THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

LAND APPEAL NO. 72 OF 2020

(Arising from the District Land and Housing Tribunal for Iramba at Kiomboi in Application No. 27 of 2016)

MUSSA SALUM .....APPELLANTS

VERSUS

HALMASHAURI YA KIJIJI CHA SENENE

AND 22 OTHERS..... .....RESPONDENTS

JUDGMENT

Date of Last Order: 22.04.2020

Date of Judgment: 10.05.2022

MAMBI, J.

In the District Land and Housing Tribunal for Iramba in Kiomboi, the respondent (**MUSA SALUM**) unsuccessfully sued the respondents

Application No. 27 of 2016. The DLHT dismissed the suit and declared the land to be the government property on the ground that all parties had no locus standi.

Aggrieved, the appellant filed his appeal basing on three grounds of appeal as follows:

1) That the District Land and Housing Tribunal Erred both in law and fact when it failed to properly analyses the evidence and reached into wrong decision.
2) That the District Land and Housing Tribunal Erred both in law and fact when it did not take into consideration the evidence by the appellant for more than twelve years
3) That the District Land and Housing Tribunal Erred both in law and fact when it failed to consider the appellant's home house since he returned from the Ujamaa villegelazation

In his submission the appellant added one ground of appeal on point of law related to opinion of assessors.

During hearing the parties preferred to argue by way of written submission and this court ordered parties to do so. In his submission, the appellant Counsel Mr Onesmo briefly submitted that the trial Tribunal Chairman erred in his judgment by not involving the opinion of the assessors. The appellant counsel further argued that the tribunal chairman failed to analyze the evidence presented by the appellant. He argued that there was no evidence to show that the land was the property of the government through Tanzania Railway Corporation.

In reply to the point of assessors, the respondents' counsel briefly submitted that the Tribunal Chairman was right in his decision since the tenure of the assessors had expired. The respondents also argued that the appellant failed to prove if he was the one who cleared the land.

I have considerably gone through the submission by the appellant and the reply by the responds. In my considered view this appeal forms one main issue that is whether the trial Tribunal Chairman erred in holding that the respondents and the appellant had no locus standi on the disputed land. The other issues to be determined, is on the issue of assessors thus whether the tribunal chairman properly dealt with the opinion of assessors. Starting with the point of assessor I wish to highlight that the question of the opinion of the assessors is the matter of law. Indeed, the composition of assessors and how to deal with their opinion are clearly reflected under 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] provides that;

> *"23 (1) The District Land and Housing Tribunal established under section 22* ***shall be composed of one Chairman and not less than two assessors****.*
>
> *(2) The District Land and Housing Tribunal* ***shall be duly constituted*** *when* ***held by a Chairman and two assessors*** *who* ***shall*** *be required to* ***give their opinion before the Chairman reaches the judgment****."*

I also wish to refer Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 that are made under the main Act. That regulation provides that;

"Notwithstanding sub-regulation (1) ***the Chairman shall, before making this judgment****, require every assessor* ***present at the conclusion of hearing to give his opinion in writing*** *and the assessor may give his opinion in Kiswahili."*

The plain meaning of the above cited provisions of the laws is clear that the involvement of assessors who are present is mandatory. In other words, where the assessors are present through the proceedings they are required to give their opinion at the conclusion of the hearing and before the Chairman composes his Judgment. However, the same provisions of the law mandate the chairman to proceed in hearing the matter and writing judgment without the presence or opinion of the assessors. That position is dictated by the law under section 23(3) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019]. More specifically section 23(3) of the Act provides that:

"3) Notwithstanding the provisions of sub-section (2), if in the course of any proceedings before the Tribunal either or both members of the Tribunal who were present at the commencement of proceedings ***is*** *or* ***are absent****, the Chairman and the remaining member (****if any****) may continue and conclude the proceedings notwithstanding such absence".*

The above provision of the law especially the words (**is** or **are absent**,) I have highlighted implies that where the chairman starts the proceedings and one of the assessors is absent the chairman has mandate to proceed with the remaining assessors or assessor even if there is only one assessor. Additionally, the words *(**if any**)* under the same provision in my firm view implies that in the situation where the chairman proceeds with the assessors but before writing the judgment

all assessors naturally vacates for any reason be it for retirement or death or any reason before giving their final opinion, the chairman can proceed composing the judgment without the opinion of the assessors. Coming to our case at hand, there is no doubt that the chairman was with the assessors from the beginning but before the assessors gave their opinion they retired and they could not qualify to proceed. Therefore, the chairman was right in invoking section 23(3) of the Land Disputes Courts Act, Cap 216 [R.E. 2019] to compose the judgement without the opinion of the assessors. In this regard the claim by the appellant that it was wrong for the chairman to compose and pronounce judgment without the opinion of the assessors is devoid of merit.

