

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 73 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal of Tarime District at
Tarime in Land Appeal No. 20 of 2019)*

ARUNGA OYIER..... APPELLANT

VERSUS

SIJE OSORO..... RESPONDENT

JUDGMENT

A.A. MBAGWA, J.

This is a second appeal from decision of the District Land and Housing Tribunal (DLHT) for Tarime in Land Appeal No. 20 of 2019.

The appellant, Arunga Oyier sued the respondent Sije Osoro before the Ward Tribunal for Roche in Land Case No. 36 of 2018. The dispute between two parties is about ownership of piece of land situated at Koroshini hamlet in Roche village. The appellant alleged that the respondent on 26th October, 2018 trespassed into land in dispute and built a house thereat. The appellant who stood as PW1 testified before the Ward Tribunal that the land in dispute belongs to his late father one Oyier Lukio. Arunga Oyier called other three

witnesses namely, Benson Chacha Otieno, Alfred Ouma Chacha and Enos Kideli.

In contrast, the respondent, Sije Osoro disputed the appellant's claims stating that the suit land belongs to his grandfather Otieno Maua. To support his case, the respondent called other two witnesses namely, Musa Owiti Ochieng and Ojuango Opiyo.

Having heard the parties' evidence, the trial Tribunal visited the locus in quo where it had an occasion to interview a number of witnesses. Surprisingly, even the witnesses at the locus in quo were divided into two sides. Some said that the suit premises are the property of Oyier Lukio, the appellant's father whereas others stated that the land in dispute was owned by the respondent's grandfather one Otieno Maua.

In the end, the trial Ward Tribunal delivered the judgment in favour of the appellant, Arunga Oyier. After taking into account the evidence adduced.

The respondent Sije Osoro was not amused by the decision of the trial Tribunal. He thus sought to challenge it by lodging Land Appeal No. 20 of 2019 in the District Land and Housing Tribunal for Tarime (the appellate Tribunal). The appellate Tribunal overturned the decision of the Ward

Tribunal and declared the respondent, Sije Osoro a lawful owner of the suit premises.

Dissatisfied, the appellant filed the present appeal to assail the decision of the appellate Tribunal.

The appellant filed a petition of appeal containing several complaints which, for the reasons to be apparent shortly, I will not reproduce them.

When the matter was set for hearing, both parties unanimously agreed to dispose of the matter by way of written submissions. Gladly, both parties filed their respective written submissions within the time frame set by the court

Having carefully gone through the record and submissions, I came to note that this appeal can be disposed of on one legal ground namely, whether the appellant had *locus standi* to sue. Consequently, I gave the parties the opportunity to address the court on this pertinent issue as it goes to the competence of the matter. I further observed that the issue of *locus standi* was one of the grounds of appeal before the appellate Tribunal but it was not determined.

The appellant's counsel Mr. Tumaini Kigombe conceded that as per the appellant's own evidence, the land in dispute belongs to his late father Oyier Oyoo. Kigombe went further and submitted that even the respondent Sije Osoro cannot be declared the lawful owner in that, according to his own evidence the land in dispute is the property of his late grandfather Otieno Maua. The appellant's counsel urged the court to nullify the proceedings and set aside the judgments of the two lower tribunals.

The respondent, Sije Osoro, on his part, maintained that the land in dispute is the property of his late father Otieno Maua.

Throughout the record neither the appellant nor the respondent claims to be the owner of the suit premises. Both parties and their respective witnesses testified that the disputed land either belongs to Oyier Lukio, the appellant's late father or Otieno Maua, the respondent's late grandfather. This explains that neither the appellant nor the respondent has title over the claimed land. Further, neither party produced a letter of appointment as administrator of the estates of their respective late parents. There is no one who even dared to explain how the suit land was transferred to him.

At page two of the typed proceedings of the trial Ward Tribunal, the appellant Arunga Oyier while testifying said;

'Namalizia nikisema eneo gombaniwa ni ardhi ya baba yangu Oyier Oyoo mimi ni kijana wake wa 10 sijawahi kusikia mizozo yoyote ila hii tu'

From the foregoing passage of the appellant's testimony, there is no gainsaying that the appellant is not the owner of the suit premises nor did he have legal authority to sue on behalf of his late father Oyier Lukio.

As rightly submitted by the appellant's counsel Tumaini Kigombe, *locus standi* is a necessary element in the institution of a suit. In the case of **Lujuna Shubi Ballonzi Senior vs Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 which was also cited by Mr. Tumaini Kigombe, the court had the following to say:

'In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter in court'

Further in the case of **Gervas Masome Kulwa v The Returning Officer and others 1996 TLR 320 (HC)** while expounding on the relevancy of *locus standi*, the High Court held;

'It is now well settled in India, England and East Africa that the traditional rule regarding locus standi is that judicial redress is available only to a person who has a legal injury by reason of the violation of his legal right by the impugned action be it by a public authority or by a private individual'

In light of the above authorities, I am inclined to hold that the appellant, Arunga Oyier had no *locus standi* to institute the suit with respect to alleged property of his late father in absence of any legal authority to do that. See the case of **Swalehe Juma Sangawe (As Administrator of the Estates of the later Juma Swalehe Sangawe) and another vs Halima Swalehe Sangawe**, Civil Appeal No. 82 of 2021, CAT at Moshi and **Omary Yusuph (Legal representative of the late Yusuph Haji) vs Alberto Munuo**, Civil Appeal No. 12 of 2018, CAT at Dar Es Salaam.

Since the appellant, Arunga Oyier had no legal standing to institute the case, the proceedings instituted by him and the resultant judgment of the Ward

Tribunal were a nullity. Similarly, the proceedings, judgment and decree of the appellate Tribunal were a nullity as they emanated from nullity proceedings.

In the event, I nullify the proceedings and set aside the judgment and decree of the two lower tribunals. The parties, if still interested, are directed to institute the matter afresh before tribunal with competent jurisdiction after meeting the legal prerequisites. Owing to the varying findings of the matter from the Ward Tribunal to this court, I order no costs.

It is so ordered.

Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa

JUDGE

11/10/2022

Court: Judgment has been delivered in the presence of both appellant and respondent this 11th day of October, 2022.

A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa

JUDGE

11/10/2022