

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

MISCELLANEOUS LAND CASE APPEAL No. 68 OF 2021

(Arising from the District Land and Housing Tribunal of Tarime at Tarime in Land Appeal No. 67 of 2020 & Original from Kyang'ombe Ward Tribunal in Land Case No. 14 of 2020)

MWITA MAGONGO APPELLANT

Versus

MANYAMA MAGESA RWESA RESPONDENT

JUDGMENT

15.02.2022 & 15.02.2022

F.H. Mtulya, J.:

A land contest was registered at **Kyang'ombe Ward Tribunal** (the Ward Tribunal) in **Land Case No. 14 of 2020** (the case) for a land which is alleged to be owned by either *Mama Matinde Magesa* or *Mzee Marwa Magongo*. After a full hearing of the dispute, the Ward Tribunal decided in favour of Mr. Mwita Magongo (the appellant). The decision aggrieved Mr. Manyama Magesa Rwesa (the respondent) hence preferred an appeal in the **District Land and Housing Tribunal of Tarime at Tarime** (the District Tribunal) in **Land Appeal No. 107 of 2020** (the land appeal) which reversed the decision of the Ward Tribunal in his favour.

The decision of the District Tribunal dissatisfied the appellant who approached this court and filed **Miscellaneous Land Appeal No.**

68 of 2021 (the appeal) in protest of the judgment of the District Tribunal. In this court the appellant had filed a total of six (6) grounds of appeal and when the appeal was scheduled for hearing, both parties appeared in person without any legal representation. However, after long submissions for and against the appeal, it was vivid that the owner of land in dispute may be either *Mama Matinde Magesa* or *Mzee Marwa Magongo*. When the parties were consulted by this court during proceedings on the subject, both admitted that the land belonged either to *Mama Matinde Magesa* or *Mzee Marwa Magongo*.

Following the admission, this court glanced the record of this appeal and found out that both parties registered materials in the Ward Tribunal displaying the land is either belonged to *Mama Matinde Magesa* or *Mzee Marwa Magongo* hence both parties lacked *locus stand* in the dispute. The respondent on his part at page 2 & 3 of the proceedings of the Ward Tribunal conducted on 30th March 2020, stated that: *eneo hilo [bishaniwa] lilipimwa na matumizi yakabadilishwa kwa kuwa makazi ya watu. Kiwanja hicho kikapewa mdogo wangu aitwae Marwa Magongo. Alikaa kwa miaka mitatu kasha akaenda Sengerema. Aliporudi Sengerema kiwanja*

alikiacha mikononi mwangu. Baada ya Marwa kufariki, familia yake inataka kiwanja chake.

On his part, the respondent stated before the Ward Tribunal on the 2nd of April 2022, as displayed at page 15 of the proceedings that: *shamba hilo ni mali ya Baba. Walililima kabla hajamuoia Dada wa Mdai. Mimi nimezaliwa Mwaka 1963 na nimekuta Mama na Baba wanalitumia eneo hilo.*

On the part of witnesses who were brought in the Ward Tribunal to testify also added value in the dispute. Mr. Manyama Mwita who was called on the 2nd April 2022, as displayed at page 9 of the proceedings in the Ward Tribunal, briefly stated that: *eneo la mgogoro ni mali ya Magongo. Tangu mimi nizaliwe ninafahamu kuwa eneo hilo ni mali ya Magongo...wake wa Magongo ndio walikuwa wanalitumia eneo hilo,* whereas Matinde Magesa testified that: *eneo daiwa ni mali yangu. Baba Mzazi alikuwa analima hapo. Nimekuwa hadi nimevunja ungo...tulikwa tunalima hapo. Miaka yote hakuna mtu aliyewahi kulalamika kuhusu hilo eneo.*

From the proceedings in the Ward Tribunal in 2020 and submissions of the parties today in this court, it is obvious that both parties have no *locus stand* in this dispute. The practice in common legal tradition is that persons with legal rights or suffered specific

legal injuries are the ones who may bring action in courts of law or tribunals to defend their interests. In present appeal both parties and record show that the appellant and respondent have no legal rights in disputing the land.

The lack of *locus stand* to sue, from the practice of this court and Court of Appeal, vitiated proceedings in courts of law or tribunals. There is a large family 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; **Johansen Elias v. Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019 and **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021.

Having said so and considering the parties had *no locus stand* in the tribunals below, and in this court, I hereby set aside proceedings and quash decisions and any orders emanated in the District Tribunal and Ward Tribunal in the case and land appeal. The appeal is allowed without any order as to costs. Each party shall bear his own costs, as each had contributed to the faults in the case.

Any party who may 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. Mwita Magongo and in the presence of the Respondent, Mr. Manyama Magesa Rwesa.

F.H. Mtulya

Judge

15.02.2022