

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MOROGORO DISTRICT REGISTRY)**  
**AT MOROGORO**

**LAND APPEAL NO. 30 OF 2022**

*(Originating from Land Application No. 24 of 2019, in the District Land and Housing  
Tribunal for Kilombero/Malinyi)*

**OMARY MANYAMBA ..... APPELLANT**  
**VERSUS**

**ZAITUNI MLATI .....RESPONDENT**

**JUDGMENT**

*Last Court Order on: 10/06/2022*

*Judgment date on: 02/08/2022*

**NGWEMBE, J.**

This appeal arose after the judgment of Land Application No. 24 of 2019 instituted at the District Land and Housing Tribunal for Kilombero/Malinyi at Ifakara. The tribunal's judgement was instituted by the respondent Ms. ZAITUNI MLATI, which at the end of trial the tribunal decided in favour of the respondent herein.

Perusing the nature of the dispute, one may wonder, the disputants are in serious loggerhead competing over a tiny piece of land measuring a quarter ( $\frac{1}{4}$ ) of an acre located at Kisiwani Hamlet, Kivukoni Village in the district of Ulanga.

The respondent claimed that the appellant has trespassed over that tiny piece of land which belonged to herself. Upon proving her ownership, the tribunal decided in her favour and she was declared the lawful owner of such piece of land. However, that decision aggrieved the appellant hence this appeal grounded by four grievances namely:-

- 1) That the trial tribunal erred in law and facts for its failure to analyze, assess and scrutinize the evidence adduced by both parties hence came with wrong conclusion;
- 2) That the trial tribunal erred in law and facts to decide the dispute in favour of the respondent herein whose evidence contradicted those of her witnesses;
- 3) That the trial tribunal erred in law and facts for its failure to scrutinize the fact that the respondent had *no locus standi*;
- 4) That the trial tribunal erred in law and in fact to proceed determining the case without the alleged seller to be joined as a necessary party to the case.

The appellant appeared in person unrepresented while the respondent was represented by Mr. Elijah Bageni, learned advocate. On 10/06/2022 when the matter came for hearing, this court ordered the appeal be heard by way of written submissions owing to the circumstance that, the grounds of appeal were both on points of fact and law.

As such the appellant argued with some authorities on ground one that the tribunal failed to analyze the evidence before it. He conceded to the fact that respondent's husband bought the land in dispute from RASHIDI SAID NYAMBULILO, but qualified that the seller sold only part of the land containing two hurts. To the contrary, the respondent claimed beyond the piece of land sold to her husband. Thus, she

extended her boundaries taking part of the appellant's land. In the circumstance, the tribunal could find out the need to visit *locus in quo* in order to appreciate the boundaries between the appellant and the respondent, he added.

On the second ground of appeal, which bears the complaint that the evidence by the respondent's side was contradictory, pointed out that the respondent in her application stated that she bought the said land nearly one acre in 1991 from one Nyambulilo, while her witness one TWAHA MUSSA MPOMA said the respondent bought the said land jointly with her late husband being 1¼ acre. He added that the concealment by the respondent that her husband was the one who bought the land should have raised doubt.

In respect of the third ground the appellant submits that the respondent had no *locus standi* to sue because the respondent was not present when her late husband bought the said piece of land. Since the said land was bought by the late Raphael Kisinga, she had no right to sue unless appointed as an administratrix.

On the last ground (ground 4), the appellant argued that, since the respondent submitted that the land was purchased from Rashidi Saidi Nyambulilo, the said seller was a necessary party. His non - joinder occasioned injustice to the appellant. He held a stance that the seller would testify on what he sold, the extent and who was the buyer.

Responding to the appellant's written arguments, Mr. Bageni learned counsel, discredited the complaint in ground one by saying it had no basis as it was proved before the tribunal that the respondent jointly acquired the land in dispute with her late husband since 1991. To him, the contention that the land in dispute is different from what was



bought by the respondent is an afterthought and a new allegation not featured in the pleadings at trial tribunal. The trial tribunal played its judicial role of analysing the evidence on record, he added.

Proceeded to challenge the second ground of appeal by submitting generally that, it does not make sense. He made reliance to DW2, one RASHIDI SAIDI NYAMBULILO whose evidence was in favour of the respondent and proved that the ¼ an acre suit land belonged to the respondent who acquired jointly with her late husband. He further argued that the alleged contradictions, if any were immaterial.

The third ground was addressed by referring to page 9 of the trial tribunal's judgment, where the tribunal ruled that the respondent purchased the property jointly with her late husband and therefore after death of her husband, she had the right to keep owning. Mr Bageni was of the firm view that, the respondent had *locus standi* to sue over the property because she was a joint owner.

