**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO 17 OF 2021**

**(Arising from the decision by Maswa DLHT, Land Application No. 46 of 2020.)**

**ONYESHA MGANDA.....APPELLANT**

**VERSUS**

1. **MUSOMA JIMOLA..... ... .....**
2. **2 SENI MBULI.....**
3. **MAKUJA MBULI.....**
4. **MWIGULU SITTA.....**
5. **NGOWO HAMA.....**
6. **DOTTO SITTA.....**

**RESPONDENTS**

**JUDGMENT**

*21st April& 6th May2022*

**MKWIZU, J:**

The appellant filed a land application at the DLHT Maswa claiming ownership of the suit land measuring 60 acres situated at Wimae hamlet, Bukundi village, within Meatu District in Simiyu Region. The Application disclosed that Appellant had jointly acquired the suit land together with her late husband Jimola Manyenye by clearing a virgin land sometimes after independence. She also claimed to have used the land together with her husband to 2017 when she became the sole owner after the death of her husband. According to the application filed at the trial tribunal, her land was sold by the 1st respondent, her own son to the 2nd to 6th

Respondent without her consent and that she became aware of the said sale in 2020.

In the written statement of defence, 1st respondent partly admitted to have sold the land to other respondent but said, the land was initially owned by his father Jimola Manyenye who died in 2006 and that he was allocated 12 acres as his shares

Parties were heard on merit by the triabunal where appellant presented three witnesses, herself inclusive, while the defence case had a number of seven witnesses. At the end, the 1st respondent was declared owner of 16 acres of the land. Appellant was not happy with the tribunal's decision, she appealed to this court with a total of six grounds pf appeal. However, during the hearing, the appellant counsel argued only three grounds namely (1) the land was not properly described (2) Appellant had no locus stand and in the alternatively, that (3) the tribunal erred in declaring the 1st respondent owner while the evidence adduced was weak. The rest of the grounds were expressly abandoned.

Mr. Samweli Ndanga, advocate who represented the appellant submitted that the tribunal failed to note that the Land in dispute was not properly described. He said, the evidence by the parties were contradictory PW2 said, the land was 80 acres in size while DW1 claims it to have 60 acres. While admitting that in Form No 1, boundaries were described, Appellant counsel was of the view that , the naming of the boundaries in Form No 1 is not enough, applicant ought to have given evidence to that effect Citing Order VII Rule 3 of the CPC, Cap 33 R E 2019, Mr Ndanga stressed that the proceedings are a nullity for failure by the applicant/appellant to clarified on the size of the suit land in her evidence. He on this point

cited the case of **Rozalia Mzengo V Regina Mmendi & anothe**r, Misc. Land Appeal No 67 of 2019 and **Victorial Kokubana (As an attorney of Angelina Mibanze Bryalubaga V Wilson Gervas & Another**, Land Case No. 70 of 2016 (all unreported) invitng the court to nullify the proceedings.

In his second ground, the appellant counsel submitted that, the appellant had no locus to institute the land dispute at hand. He said, Peter Kunzeza informed the court that the suit land belonged to Jimola , Appellant's husband and therefore the appellant was not a proper person to institute the suit land for he was not an administrator.

In the alternative, Mr. Nganga argued that the 1st respondent part of the claim was not proved to entitle declaration that he is the owner.

The respondent's counsel's submissions were short. He said the suit land was properly described. And that having claimed to be the owner of the suit land, appellant was a proper person to institute the proceedings.

Regarding the third ground of appeal, Mr Samwel Rugamila advocate said, having found the appellants case not proven, then it was right for the tribunal to declare the 1st respondent owner of the suit land.

I have considered the arguments of the counsels of both sides. The first ground challenged an application at the tribunal for lacking proper description contrary to Order VII Rule 3 of the Civil Procedure Code, Cap. 33, R.E., 2019. The Appellant counsel had argued this court to find the proceedings a nullity for failure by the applicant to give proper description and size of the suit land. The cited law clearly provides: -

*"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the Plaint shall specify such title number"*

The section above requires a satisfactory description of the suit land for proper identification that would differentiate a suit land from other pieces of the land in the same area. As correctly submitted by the appellant, counsel, to have a complete and proper identification of the land, the applicant, is required to show the size of the land, location, and boundaries. The location will give direction to the locality where the land is, the size and the boundaries makes the identification more accurate by isolating the suit land from other land in the said location.

My objective reading of the pleading, however, reveals that the suit property subject of this appeal was properly described by the appellant in her pleadings. Paragraph 3 of the application before the tribunal describes the suit land as 60 acres of land, located at Wimae Hamlet, Bukundi Village, Meatu District with a well pointed out boundary marks namely in Nale Ndulu, at the eastern side, Ndowo Hama, western part, and Magaki Jimola, South and Shege Shalali at the Northern side. The descriptions given by the appellant in her pleadings sufficiently identified and isolates the suit land. From the rest in that given locality. Order VII Rule 3 of the CPC was fully complied with. The first ground of appeal lacks merit.

