

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 114 OF 2021

*(Arising from District Land and Housing Tribunal for Mara at Tarime in
Land Appeal No. 131 of 2018 originating from Bukura Ward Tribunal in
Land Dispute No. 21 of 2018)*

EDWARD NYABUTA APPELLANT

Versus

MERY KISUKE RESPONDENT

JUDGMENT

16.08.2022 & 16.08.2022

Mtulya, J.:

The Court of Appeal of Tanzania in full court, on 12th May this year, in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021, resolved, at page 4 of the decision, that:

It is now a settled law that where a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of necessary standing.

In the present appeal, both parties had no necessary standing in **Land Dispute No. 21 of 2018** (the dispute) resolved

at the **Bukura Ward Tribunal of Tarime District** (the ward tribunal). From the record, Mr. Edward Nyabuta (the appellant) was recorded to have testified in the ward tribunal, on 7th August 2018, that:

Ardhi ni ya Mama yangu Paulina Nyabuta....ambaye amefariki tarehe 25 Novemba 2008....wanaukoo walinichagua mimi kuwa msemaji wa mirathi ya mama yangu marehemu Paulina Nyabuta.

On the other hand, during the proceedings of the ward tribunal conducted on 27th July 2018, Mery Kisuke (the respondent) had testified that:

Ardhi ya Mme wangu aliyefariki Juni 2003.

Following the mentioning of ownership of the land in dispute to the third parties concerning the present dispute between the appellant and the respondent, the ward tribunal on 14th September 2018, observed that:

Mdaiwa tulipomuuliza barua original ya wanaukoo waliomteua kuwa msimamizi wa mirathi alishindwa kuwasilisha.

However, the ward tribunal, despite noting the incompetence of the proceedings for want of *locus standi*, it

went further and decided in favour of the respondent. The ward tribunal declined to cherish the directives of the Court in full court in the cited precedent above and finally held that:

...huyu Mdaiwa anashindwa kesi dhidi ya Mdai. Hivyo aheshimu sheria amwachie Mdai ardhi yao ya asili.

This decision aggrieved the appellant hence preferred **Land Appeal No. 131 of 2018** (the appeal) in the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal). After full hearing of the appeal, the district tribunal dismissed the appeal with costs and upheld the decision of the ward tribunal. The reasoning of the district tribunal is found at page 2 of the decision that:

...kwa kuwa Mama wa mrufani ambae ndio alikuwa mmiliki wa awali wa ardhi yenye mgogoro alibadilishana ardhi hiyo kwa hiari yake na kumpa Mume wa mrufaniwa.

This reasoning was not inviting to the appellant hence preferred second appeal in this court registered in **Misc. Land Appeal Case No. 114 of 2021** (the Misc. Appeal) complaining that the district tribunal erred in law and fact in deciding in favour of

the respondent without taking due regard of the evidences tendered in the dispute.

Today afternoon the appeal was scheduled for hearing and this court noting the dispute was incompetent for want of necessary standing as per directives of the Court in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra), invited the parties to enjoy the right to be heard on the subject and explain their understanding of the directives of the Court. Being aware it is a legal issue, the appellant on his part invited the legal services of Mr. Baraka Dishon, learned counsel to argue the subject, whereas the respondent appeared in person without any legal representation.

According to Mr. Dishon, the record is silent on the documents showing necessary standing hence the legal status of the parties is in shambles and this court may pronounce any directives as to the precedent of the Court. The respondent on her turn, and being a lay woman, she narrated all the facts of the case and insisted that the land belongs to her as it was previously owned by his husband and that she has been in the disputed land uninterrupted since the death of his husband.

This court on its part cannot be detained on obvious matters which have already received guidance of our superior

court, the Court of Appeal. This court is only required to cherish the directives rendered down by the Court, even if it has good reasons to depart from the directives. Having said so, I have decided to set aside proceedings and quash decisions of both lower tribunals emanated from the incompetent proceedings for want of *locus standi*. The parties are at liberty to prefer another fresh and proper land dispute provided that they are in possession of valid letters of administration of estates of their beloved deceased persons. In the circumstances of the present appeal, I make no order as to costs.

It is so ordered.



A blue ink signature of F. H. Mtulya, consisting of a stylized, cursive script.

F. H. Mtulya

Judge

16.08.2022

This judgment was pronounced in the presence of the Mr. Baraka Dishon, learned counsel for the appellant and in the presence of the respondent, Mery Kisuke.

A blue ink signature of F. H. Mtulya, consisting of a stylized, cursive script.

F. H. Mtulya

Judge

16.08.2022