

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISCELLANEOUS LAND CASE APPEAL No. 69 OF 2021

(Arising from the District Land and Housing Tribunal of Tarime at Tarime in Land Appeal No. 107 of 2020 & Original from Roche Ward Tribunal in Land Case No. 2 of 2020)

ALFRED MAWIRI ODI APPELLANT

Versus

ISACK ONYANGO OCHUODHO RESPONDENT

JUDGMENT

15.02.2022 & 15.02.2022

F.H. Mtulya, J.:

A land dispute arose at Nyataya Hamlet within Roche Village of Rorya District in Mara Region in 2012 between Alfred Odi and Osoro Adiema regarding boundaries demarcating their lands. In order to resolve the matter, on 13th January 2012, **KIKAO CHA WAJUMBE WA KITONGOJI PAMOJA NA WAZEE WATEULE CHA KUTANZUA MGOGORO WA MIPAKA YA MASHAMBA KATI YA ALFRED ODI NA OSORO ADIEMA** (the elders meeting) was scheduled and after long discussions and consultations of the members and disputants, the meeting finally resolved that: *eneo la mgogoro libaki mikononi mwa Serikali ya Kijiji cha Roche na pande zote mbili waheshimu mipaka yao ya awali.*

It was very fortunate that the elders meeting described the land demarcation between the two contesting parties and the land remained

under ownership and control of the Roche Village authority without any intervention by any of the parties or any other person.

However, sometime in 2019 another dispute arose on the same land, between the sons of the parties, Mr. Alfred Mawili Odi (the appellant) and grandson of Mr. Osoro Adiema, Mr. Isack Onyango Ochuodho (the respondent). The disputed was registered and determined by **Roche Ward Tribunal** (the Ward Tribunal) in **Land dispute No. 2 of 2020** (the Land Dispute) in favour of the *Familia ya Adiema*.

The decision of the Ward Tribunal irritated the appellant hence preferred **Land Appeal No. 107 of 2020** (the Land Appeal) before the **District Land and Housing Tribunal for Tarime at Tarime** (the District Tribunal). After full hearing of the Land Appeal, the Tribunal dismissed the appeal and stated at page 2 of the decision that: *kwa kuwa mgogoro huu ulihusu mipaka na kwa kuwa Baraza la Kata lilitembelea eneo lenye mgogoro na kuainisha mipaka ya eneo hilo, natofautiana na maoni ya Wazee wengine wa Baraza yaliyokuwa upande wa mrufani.*

This decision and its reasoning were also protested in this court in **Land Appeal No. 69 of 2021** (the Appeal). Today when the appeal was scheduled for hearing, the appellant invited Mr. Godwill Mweha to argue the appeal for him, whereas the respondent appeared in person.

In his submission, Mr. Mweha joined ground number 1, 2 & 3 together and argued ground number 4 separately. In the first three grounds Mr. Mweha briefly argued that the dispute before the Ward Tribunal was between the appellant and the respondent, but the Ward Tribunal decided in favour of *Familia ya Mzee Osoro Adiema*, which was not party to the proceedings in the Ward Tribunal. On the fourth ground Mr. Mweha argued that the appellant occupied the land for more than 12 years and according to **Item 22 of Part I of the Schedule to the Law of Limitation Act** [Cap. 89 R.E. 2019] (the Law of Limitation), the appellant must be declared a rightful owner of the land as he occupied and owned for more than twelve (12) years since 1975. Finally, Mr. Mweha as an officer of this court alleged that the respondent had no *Locus Standi* in the case and prayed this court to take note of the fault which vitiates the whole proceedings in the Ward Tribunal.

In a brief reply of the grounds of appeal, the appellant did not protest the first ground arguing that it is correct that the land belongs to Mzee Osoro Adeima, but he has the right and mandate to protest any intrusion into Mzee Osoro's family land. With the allegation of time limitation the respondent argued that it is not correct that the appellant

occupied the land since 1975. With *Locus Stand*, the appellant reiterated he is contesting for family land.

I have perused the record of this appeal. The record displays that the elders meeting articulated the dispute and identified the land in dispute in terms of size and location and finally issued the verdict in 2012. Neither the appellant nor respondent had disputed the decision until 2019 when the new dispute arose between the parties. It was unfortunate that both parties agree with the findings of the elders meeting, but initiated another dispute on the same land. It is also unlucky the Ward Tribunal delivered its decision in favour of *Familia ya Mzee Osoro Adiema*, who was not party in the dispute and did not tender any evidence to substantiate ownership.

