

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA

Misc. LAND APPEAL CASE No. 36 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at
Musoma in Land Appeal No. 79 of 2021; and Originating from Buswahili
Ward Tribunal in Land Dispute No. 53 of 2019)*

MWIHECHI SUMATI APPELLANT

Versus

NYAMAROBA TARAGWA RESPONDENT

JUDGMENT

15.12.2022 & 15.12.2022
Mtulya, J.:

On 25th October 2019, **Mr. Mwihechi Sumati** (the appellant) had approached **Buswahili Ward Tribunal located at Butiama in Mara Region** (the ward tribunal) and lodged **Land Dispute No. 53 of 2019** (the dispute) complaining that **Nyamaroba Taragwa** (the respondent) had refused to vacate the land belonged to his father, namely: **Mr. Sumati Marwa Sagurya** (the deceased). Following the complaint, the ward tribunal's chairman convened a meeting of the ward tribunal's members to hear and resolve the dispute.

During the hearing of the dispute, the appellant testified before the ward tribunal, as reflected at page 3 of the

handwritten proceedings of the ward tribunal that the land belongs to his deceased father and he is representing the clan members of the deceased in the dispute. The assertion was supported by other two (2) members of the deceased's clan, **Mr. Magweiga Sumati** and **Mr. Tiras Yunus**, as reflected at page 6, 8 and 11 of the handwritten proceedings of the ward tribunal.

However, when the appellant was prompted and requested by tribunal's members, **Ghati Chacha** and **Sylvester Muruga**, on instrument which granted him a mandate to represent the deceased's clan members and institute the dispute at the ward tribunal on their behalf, he could not be able to produce the same. At the end of the hearing, the ward tribunal distributed the land in dispute equally between the appellant and respondent. The appellant was aggrieved by the decision hence rushed to the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) and lodged **Land Appeal No. 79 of 2021** (the appeal) to contest the decision of the ward tribunal.

The district tribunal noted the materials related to the subject of letters of administration of the deceased's estates

on part of the appellant at page 4 of the judgment delivered on 29th April 2022, but declined to determine or say a word on the same. In the end, the district tribunal decided in favor of the respondent. Today afternoon when the appeal was scheduled for hearing in this court, both parties decided to invite learned minds in **Mr. Tumaini Kigombe** and **Mr. Emmanuel Gervas** to argue the appeal for them. Before the reasons of appeal could be explicated, Mr. Kigombe, for the respondent, raised up and prayed to state a legal issue which is reflected on the record. In his opinion, the legal issue has to be resolved by this court before hearing and determining the grounds of appeal as it could settle the matter in entirety.

When Mr. Kigombe was granted leave and floor of this court to expound the legal issue, he briefly submitted that the appellant had initiated a suit at the ward tribunal without *locus standi* as per requirement of the law in section 99 and 100 of the **Probate and Administration of Estates Act** [Cap. 352 R.E 2002] as interpreted in the decision of **Mohamed Hassan v. Mayase Mzee & Mwanahawa Mzee** [1994] TLR 255. In his opinion, any person without interest in a dispute or letters of administration of the deceased's estates has no right to sue or

be sued as it was stated in the precedent of **Lujuna Shubi Balonzi Snr. v. Registered Trustees of Chama cha Mapindizi** [1996] TLR 203 and that *locus standi* is a jurisdictional issue as it was categorically elaborated in the decision of the Court of Appeal in **Godbless Jonathan Lema v. Musa Hamis and Two (2) Others**, Civil Appeal No. 47 of 2012. Finally, Mr. Kigombe prayed this court to declare the respondent as a rightful owner of the disputed land since the appellant had no *locus standi*.

On the other hand, Mr. Gervas, who appeared for the appellant, conceded with the citations on the record and registration of authorities in statute and precedents by Mr. Kigombe. However, he had reservations with regard to the declaration of this court on a rightful owner of the contested land. In his opinion, Mr. Gervas, thinks that the issue of *locus standi* drives the dispute to the root of the decision and proceedings of the ward tribunal hence this court has no mandate to pronounce an order on the prayer.

According to Mr. Gervas, the decision and proceedings of the ward tribunal were a nullity and the only available remedy in the circumstances is to quash the decision and set aside proceedings of the ward tribunal for want of proper application

of law. In his opinion, Mr. Gervas, considers that once proceedings is a nullity all decisions produced by a nullity proceedings are at fault, and no one can be pronounced as a rightful owner of the disputed land. With regard to the rights of the parties, Mr. Gervas thinks that any of the parties may wish to initiate proper proceedings in a competent body entrusted with powers to determine land disputes.

I have consulted the record and submissions of the learned minds in this dispute. The record is vivid that the appellant had filed the present dispute in representative capacity without instrument constituting his appointment. The available practice in this court and Court of Appeal has been that failure to plead and attach an instrument which constitutes an appointment of either party in disputes filed in courts is fatal irregularity which renders the proceedings incompetent for want of necessary standing (see: **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021; **Manyonyi Weswa v. Malibha Njoya**, Misc. Land Appeal Case No. 34 of 2022; and **Waziri Hussein Isore v. Sokoine Mseti & Two Others**, Misc. Land Appeal Case No. 38 of 2022).

Similarly, practice has shown that incompetent proceedings cannot award either party a right in suits filed in courts (see: **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra); **Manyonyi Weswa v. Malibha Njoya** (supra); **Burendire Isakwe v. Itaso Ally**, Misc. Land Appeal Case No. 116 of 2021).

Having the laws in statutes and precedents on the subject of *locus standi*, this court cannot be detain on the same question and try to interpolate new matters on the established practice of this court and Court of Appeal. I am therefore moved to invoke the provision of section 43 (1) (b) of the **Land Disputes Court Act [Cap. 216]** as it appears there has been an error material to the merit of the case involving injustice to the parties. In that case, an appropriate decision in the circumstances of the instant dispute is to quash the proceedings and decisions of lower tribunals for want of proper record of the court, as I hereby do.

Following this decision, I decline to pronounce either party as a rightful owner of the disputed land for want of competence of proceedings in the lower tribunals. I do so without any order to costs as the fault was caused by the lay

person appellant, but blessed by the legal machinery in the ward tribunal and legal mind in the district tribunal. Any party who is still interested in the disputed land is at liberty to initiate proper proceedings in a competent machinery entrusted with legal mandate to resolve land disputes in accordance to the current laws regulating land matters.

Ordered accordingly.



F. H. Mtulya

Judge

15.12.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, **Mr. Mwihechi Sumati** and his learned counsel, **Mr. Emmanuel Gervas** and in the presence of **Mr. Tumaini Kigombe**, learned counsel for the respondent.

F. H. Mtulya

Judge

15.12.2022