

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE APPEAL NO. 02 OF 2022**

*(Arising from the decision of the District Land and Housing Tribunal land Case Appeal No. 65 of 2020, Original from Mwandeti Ward Tribunal Application No. 01 of 2020)*

**DAUDI LEVILAL..... APPELLANT**

**VERSUS**

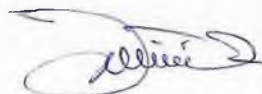
**MAIKA KAPURWA..... RESPONDENT**

**JUDGMENT**

27<sup>th</sup> July & 9<sup>th</sup> September, 2022

**TIGANGA, J.**

The appellant in this appeal successfully filed an application of land ownership against the respondent in Mwandeti Ward Tribunal. The respondent was aggrieved by the decision and findings of the said Ward Tribunal, therefore, he lodged an appeal in the District Land and Housing Tribunal for Arusha at Arusha, herein referred to as 'the DLHT'. Upon scrutiny and analysis of the grounds of appeal as well as the arguments presented before it, the DLHT reached to the conclusion that, the appeal had merits as the ward tribunal erred in its findings and decision thus. Consequent to that, its proceedings and the decision emanating therefrom were quashed and set aside. Aggrieved by such



decision, the appellant opted for the second appeal, seeking reverse the decision of the DLHT, its findings and orders.

Briefly, the antecedent of the turmoil obtaining from the record, stands as hereinafter stated, that the land in dispute is measured twenty-five acres' of arable lands located in Engalaoni village in Mwandeti Mwandeti, Arusha District. The appellant claimed it to be his property having acquired it from his father and that the respondent was only a lessee thereto after being leased the disputed land for cultivation purpose only. However, it is alleged by the appellant that unexpectedly, the respondent turned around and forcefully wanted to grab that land from the appellant's father.

On the other side of the story, the respondent is alleging that, the land in dispute belonged to one Kapurwa Lesiyo Kimbele and that, the said alleged owner of that land, once articulated that, after various lessees in that land, at last it must revert to the family of Lesiyo Torongei. That, after the said land changing hands from various owners and lessees at last, the respondent came to the ownership of it after clearing mortgages on the suit land.

In this appeal, the appellant marshalled two grounds to wit:

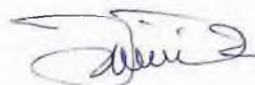
1. That, the first appellate tribunal erred in holding that the respondent had no locus standi in the original proceedings at the ward tribunal.
2. That, the appellate tribunal erred in failing to properly analyse the evidence on record thereby arriving at the wrong conclusion.

The appeal was opposed by the respondent. With leave of the court, the hearing was conducted by way of written submissions.

In his submission in chief, the appellants abandoned the second ground of appeal thereby remaining with the first ground as the sole ground which was argued by the parties.

In the submissions, parties were represented by learned Advocates who drew and filed their respective submissions. While the applicant was represented by Mr. E.F. Kinabo, also learned Advocate, Mr. Julius Peter Kessy also learned Advocate services the respondent. The submissions from both sides were made as scheduled save that, the appellant via his Advocate did not file the rejoinder which is an optional document to file.

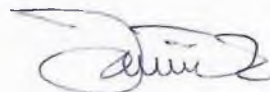
In support of the appeal, Mr. Kinabo, contended on the onset that, the ground upon which the DLHT based its decision was wrongly raised



by the DLHT on its own without giving parties the right to be heard. The issue he contended to have been raised *suo moto* by the DLHT is that of *locus standi*. He said, in the impugned judgment, the DLHT concluded the appeal by reflecting the issue of locus standi through ground number 4 of the grounds submitted before the DLHT while in reality the said ground does not touch the basis of its findings. That, the ground was discussing about the respondent's vacation from the suit land and not the respondent. To justify his claim, he quoted the said ground number 4 as coached in the petition of appeal presented in the DLHT for determination. The ground reads in kiswahili version that:

*"Kwamba Mwenyekiti alkosea sana kisheria na kiukweli(siyoy makosa yangu) kwa kuamuru Kapurwa Lesiyo aondoke kwenye ardhi yenye mgogoro wakati yeye sio(siyoy makosa yangu) mdaiwa na hausiki na mgogoro."*

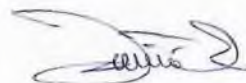
To fortify his argument, Mr. Kinabo referred the court to the cases of **Bahari Oilfield Services EPZ Ltd versus Peter Wilson**, Civil Appeal No. 157 of 157, CAT at Mtwara, **G 9963 Raphael Paul @ Makongojo versus The Republic**, Criminal Appeal No. 250 of 2017, CAT at Arusha and **Mrs Fakhria Shamji versus The Registered Trustees of the of the Khoja Shia Ithnasheri (MZA) Jamaat**, Civil Appeal No. 143 of 2019 CAT at Mwanza (all unreported).