In my opinion, I think, the decision of the Ward Tribunal is against the law in section 110 and 3(2) (b) of the **Evidence Act** [Cap. 6 R.E. 2019] (the Evidence Act), and precedents in **Haruna Mpangaos & 932 Others v. Tanzania Portland Cement Co. Ltd**, Civil Appeal No. 129 of 2008 and **NAFCO v. Mulbadaw Village & Others** [1985] TLR 88. The law in section 110 (1) of the Evidence Act provides that: *whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist* whereas section 3(2) (b) of the Act states that: *A fact*

is said to be proved, in civil matters, when its existence is established by a preponderance of probability. On the other hand the precedent in **Haruna Mpangaos & 932 Others v. Tanzania Portland Cement Co. Ltd**, (supra) when citing the authority in **NAFCO v. Mulbadaw Village & Others** (supra) held at page 18 of the judgment that: *as there is no evidence coming from the appellants to assert their rights over the land, it is very difficult to sustain their claim.* The reasoning of our superior court is found at page 17 of the decision:

Since the land is not jointly owned by all the appellants, and since it is them in their individual capacities who claimed to have better title than that the respondent and as that is one of the issues raised in the suit, it was the duty of each appellant and not someone else to testify and prove on balance of probabilities that the disputed land belonged to each individual..

In the present appeal, *Familia ya Mzee Adiema* did not tender any evidence to substantiate the claim of the disputed land. In any case, the decision of the elders, which I am aware is not binding, but it carries with it a high weight as they have greater knowledge of lands in Nyataya Hamlet. Asking this court at this stage to declare one of the parties as a rightful owner of the same land which is well known to the

elders, would lower the meaning and values of the indigenous elders who are well aware of lands in their areas of jurisdiction.

I understand Mr. Mweha submitted that the appellant had occupied and owned the land for more than twelve (12) since 1975 and invited Item 22 of Part I in the Schedule to the Law of Limitation. However, record in the Ward Tribunal does not support the allegation. There are no record showing that the appellant occupied the land since 1975, but the record depicts the dispute on the land erupted in 2012 and was resolved by the elders' meeting. The elders' decision is still intact to date and the parties in that decision are not part in the present dispute.

I am aware that both parties in the present dispute, the appellant and respondent, had agreed that the land in dispute does not belong to them. The record of this appeal displays all the facts. The proceedings at the Ward Tribunal conducted on 23rd January 2020 at page 2 shows the appellant stating that: *sehemu hiyo ilikwisha patanishwa na Baraza la Ardhi ya Kijiji kati yangu na Adiema Ochodhuo. Baraza lilitoa uhamuzi kuwa **eneo hilo libakie** kuwa mali ya Kijiji.* On the other hand, the appellant is quoted to have said, at page 9 of the proceedings in the Ward Tribunal, conducted on 30th January 2020, that: *katika kikao kwenye eneo hilo mama ake mzazi*

alisema kuwa ardhi hiyo ni ya Adiema. Again, reading the proceedings from page 1 to 29, both parties and their witnesses have been referring the land to belong either to Mzee Adiema Ochuodhu Osoro or Mzee Odi. At any rate, the record shows that the present parties in this dispute have no *locus standi* in this case. The law regulating *locus standi* requires those who may wish to bring an action to court of law to have interest in the suit.

The principle is intended to limit rights and responsibilities of parties in suits. It is to those who their legal rights have been affected or suffered specific legal injuries enjoy filing of suits in courts of law or tribunals to protect their interests. In present appeal both parties and record show that the appellant and respondent have no legal rights in disputing the land hence have no *locus standi* in both tribunals below and this court.

The Practices available in this court and Court of Appeal show that lack of locus standi to sue vitiated proceedings and make the same incompetent. There is a large bundle of precedents on the subject (see: **Ramadhani Mumwi Ng'imba v. Ramadhani Jumanne Sinda**, Misc. Land Case Appeal No. 8 of 2012; **Ally Ahmad Bauda v. Raza Hussein Ladha Damji & Two Others**, Civil Application No. 525/17/ of 2016, **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha**

Mapinduzi [1996] TLR 203; and **Johansen Elias v. Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019.

Having said so and considering the parties had *no locus standi* in the two tribunals below, and in this court, I hereby set aside the proceedings and quash decisions of the District Tribunal and Ward Tribunal in the Land Dispute and Land Appeal respectively. The appeal is allowed without any order as to costs. Each party shall bear his own costs, as each had contributed to the identified faults in the case. Any of the parties who wish to initiate legal steps on the same land may do so in accordance to the law regulating land disputes.

Ordered accordingly.

Right of appeal explained.




F.H. Mtulya

Judge

15.02.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Alfred M. Odi and his learned counsel Mr. Godwill Mweha, and in the presence of the Respondent, Mr. Isack O. Ochuodhu.



F.H. Mtulya

Judge

15.02.2022