

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 72 OF 2021

(Arising from the decision of Land Appeal No. 59 of 2020 in the District Land and Housing Tribunal for Tarime at Tarime)

ORANGO KARANI..... APPELLANT

VERSUS

OTIENO NYAKWAKA..... RESPONDENT

JUDGEMENT

31st October & 4th November, 2022.

M. L. KOMBA, J.:

This appeal traces its origin from the decision of the DLHT for Tarime at Tarime in Land Appeal No. 59 of 2020 in which the appellant Mr. Orango Karani unsuccessfully prayed for among other things, declaration that he has no ***locus standi*** to be sued and defend the disputed land. In that appeal two issues were in stake to wit; the applicant who was also the applicant in DLHT lack ***locus standi*** to defend the matter nonetheless claiming the ownership and the other ground was that his evidence in the Ward Tribunal was heavier than that of respondent. DLHT while dismissing appeal it ordered the natural demarcation in the disputes land should be adhered to by both parties and ordered nothing about the ***locus standi***.

Undeterred, Orango Karani decided to file the instant appeal which raises four grounds of appeal that constitute the gravamen of this complaint which are;

- 1. That, the first appellant Tribunal erred in law and fact for failure to consider that, the trial Tribunal entertained dispute between the Appellant and Respondent in which they had no locus standi to institute the case.*
- 2. That, the first Appellant Tribunal erred in law and fact for failure to consider that the trial Tribunal erred in law and fact in determining the matter with an improperly constituted quorum as the requirements of the law.*
- 3. That, the first Appellate Tribunal erred in law and fact by failing to consider that the land in dispute is a family property.*
- 4. That, the first Appellate Tribunal erred in law and fact by failing to consider that the Respondent failed to show the boundaries of the disputed land.*

On 31 October, 2022, when the appeal was called on for hearing the appellant, through his advocate Edson Philipo informed the court that there is a point of law he wish to address the court. He stated that while preparing

for the hearing of appeal he seriously studied the proceedings of both lower courts that is, Ward Tribunal on Land case No. 08 of 2019 and Land Appeal No. 59 of 2022 from the DLHT and he noticed that both Appellant and the respondent had no **locus** to the suit. He referred to page 8 of the Ward tribunal judgment. In that page Chairman refer the two sides of the dispute as *upande wa familia ya Karani Orango pia upande wa familia ya Mzee Bwana Orango*. This show that the land belongs to the family and not to Orango Karani. He prayed the court to nullify the proceedings and that court should order no costs because it was the Tribunal which misdirected itself.

Responding to the submission Mr. Paulo Obwana, learned advocate submitted that since when the matter is in Ward Tribunal the appellant denied to be the family head. He refers this court to page 3 of the Ward tribunal judgement where appellant mention the name of elder person in their family who was supposed to be sued for the family land. He further submitted that he disagrees the assertion that the respondent also lack **locus standi**. He stated that, Mr. Otieno Nyakwaka Orango was a family head and that the administrator of his estate can still have **locus standi** because Mr. Otieno Nyakwaka passed away on 17 December, 2021. Mr. Obwana acquiesce that he did not object the submission because the appellant raised this issue right from the beginning and for that he conceded

the prayer. He proposes parties to be directed to file fresh suit and as prayed by appellant each party should bear its own costs.

Having heard both counsel, the issue which I am called upon to determine is whether the parties had no *locus standi* to the case. In the current appeal it is evident that appellant raised the issue of *locus standi* at the Ward Tribunal as well as DLHT but both tribunal did not deliberate the same. He contended that the Family of Orango Karani had elder persons who could appear and represent the family in Tribunal but not Orango, the appellant.

The consequences of suing a wrong party is well stated in various case laws. (See **Madam Marry Silvanus Qurro V. Edith Donald Kweka and Another**- Civil Appeal No. 102 of 2.016 - CAT at Arusha as compared to the case of **Lujuna Shubi Balozi V. Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203). This being the right position of the law, and since the learned counsel for both parties conceded, I find the appellant was not the proper party to be sued at the trial tribunal as he is not the head of the family with Power of Attorney of suing or being sued. This fact alone is decisive in determining this appeal.

In exercising the powers vested to this Court under section 43(1) of the LDCA, the proceedings and orders of the two lower tribunals are hereby

quashed and set aside. Interested party is at liberty to file a fresh suit in a competent court/tribunal as per current position of the law and subject to the law of limitation.

Considering the nature of this matter, each party shall bear its own costs.

Dated in MUSOMA this 4th Day of November, 2022



NK
M. L. KOMBA

JUDGE

04 November, 2022

Ruling delivered on 4th November 2022 in the presence of parties' Advocates.

NK
M. L. KOMBA

JUDGE

04 November, 2022