

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 22 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal Case No. 96 of 2021, originating from Salama Ward Tribunal in
Land Dispute No. 1 of 2021)*

MERCHANT IKUNGULA APPELLANT

Versus

MAGEME MTABWA RESPONDENT

JUDGMENT

24.08.2022 & 24.08.2022

Mtulya, J.:

During the hearing of the **Land Dispute No. 1 of 2020** (the dispute) on 11th January 2021 at **Salama Ward Tribunal** (the ward tribunal), Merchant Ikungula (the appellant) testified that:

Eneo hili aliishi babu yetu marehemu Mzee Kinanda aliyefariki 1942...Ile Kaya ya juu ni familia ya Musoma-Ikungula...nilifyatua tofali na kujenga nyumba pale na kuhamia mwaka 2016...marehemu alikuwa anaishi hapa...nikawaza kuita Kikao cha Ukoo, bahati mbaya nikapata dharura nikaenda Dar Es Salaam. Niliporudi nilikuta amelima mahindi. Nikasema ngoja tuitishe Kikao cha Ukoo kwani ni ndugu yangu...eneo la ukoo wetu.

After full hearing of the dispute, the ward tribunal decided in favour of Mageme Mtabwa (the respondent). The decision aggrieved the appellant hence preferred **Land Appeal Case No. 96 of 2021** (the appeal) at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal), which upheld the decision of the ward tribunal, despite a complaint on *locus standi* of the appellant at the ward tribunal. For the reply on *locus standi*, the district tribunal stated, at page 3 of the judgment, that:

Kwa kuwa kwenye sababu zake za rufaa Mrufani yeye mwenyewe amekiri kwamba kesi hii ilikuwa na mambo ya kimirathi, na kwa kuwa yeye mwenyewe Mrufani ndiye aliyefungua shauri hili, ninaungana na Mawasilisho ya Wakili wa Mrufaniwa kuwa sababu hii ya rufaa haina mashiko.

However, the district tribunal was unaware of the existing precedents of this court in **Edward Nyabuta v. Mery Kisuke**, Misc. Land Appeal Case No. 114 of 2021 and Court of Appeal (the Court) in **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021, which 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, the appellant had no *locus standi* in the dispute. Today, this court after perusal of the record, noted the complaint at the district tribunal, but the district tribunal declined to abide with the directives of the Court. However, the complaint was not registered in the present appeal with three (3) reasons of the appeal. This court noting the incompetence of the proceedings at the ward and district tribunals, raised the issue *suo moto* and invited the learned minds of the parties to cherish the right to be heard on the subject.

According to Mr. Godfrey Muroba for the appellant, it is vivid from the record that the land in dispute does not belong to the appellant and the fault on *locus standi* goes to the root of the matter. With the available remedies, Mr. Muroba prayed this court to allow the appeal and quash all the decisions and proceedings of the lower tribunals and any party with interest on the disputed land to file fresh and proper suit in accordance to

the law. The respondent on her part invited Mr. Thomas Ilanga, learned counsel, who conceded the point of Mr. Muroba on nullification of proceedings and decisions of the lower tribunals, but prayed the appeal be dismissed with costs.

In my considered opinion, I think, the subject of *necessary standing* or *locus standi* has already received directives and guidance of our superior court, the Court. This court cannot be detained on the subject rather than to abide with the directives for the sake, of what was stated precedent of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021, on: *certainty, prediction and consistency in decisions emanating from our courts*.

Having cited the long paragraph of the Court, I have decided to quash decisions and set aside proceedings of the lower tribunals in favor of proper application of the law regulating *locus standi* (see: **Ghati Chacha & Another v. George John Wambura**, Misc. Land Appeal Case No. 119 of 2021; **Edward Nyabuta v. Mery Kisuke** (supra); and **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra).

I order no costs in the present appeal for several reasons: first, the matter was raised *suo moto* by this court; second, the

fault in the record was initiated by the appellant but blessed by both tribunals below; third, the parties are relatives with possibility to settle their differences; fourth, learned counsels of the parties acted as officers of this court in searching justice of the parties; and finally, the dispute may take new course, if any of the parties, initiates fresh and proper suit in a competent forum entrusted with determination of land disputes in accordance to the new laws regulating land matters.

Ordered accordingly.



F. H. Mtulya

Judge

24.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant's learned counsel Mr. Godfrey Muroba and in the presence of the respondent, Mageme Mtabwa.

F. H. Mtulya

Judge

24.08.2022