With regard to analysis of evidence, the chairman at pages 5, 6 and 7 properly analyzed the evidence of both parties with reasons before making his decision. Again, the ground of appeal on the issue of analysis of evidence has no merit. It is on the records and evidence that the suit land in dispute is the public land that used to be under Tanzania Railway Corporation since the operation of Ujamaa villages where the land was acquired by the government for public interest. This was also testified at the DLHT by some witnesses DW1, DW2 and DW3. In their evidence, DW1, DW2 and DW3 testified that the disputed land was the railway station property owned by the Railway Corporation but latter it used to be a grazing land under the Village Government control.

It is also on the records that the appellant testified that he cleared the land in 1969 and after five years he abandoned the land before he came back in 1988 (after 19 years). If this evidence of the appellant (which was proved in any way) was true still the appellant was caught by the doctrine of adverse possession on the 12 years' time limitation under Cap 89. Alternatively, if the land left the land following operation Vijiji vya Ujamaa, the land became the village land. Therefore, since the appellant was claiming that the land belonged to him and the respondents are not the owners of the land, it is the duty of the appellant to disclose all the facts as to why he abandoned the land for such a long time (19 years) but he did not do so at the Tribunal.

It appears according to the records that the appellant came back after the area was abandoned by the Railway Corporation but in my view the land still belongs to the government under the supervision of the Village Government as rightly decided by the trial tribunal. The records reveal the land was initially the railway station which means it is the government property.

My perusal from the records and analysis of evidence show that the appellant had no locus standi. For easy reference I wish to highlight the doctrine or principle of *locus standi.* Briefly, *locus standi* has been explained as the matter of jurisdiction issue and it is the rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In other words, *locus standi* is the right or capacity to bring an action or to appear in a court. This means that, it is a person with locus

standi who can only appear to be heard in court, or to address the Court on a matter before it. It is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Reference can be made to Lord Justice James, a distinguished English Judge, who laid the principle down in 1880 in the ***Ex P. Sidebotham case[1880) 14 Ch D 458, [1874-80] All ER 588].*** In this Case (persuasive decision) the court observed that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights. Reference ca also be made to another persuasive decision by Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** **[1966] 1QB 380 at 400-1** where he observed that:

> *"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

There is no doubt that the appellant at the Tribunal had no *locus standi* as rightly decided by the trial tribunal since he was neither the owner of the land nor proper party to institute the action. Even at the trial Tribunal the appellant never adduced clear evidence to show that he is the legal owner. This means that appellant at the DLHT had no locus standi and cause of action since he was not the owner of the land.

It is clear from the evidence they testified at the tribunal the appellant failed to show that the land belonged to him. It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities. This simply means that he who alleges must prove as indicated under section 112 of the Law of Evidence Act, Cap 6 [R.E 2019], which provides that:

> *"The burden of proof as to any particular 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".*

The court in ***NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZAIA & 4 OTHERS, Comm. CASE NO 59 OF 2003( ) HC DSM,*** observed that:-

> *"The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side".*

In this regard, I find that all grounds of appeal have no merit. My perusal from the records from the District Land and Housing Tribunal reveals that the District Land and Housing Tribunal was right in its decision as there was no clear evidence adduced by the appellant at the Tribunal and the appellant neither showed any exhibit nor even called his reliable witnesses to show the land belonged to him.

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Land and Housing Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-

meritorious hence dismissed. The land shall remain the government property to be under the supervision of the relevant authority to be determined by the government. In the event I make no orders as to costs. Order accordingly.

A. MAMBI

JUDGE

10.05. 2022

Judgment delivered in Chambers this 10th day of May , 2022 in presence of both parties.

A. MAMBI

JUDGE

10.05. 2022

Right of Appeal explained

A. MAMBI

JUDGE

10.05. 2022