The second ground is a suggestion that the appellant, **Onyesha Mganda** had no locus stand to institute the case in respect of the land subject of this appeal . I think this ground should not detain the court. It is a common ground that locus standi is what may be called one's legal right or ability to bring a legal action to a court of law, or to appear in a court. It is the status without which one becomes ineligible to institute the case against the other. This was said in the case of **Lujuna Shubi Ballonzi, Senior Vs Registered Trustees Of Chama Cha Mapinduzi** [1996] TLR 203 this court, held :

> *"Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with"*

And in **Peter Mpalanzi V Christina Mbaruka**, Civil Appeal No 153 of 2019, ( Unreported) Court of Appeal observed:

> *"Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it"*

I think, the pleadings can easily give a hint on what was presented and whether the appellant had such a locus or not .According to the pleadings presented at the Tribunal, appellant claimed ownership of the suit land. Paragraph 6(a) of the application partly reads:

(i) *That the **applicant is a lawful owner of the disputed parcel** of land which she jointly acquired with her husband JIMOLA MANYENYE by clearing a virgin land and settled there sometimes after independence*

(ii) *That the Applicant and her husband were in co occupation of the land and had been cultivating it before death of her husband who passed away in 2017*

Applicant/ now appellant is the person conversant of her rights over the matter than anybody else. She had a right to bring to the court the claim fitting her grievances provided they are permissible. As deposed in her pleadings, she claimed to be lawful owner of the suit land. She had a right to so claim provided she proves her allegation to the required standard in civil suits, that is on the balance of probabilities. See for instance sections 3, 112 and 115 of the Evidence Act, (Cap. 6 R: E 2019) which provide:

> *"3(2) A fact is said to be proved when*
>
> *(a) N/A*
>
> *(b) in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability."*
>
> *"112. **The burden of proof as to any fact lies on that person who wishes the court to believe in its existence**/ unless it is provided by law that the proof of that fact shall lie on any other person."*
>
> *And*
>
> *"115. In civil proceedings **when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him**. " (emphasis is mine)*

Appellant in this case being the one asserting ownership of the suit land, she was in law bound to prove the same by adduced evidence affirming her own claim as presented in the pleadings. And as settled, parties are bound by their pleadings. See for instance the decision of **Makori J.B. Wassaa v. Mwaikambo & another [1987] TLR 88** where it was held that:

> *"In general, and this is I think elementary, a party is bound by his pleadings and can only succeed according to what he has averred in his plaint and in evidence he is not permitted to set up a new case".*

The claim by the appellant's counsel that one of the defence witness had testified that the land belonged to the appellant's husband, is not by itself conclusive that the appellant had no locus as this evidence did not change the main claim presented by the parties for adjudication. That evidence instead went to dismantle the appellant's claim of ownership. Enough to conclude here that, appellant failed to prove her claim and therefore cannot come again, in an appeal disowning what she originally claimed to be her property. This ground has no merit.

The last issue is on whether the trial tribunal was wrong in declaring the 1st respondent owner of the suit land. The land in dispute was 60 acres in size as per the pleadings. In his evidence the 1st Respondent claimed ownership of only 16 acres from which 12 acres were sold to the 2nd to 6th respondents as clearly demonstrated in paragraph 4.5 of the WSD. At page 11 of the trial tribunal decision, chairman declared the 1st respondent owner of the suit land. The decision reads

*"Swali la kwanza/ kiini cha kwanza ambalo baraza hili lilijiuliza, linajibiwa bchanya kuwa mjibu maombi wa kwanza ndiye mmiliki halali wa eneo lenye mgogoro"*

This is both, evidentially and arithmetically incorrect because the definition would be 1st respondent owns the whole of the 60 acres irrespective of his own declaration that he only owns 16 acres of which he had sold part of it to other respondents. And in a more confusing manner, at the end of its decision, the trial tribunal changed its findings and declared the 1st respondent owner of 16 acres located at Bukundi Village in Meatu District without more clarification as to its identity. I concur with the appellant's counsel that it was generally wrong to declare the 1st respondent owner of the whatever piece of land. It is safe under the circumstances of this case, to find the application not proved without more, as I hereby do.

As a result, except for the ground allowed above, the appeal stands dismissed. Being it a fact that appellant and the 1st respondent, key players in this suit are mother and son, I order each party to bear owns costs.

Dated at Shinyanga, this 6th day of May 2022

**E.Y. Mkwizu**
**Judge**
**6/5/2022**

**Court:** Right of Appeal Explained

**E.Y. Mkwizu**
**Judge**