

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND CASE APPEAL No. 95 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land Appeal
No. 255 of 2020 & Original from Makoko Ward Tribunal in Land Case No. 2 of 2018)*

KAREGA PIUS MAKUNJA APPELLANT

Versus

1. JOHN MABHAI MAKUNJA } **RESPONDENTS**
2. NYANG'ANDO JOHN MAKUNJA }

JUDGMENT

23.02.2022 & 23.02.2022

F.H. Mtulya, J.:

Today afternoon two (2) grandsons and one (1) granddaughter of the late Chief Mzee Makunja Mabhaji (the deceased), the Chief of Wakwaya Sect of Musoma area in Mara Region showed up in this court contesting on ownership of their ancestors' lands commonly known as *Mahame ya Babu*. One of the grandsons, Mr. Karega Pius Makunja (the appellant) prayed to the authorities of the lower tribunals and this court to be declared as a rightful owner of the deceased's land located at Makoko area of Mara Region.

The contest was originally initiated at **Makoko Ward Tribunal** (the Ward Tribunal) in **Land Dispute No. 2 of 2018** (the case) and proceeded to the **District Land and Housing Tribunal for Mara at**

Musoma (the District Tribunal) in **Land Appeal No. 255 of 2020** (the appeal) and finally today was scheduled for hearing before this court in **Misc. Land Case Appeal No. 95 of 2021** (the land appeal). In this court, the appellant registered two (2) reasons of dissatisfaction in the land appeal, which were related to each other. In short, the grounds were: first, the District Tribunal erred in law and fact by deciding the issue of probate and administration of estate; and second, the decision of the District Tribunal was based on extraneous matters.

When the appellant was invited to take the floor of this court to submit his reasons of appeal, he consolidated the two (2) grounds and argued them together. He briefly complained that the District Tribunal determined the matter which was not brought to its attention by introducing new issue of probate and administration of estates of the deceased. According to the appellant, the issue of probate and administration of the deceased's estates was not part of the matters registered at the Ward Tribunal and finally prayed to add more evidence at this court to substantiate his ownership of the land in dispute.

In reply to the grounds of appeal the first respondent submitted the appeal cannot be allowed for two reasons: first, the land in

dispute belonged to the deceased and to date no one has been appointed to serve as an administrator of the deceased's estates; and second, the disputed Plot No. 134 in Block A was already granted to Pendo Mkali, who is not party in the present dispute. With the second respondent, she prayed the appeal be dismissed for lack of merit. In her opinions, first the appellant did not follow legal procedures regulating land dispute in initiating the dispute at the Ward Tribunal and second, the appellant has no any evidence to prove ownership of the dispute land.

In a brief rejoinder, the appellant contended that he has evidence as he lived at the disputed land and that the deceased has already expired long time, but before his demise he had distributed the clan land to his sons, without any disputes among them, and each of the parent's sons inherited part of the land.

On my part, I perused the record of this appeal and found the evidence on record which shows the complaint text which was registered by the appellant at the Ward Tribunal in the case. In brief, the following text is displayed in the first page of the proceeding of the Ward Tribunal, conducted on 23rd March 2018. In the text, the appellant alleged that:

Mimi Karega Pius nawashitaki ndugu John Mabahi na Nyariando John kwa kula njama za kuninyang'anya viwaja vyangu vilivyokuwa vya Baba Mzazi Mtemi Pius Makunja...

This allegation was followed by details of the matter on the hearing date, 5th April 2018, at the Ward Tribunal as depicted at page 2 of the proceedings in the Ward Tribunal. The appellant stated that:

...kabla sijazaliwa mimi Mtemi Pius Makunja alioa wanawake sita (6) akina mama wote walikuwa wanaishi hapo hapo Mwitongo (Mlusoli) na baba yangu kabaki hapo mwitongo..... Baba alikaa na akina mama (wake zake). Kiwanja cha mama yangu Mzazi upimaji ulipofanyika kikawa Namba 134 Block A. Nilipotaka nimilikishwe kisheria, nikapata barua kuwa hicho kiwanja tayari kimesha milikishwa kwa Pendo Nyang'ambwa Mkali...

The facts registered at the Ward Tribunal shows further that the disputed land or deceased's land was divided by the Municipality into three (3) portions in Plot No. 134, 137 and 202 in Block A. However, the facts are silent on exact location and size of the

deceased's land, and whether the plots occupied the whole land or part of the deceased's land.

After a full hearing of the case, the Ward Tribunal decided in favour of the appellant. The reasoning of the Ward Tribunal is found at the last page of the decision, that:

....kwa mujibu wa mila na desturi za kuhusu ardhi, makaburi na msingi uliojengwa zamani kidogo ni uthibitisho kuwa walikuwa hapo...walikuwa na makazi maalumu na ya kudumu katika eneo hilo husika kwamba mtoto wa kiume ndiye mrithi kwa baba na mama kwa mambo yote mali na ardhi...

The Ward Tribunal on his part declined to state anything related to *locus standi* and land size and location which was declared part of the appellant. It was also not clear whether the appellant was granted the whole deceased's land or part of it, despite contradictions in evidences on record. The Ward Tribunal also totally ignored the evidence of the appellant with regard to the disputed land and the deceased's properties.