Countering on the fourth ground, Mr. Bageni argued briefly that, the seller in this case was not a necessary party because on the circumstance, the tribunal would pass an effective decree in the absence of the seller as it did. Above that, the seller appeared and testified clearly that he sold the suit land to the respondent.

While the appellant wished the appeal could be allowed with costs, Mr. Bageni, learned Advocate prayed this court to dismiss the appeal with costs for want of merits.

Having summarised the arguments of both parties, it is obvious the third and fourth grounds raise legal questions, while the first and second grounds raised factual complains on failure of the tribunal to analyse the evidence available. I will therefore address the grounds in



descending order. I intend to consider grounds 4 and 3 jointly and when need arise I will consider grounds 2 and 1.

In determining the fourth ground, I need to peruse the tribunal's proceedings. It is evident and is on record that Mr. Rashidi Nyambulilo (the seller) testified to have sold the suit land to the respondent and her husband. Correctly as Mr. Bageni has submitted, Mr. Nyambulilo appeared before the tribunal and rightly testified to have sold the suit land to the respondent and her husband, the late Kisinga.

I am alive to the rule that although it is the plaintiff who decides who to and who should not be sued in a case, the liberty applies to proper parties, same does not apply to a necessary party. In the suit at hand, it is the seller to the plaintiff who was not sued and the appellant holds firm view to the stance that, the seller was a necessary party. This brings the pertinent question of who is a necessary party?

Before going to the heart of the minor question born hereinabove, I find it very helpful to note that, establishing whether a person is a necessary party to the suit or not is subjective. Usually depends on the facts of a particular case. I find a reasoning by the Court of Appeal in the case of **Abdullatif Mohamed Hamis Vs. Mehboob Yusuf Osman and Another, Civil Revision No.6 of 2017** (unreported) held: -

*"The determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of relief claimed as well as*



*whether or not, in the absence of the party, an executable decree may be passed."*

I fully subscribe to the guidance of the Court of Appeal in the above holding. Obvious, there is a necessary and proper party to suit. A general distinction of the two was made in the case of **Suryakant D. Ramji Vs. Savings and Finance Limited and Others [2002] TLR. 121**. This court in determining the question of joinder and non-joinder of parties had this to hold: -

*"As who can, be joined as a party to a suit the legal stand is very clear – the plaintiff may decide to join both proper parties and necessary parties. While a plaintiff cannot avoid joining the latter, it is within his discretion as regards who should be fished from the former category. A necessary party in litigation is the one against whom the relief is sought or without whom an effective decree cannot be passed by the court, and those whom the law requires to be impleaded. On the other hand, proper parties are those whose presence enables the court to decide effectively and finally the dispute presented before it, and these include those who in one way or another, are interested in or connected with the relief being asked for as against others."*

The excerpt above on the necessary party is parallel to what was held by the Court of Appeal in **Abdullatif Mohamed Hamis Vs. Mehboob Yusuf Osman and Another (supra)** where it devotedly set two tests as parameters to apply in a particular case. The court adopted the following tests: -

*"First, there has to be a right of relief against such a party in respect of the matters involved in the suit and; Second, the court must not be in a position to pass an effective decree in the absence of such a party"*

Being guided by the above authorities and having reflected on the matter at hand, it is my settled view that Rashidi Said Nyambulilo was not a necessary party who ought to have been joined in the proceedings. Applying the two tests, the plaintiff did not have any cause of action against him, but against those who are alleged to have trespassed to her land.

On top of that fact, the said seller Mr. Rashid appeared before the tribunal as a witness and testified positively that he sold a piece of land to the respondent and her late husband. Subject to what I will observe on the evidence of Rashidi Said Nyambulilo, I accept the proposition by Mr. Elijah Bageni, respondent's advocate, the seller to the plaintiff who did not refute the sale was not a necessary party to this suit. His non-joinder would not vitiate the suit. This ground of appeal is baseless, consequently is dismissed forthwith.

Regarding the third ground on *locus standi*, I have gone through the hand written proceedings. Before the trial tribunal, there was no dispute that the respondent was once married to Raphael Kisinga. No dispute also that the said Mr. Kisinga died long before institution of Land Application No. 24 of 2019 before the District Land and Housing Tribunal for Kilombero/Malinyi. Such land dispute at tribunal was instituted by Ms. Zaituni Mlati, a widow of Mr. Kisinga. In hearing that dispute before the tribunal, the appellant did not raise the issue of *locus standi* of the respondent. Therefore, the issue of *locus standi* is raised here on appeal for the first time.

