

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA
AT MUSOMA

MISC. LAND APPEAL NO. 42 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Tarime at
Tarime in Land Appeal No. 105 of 2019)*

MARWA WANKYO MARWA APPELLANT

VERSUS

CHARLES CHACHA KITAMURU RESPONDENT

JUDGMENT

9th & 31st March 2022

F.H. MAHIMBALI, J.:

In this second appeal the appellant **Marwa Wankyo Marwa** fostered four grounds of appeal challenging the decision of the District Land and Housing Tribunal for Tarime at Tarime (DLHT) in Land Appeal No. 105 of 2019 whereas the appellant lost the case against the respondent **Charles Chacha Kitamuru**.

Before embarking into the merit of the appeal, I find it apposite, in order to give a clear pathway, narrate relevant facts which constitute the brief background of the matter. And it goes as follows; before the Ward Tribunal of Bumera the appellant instituted the land suit against

the respondent, claiming that the respondent encroached on his deceased brother's land measuring eight (8) acres located at Bumera Ward in Tarime District. The matter proceeded *ex parte* against the respondent, and at finality the Ward Tribunal declared the appellant the rightful owner of the suit land.

Unsatisfied with the decision of the trial Tribunal, the respondent appealed to the DLHT. The DLHT find that the issue of Territorial Jurisdiction of the Ward Tribunal is of merit since the location of the suit premise was at issue. The DLHT reached at the same resolution after the respondent averred that the suit was determined by Bumera Ward Tribunal whilst the disputed land located at Nyandoto Ward. In conclusion, the DLHT quash the judgment and proceedings of Bumera Ward Tribunal and order the matter to start afresh before the DLHT which has jurisdiction over all land matter in the entire district.

The DLHT decision did not amuse the appellant hence this second appeal. As I mentioned early, the appellant fostered four grounds of appeal which can be paraphrased as follows;

- 1. That since it was not concretely established affirmatively by any local authority nor a Central Government that the land in dispute is not in Bumera Ward, the appellate*

Chairman of the Land Court erred to find that the land in Nyandoto.

2. That since the appellant, when he instituted the land in dispute said it was 8 acres, the appellate Chairman erred to find that the land was 30 acres as was averred by the Counsel of appeal.

3. That since the proceedings proceeded ex parte at the trial Tribunal, the appellate Tribunal erred on point of law to assume jurisdiction which he had none on setting aside an ex parte decree.

4. That the appellate forum Chairman erred without material and sufficient grounds to support it (extension of time).

During the hearing of the appeal on 9th March, 2022, the appellant was represented by Mr. Baraka Makowe, learned advocate whilst at the other hand the respondent was represented by Mr. Samson Samo, the learned advocate.

When I was composing the judgment, I detected that the appellant's locus standi to prosecute the case was at issue. Therefore, when the matter came up for judgment today, I found it pertinent to call both parties to address me on whether the appellant has locus standi.

Mr. Makowe learned advocate after being referred to the relevant part of the trial tribunal's proceedings on the testimony of Mr. Marwa Wankyo Marwa, admitted that the appellant had no locus to sue on his

own capacity. He considered that the proceedings and orders emanating therefrom are nullity. He prayed the court to nullify the same.

Equally, was the position of Mr Samo, learned advocate who submitted that the appellant lacked locus to institute the case on his own capacity.

I have dispassionately considered the records and submission by the parties; I find the issue addressed is sufficient to dispose of the appeal.

The trial Tribunal records show that, the appellant claimed the land in dispute belongs to his late brother one **Isegere Marwa Wankyo**. And that he was appointed administrator of the estates of his late brother. His evidence was supported by witness **Anna Isegere Marwa Wankyo** who is the deceased wife. It is shown in page 3 and 4 of the handwritten judgment of the trial Tribunal that the evidence of the appellant states as follows;

"...Marehemu ameacha mke mmoja mjane, watoto sita 6, ardhi Hekari nane (8) pikipiki moja. Baada ya uteuzi huo wa ukoo kuwa mimi MARWA WANKYO MARWA kuwa msimamizi wa Mirathi hiyo Pia niliteuliwa na Mahakama ya mwanzo Tarime mjini kuwa Msimamizi halali wa Mirathi hiyo..... Nilijikakamua tu na kumjibu kuwa hili shamba ni la

marehemu Isegere Marwa Wankyo ameishi hapa tangu mwaka 1995 hadi kufa kwake 2016...."

But again, the trial Tribunal records shows that the appellant instituted the case in his capacity and he was the one who declared legal owner of the suit land. It is read from the pleadings that initiate the suit before the trial Tribunal that;

"DAI KWA UFUPI – MGOGORO WA ARDHI INAYOGOMBANIWA

Mdai – Marwa s/o Wankyo anamdai Mdaiwa Chacha Kitamuru kwa kosa la uvamizi wa shamba la ploti ya ardhi ya Mdai bila idhini ya Mdai eneo lipo kitongoji cha Runyerere kijiji cha Turugati. Eneo hilo ni ekari nane (8)"

And paragraph 1 of page 6 of handwritten judgment of the Bumera Ward Tribunal it reads as follows;

"Mbali na hayo yote yaliyoelezwa hapo juu Baraza hili la kata ya Bumera kwa pamoja linatamka kuwa eneo la shamba la ploti ya ardhi inayogombaniwa ni mali halali ya MDAI – MARWA s/o WANKYO MARWA."

Paragraph 6 of the Fifth Schedule to the Magistrate Courts' Act [Cap 11 R.E 2019] and section 71 of the Probate and Administration Act [Cap 352 R.E 2002] provides that the lawful appointed legal

representative of the deceased estates can sue or be sued for or on behalf of the deceased. Section 71 reads;

"After any grant of probate or letters of administration, no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled."

See also the case of **Omary Yusuph (Legal representative of the late Yusuph Haji) vs Albert Munuo**, Civil Appeal No. 12 of 2018 CAT at Dar es salaam.

Back in our case at hand, it is claimed by the appellant that the land in dispute belongs to his late brother. Thus, as the law provides, the appellant ought to have instituted the suit on behalf of the deceased and not on his own capacity as it is appeared on the trial Tribunal records. What portrayed in the pleadings and the decision of the trial Tribunal suggests that the suit land belongs to the appellant whilst there is no evidence that show the land in dispute was distributed to the appellant after the demise of his brother. He is only the administrator of the estates.

On the way forward, I find the appellant has no *locus standi* and I proceed to nullify the entire proceedings before the two lower tribunals

and, quash and set aside the respective judgments and direct that any action in respect of the suit premises on behalf of the deceased be commenced by or against the administrator of estate of the late Isegere Marwa Wankyo.

Regarding the circumstances of the case, I make no order as to costs.

DATED at MUSOMA this 31st day of March, 2022.




F. H. Mahimbali

JUDGE

Court: Judgment delivered this 31st day of March, 2022 in the presence of the Mr. Makowe, Advocate for the Appellant, Samson Samo, advocate for the respondent and Mr. Gidion Mugo, RMA.

Right of appeal is explained.


F. H. Mahimbali

JUDGE

31/03/2022