Convincingly, Mr. Kinabo contended that had the DLHT found the issue of *locus standi* important to be determined, it ought to have accorded parties an opportunity to address the tribunal on it. He therefore, asked this court to nullify both, the proceedings and judgment of the DLHT.

Counteracting, Mr. Kessy opined on the submission made by his fellow learned Advocate, Mr. Kinabo. In that regard, he said, the issue of *locus standi* is of law it goes to the root of the jurisdiction of the tribunal to determine the matter. That, due to its fragility it can be raised at any time including appellate stage. Thus, he dismissed the contention by Mr. Kinabo as of no merits due to its legality permission. In support of the application, he cited the cases of **Khanan Said Aljabry versus Nevumba Salum Mhando**, Misc. Land Appeal No. 81 of 2021, HC land Division at Dar es Salaam, **Peter Mpalanzi versus Christina Mbaruka**, Civil Appeal No. 153 of 2019, CAT at Iringa and **M/S Tanzania Friendship Textile Co. Ltd versus Our Lady of the Usambara Sisters** (2006) TLR 70.

Given the legal weight of the ground raised, I have accorded each submission of both advocates the weight it deserves. Therefore, I now



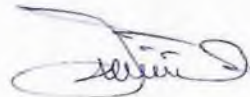
go straight to the determination of the issue which is whether, this appeal is meritorious.

While I subscribe to the position by Mr. Kessy that *locus standi* is a point of law and jurisdictional one which can be raised at any stage of the proceedings including appellate stage, still our legal jurisprudence has already set thresholds on how this paramount point of law can be raised and determined. Authorities on this area are legion.

In the case of **Kubwandumi Ndemfoo Ndossi versus Mtei Bus Service Limited**, Civil Appeal No. 251 of 2018, CAT at Mwanza the Court held that:

*"Basically, cases must be decided on the issues or grounds on record and if it is desired by the court to raise other new issues either founded on the pleadings or arising from the evidence adduced by witnesses or arguments during the hearing of the appeal, those new issues should be placed on record and parties must be given an opportunity to be heard by the court."*

The current legal jurisprudence of our nation is settled. It no longer a novel. It is like that, whenever the court or tribunal considers important to raise a new issue not raised by the parties themselves, but by implication arising from the evidence adduced by witnesses or

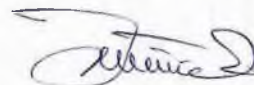
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arguments during hearing of the case or appeal, parties must be afforded opportunity to be heard. That being the position of the law, the consequence of this omission renders the findings arrived at nugatory. Giving parties the podium to address on the new raised issue is highly connected to the right to be heard. As old as it is, in the lifetime of mankind, it is the principle of natural justice currently enshrined in our Constitution of the United Republic of Tanzania, 1977 as amended from time to time specifically Article 13(6)(a).

In the case of **Mbeya-Rukwa Auto Parts & Transport Limited versus Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 (unreported), the Court observed that:

*"In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13(6)(a) includes the right to be heard amongst the attributes of the equality before the law..."*

As for the resultant of the violation of the right to be heard, the Court in the case of **Abbas Sherally & Another vs. Abdul S. H. M. Fazalboy**, Civil Application No. 33 of 2002 (unreported), in no uncertain terms, settled that:

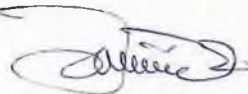


*"The right of a party to be heard before adverse action is taken against such a party has been stated and emphasized by court in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."*

It is evident in this case that the parties were not heard on the issue whether the appellant has *locus standi* or not which was raised and determined by the DLHT when composing the judgment. It is the fact which is also opined by Mr. Kessy. The chairperson, therefore, arrived at the finding that the appellant had no *locus standi* in flagrant violation of the fundamental right to be heard. Consistent with the settled law, the resultant effect is that such finding cannot be allowed to stand. It was a nullity.

In the circumstances, since I have held the finding to be a nullity, I am inclined to hold also that both the DLHT judgment and the decree thereof cannot stand.

In the event, both the DLHT judgment and the decree thereof are hereby quashed and set aside. The record is hereby remitted to the DLHT for it to hear the parties on the issue whether the appellant has a

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*locus standi* on the matter thereafter compose a fresh judgment in which all the grounds that were presented in the petition of appeal as well as the issue of *locus standi* shall be considered in accordance with the evidence and law. As the parties are not to blame on what transpired, I hereby order that, each party to bear its own costs.

It is ordered accordingly.

**DATED** at **ARUSHA** this 09<sup>th</sup> day of September, 2022.



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**J. C. TIGANGA**

**JUDGE**