The law is settled in our jurisdiction that a person cannot bring an action in a court of law or competent tribunal unless he/she has *locus standi*. The concept of *locus standi*, is understood clearly that it is a legal capacity to bring an action or appear in a court of law. This is what this court expounded in the old case of **Lujuna Shubi Ballonzi Vs. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 203** 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 right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions"*

This interpretation is well accepted, further developed and explained by the Court of Appeal of Tanzania in the case of **Peter Mpalanzi Vs. Christina Mbaruka, Civil Appeal No. 153 of 2019, CAT at Iringa (unreported)** where it was held that a person cannot maintain a suit or action unless he has an interest in the subject matter.

This court has applied that guidance of the Court of Appeal in several cases including in the cases of **Mary Tuyate Vs. Grace Mwambeni, Land Appeal No. 42 of 2019**, (HCT at Mbeya (unreported)); and **Ally J. Mkokoya Vs. Mohamed Bakari Matepwe, Land Appeal No. 42 of 2019**, (HCT at Mtwara) this court, held:-

*"Notably, Locus standi in any civil suit or suit of civil nature or Land matter, is always treated as cornerstone upon which, a suit or dispute is built. The applicant must demonstrate that he/she has locus standi over the disputed matter"*





In respect to this appeal, the respondent stood in a common position to herself and to the position of the deceased because she was a co-owner of the suit land. This would mean she had direct interest in the land, which she would protect even without being appointed as an administratrix of the estate of her late husband Mr. Raphael Kisinga. I would have a different view on this point if were otherwise that the respondent claimed as an heir. This ground is unmerited same is dismissed.

Considering on the ground related to contradiction averred in the second ground, the law is clear that where contradictions occur, the court must analyse the said contradictions and make findings as to whether those contradictions go to the root of the case.

In this case, the appellant pointed out the contradictions on two aspects; the size of the disputed land and the name of the purchaser. In my scrutiny of the trial tribunal's record, I found that there was no contradiction in respect of the size of the disputed land. PW1 (The respondent) did not state the exact size of the land purchased, but stated that the appellant had encroached on  $\frac{1}{4}$  an acre of the land so purchased. PW3 stated that the size of the purchased land was  $1\frac{1}{4}$  acre without specifying the trespassed area. But on the other limb, it is true that the respondent testified that along with her husband they bought the said land from Rashid Nyambulilo, while PW2 supported that the land was sold to the respondent's husband one Raphael Kisinga. PW3 (Twaha Musa Rashidi Mpoma) stated that the respondent with her husband bought the said land. From such testimonies, there were no contradictions for all three witnesses, confirmed the suit land was sold to the respondent and her husband by Nyambulilo family.

Whatever minor contradictions occurred during testimonies during trial same was minor and did not affect the fact of ownership. Therefore, the question of whether or not the respondent and her late husband bought the said property was cleared with no contradiction.

The first ground which is on analysis of the evidence by the tribunal. The trite principle of law guiding this court being the first appellate court has a duty to re-evaluate the whole evidences and when appropriate, come up with its findings. Keeping abreast that the trial tribunal was in a better position to handle matters of fact, reasonable caution will thus be taken.

I have subjected the whole evidence in a serious analysis. PW1 and PW3 were clear that the respondent, along with her late husband purchased the land in dispute from one Rashidi Said Nyambulilo. Undoubtedly, the testimonies of PW2 (Said Haji Nyambulilo, 45 years) confirmed that the family of Nyambulilo sold the suit land to the respondent's husband as rightly quoted hereunder:-

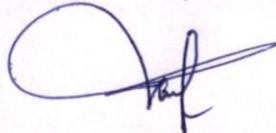
*"I reside at Lupiro division Mbasia Village. My father was given a piece of land at Mbasia village by the respondent's father. I built two houses. After the death of my parents, I decided to sale my houses over the disputed area to Raphael Kisinga at the consideration of Tsh. 35,000/= he gave me Tsh. 5000/-. My testimony to the effect that I sold my two houses to Raphael but he only paid to me the sum of Ths. 5,000/"*

With the contents of this piece of evidence what else do this court need? Obvious same is supporting the testimonies of PW1 and PW3.

I would therefore, find no reasonable ground to fault the decision of the trial tribunal. Thus, this appeal lacks merits same is dismissed with costs.

**Order accordingly.**

Dated at Morogoro this 02<sup>nd</sup> day of August, 2022.



**P. J. NGWEMBE**

**JUDGE**

**02/08/2022**

**Court:** Judgment delivered at Morogoro in Chambers on this 2<sup>nd</sup> day of August, 2022 in the presence of Mr. Elijah Bagen, Advocate for the Respondent and in the absence of the Appellant.

**Right to appeal explained.**



**P. J. NGWEMBE**

**JUDGE**

**02/08/2022**