Since the issue of Locus is a point of law which if found to exist will vitiate the proceedings, this court found it pertinent to deal with it first. The counsel for the respondent while responding to the submissions by Mr. Stewart, Learned advocate for the appellant submitted that the appellant who stood as PW1 before the trial tribunal, when cross examined by the Advocate for the respondent stated that he was the administrator of the estate of the late Charles Rwezaura and that by the time when he filed the suit against the

respondent, he had already distributed the deceased's estate to heirs. He added that the land in dispute was allocated to one Stephen Rwegoshora, the deceased's son. The learned advocate submitted further that if the said land was already distributed to the heir mentioned above then the appellant had no locus standi to sue. On his part, Mr. Stewart, learned advocate for the appellant while making rejoinder, respondent to that argument in that even if the said land was allocated to the deceased's heir, the appellant being the administrator of the deceased estate had powers sue and defend the clan land in case of any dispute.

This court keenly went through the records and noted that the appellant had, before the trial tribunal, stated that he had already distributed the deceased's estate and the land in dispute was allocated to one Stephen Rwegoshora. This fact was not disputed by Mr. Stewart in the course of making submission but at a different angle Mr. Stewart was of the view that the appellant, despite having administered the estate to the heir he still retained powers to sue under the umbrella of administrator ship. With due respect to Mr. Stewart's submission this is not the legal position.

This is so because the appellant's duty to defend the deceased's estate ceased the moment he finished administering the deceased's estate. From that time the said property shifted hands from him to the heir. In other words the appellant had no locus to sue in respect to a piece of land which was already allocated to a heir.

The issue of Locus standi to sue was discussed by the court in various cases. In the case of ***Aliander Andrew V. Theopista Cronery, Misc. Land Appeal No. 23 of 2021***(unreported) this court while citing the case of ***Lujuna Shubi Balonzi V. Registered Trustee of Chama Chama Mapinduzi*** [1996] TLR 203 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.”***[emphasis added] .

In the same case (supra) this court stated and I quote:-

***“...The respondent informed the court that he was not the administrator of his deceased’s father, but he sued as a family representative. Now, the issue of family representative cannot arise since the disputed property is alleged to belong to the deceased person. Since the respondent is not the administrator of his deceased father’s estate, he lacks locus standi to sue***



***in that behalf...Lack of locus standi to sue  
vitiating the proceedings before the Ward  
Tribunal making the same incompetent."***

In the present appeal therefore, the appellant having administered the estate of the deceased by allocating the land in dispute to one Stephen Rwegoshora, he then ceased to be the administrator of his deceased father's estate and therefore lacked locus standi to sue.

Since the issue of locus standi is capable of disposing of this matter this court did not find reasons to discuss the grounds of appeal on the legality of sale agreement. That being said I find no merits with this appeal. I hereby nullify and quash the proceedings and judgment of District Land and Housing Tribunal in Application No. 140 of 2018 and any other order arising therefrom. Each party shall bear its own costs.

It is so ordered.



  
A.Y. Mwenda

**Judge**

11.03.2022



This Judgment is delivered in chamber under the seal of this court in the presence of Mr. Anesius Stewart learned counsel for the Appellant and in the presence of Mr. Geoffrey Lugamkamu learned counsel for Respondent



  
A.Y. Mwenda

**Judge**

11.03.2022