The appellant stated further before the Tribunal that: *kuninyang'anya viwaja vyangu vilivyokuwa vya Baba Mzazi Mtemi Pius Makunja* and the members of the Ward Tribunal on 23rd March

2018, as depicted at page 4 of the proceedings questioned the appellant: *je unatambua utaratibu wa mali za marehemu?*, and the appellant replied: *Nautambua, walishagawa*, and when was asked by the first respondent on the transfer from the deceased to Pius Makunja, the appellant replied that: *ndiyo, upo ushahidi wa kimazingira*, and finally when the appellant was asked of the clan meeting to appoint administrator of the deceased's estates held on 9th August 2015, the appellant replied: *mimi nafuata sheria kudai haki yangu...kikao kiliamua ateuliwa msimamizi wa mirathi...*

Despite all these facts showing the land belonged to the deceased and processes were underway to produce an administrator of the deceased's properties through the clan meeting route, the Ward Tribunal did not take due regard of the facts and process. Following the decision of the Ward Tribunal, the respondents initiated the appeal before the District Tribunal, which nullified the proceedings and quashed decision of the Ward Tribunal for want of *locus standi* of the parties in the case. The reasoning of the tribunal is found at page 2 of the judgment.

...nimezipitia kwa umakini kumbukumbu za Baraza la Kata. Mojawapo ya maelezo ya mdai, Karenga Pius Makunja, kwenye Baraza la Kata ni kwamba eneo lenye

mgogoro ni urithi wa baba yake Pius Makunja na kwamba warithi wa Pius Makunja wako wanne. Pia kwa ushahidi unaoonyesha kwamba waleta rufaa na mjibu refaa ni watoto wa mzazi mmoja. Pia mojawapo ya sababu za Baraza la Kata kumpa ushindi mrufaniwa Karega Pius Makunja ni kile kwamba mtoto wa kiume ndiye mrithi kwa Baba na Mama kwa mambo yote mali na ardhi.... kwa mazingira hayo nilio yaeleza hapo juu shauri hili lina mambo ya kmirathi hivyo lilitakiwa kushughulikiwa kwa kufuata taratibu za mirathi...

This reasoning is what is contested in this appeal that the issue of administration estates was not one of the issues raised in the Ward Tribunal hence raising it at the District Tribunal in the appeal is extraneous. However, the District Tribunal did not note the discrepancies in terms of the land size and location as required under the provision of Regulation Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) and precedent in **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015 and **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021.

The law and practice of this court and Court of Appeal has been that land disputes must identify exact size and location. The exactly size of the deceased's land is missing on the record hence it is difficulty to grant any of the parties, even if the legal procedures were properly followed. That has been the practice directed by our superior court since 1985 in the precedent of **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** [1985] TLR 88, which stated that a claim of land must be substantiated in specific size to specific person.

This court after noting the faults, it consulted the parties as part of cherishing the right to be heard as enacted under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44 and **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, and the parties were questioned on whether this court, under the circumstances of the present case, can declare any of the parties to be a rightful owner of the disputed land.

The appellant on his part replied that the dispute arose at Makoko area hence the land will be located at Makoko area and that the issue of administrator of the deceased's estates has no merit

whatsoever whereas the first respondent submitted that he is not aware of the location of Plot 134 Block A and that the family had started clan process of appointing the administrator of the deceased's estates. The second respondent on her part submitted briefly that she is aware of *Mahame ya Babu* which is dispute in this case, and not Plot 134 in Block A.

The record in this appeal shows that the dispute originated and proceeded to this court with two faults, *locus standi* of the parties who admitted in this court and tribunals below that the land belonged to the deceased and uncertainty of the land in dispute. For the second respondent, the land belongs to ancestors, known as *Mahame ya Babu* whereas to the appellant is complaining of Plot 134 Block A. In any case Plot 134 Block A from the record was granted to *Pendo Nyang'ambwa Mkali*, who is not party in the present dispute. In the circumstances, like the present one, this court will not declare either party as a rightful owner of the disputed land.

Reasons are very obvious that the dispute was initiated and proceeded with parties who have no *locus standi*; no proper and necessary parties, the Municipality and *Pendo Nyang'ambwa Mkali*, and there discrepancies in land size and location. This court is a

court of record with the additional duty of ensuring proper application of the laws by the courts and tribunals below. It cannot remain silent when there is vivid illegalities, which are obvious.

The law regulating *locus standi* requires those with interest to initiate and defend their suits. I am aware that *locus standi* is governed by common law practice in which a person bringing a matter to a court should be able to show that his interest has been breached or interfered with. In that case, even family members may initiate proceedings or defend suits against their lands. However, the same must be in accordance to the law. Failure to that, the issue of *locus standi* may crop up at any stage of the proceedings and since the issue relates to legality of the matter, may vitiate proceedings.

There is currently a large family of precedents on the subject of *locus standi* (see: **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; **Mwita Magongo v. Manyama Magesa Rwiswa**, Misc, Land Case Appeal No. 68 of 2021; **Johansen Elias v. Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019;; **Ally Ahmad Bauda v. Raza Hussein Ladha Damji & Two Others**, Civil Application No. 525/17/ of 2016; **Ramadhani Mumwi Ng'imba v. Ramadhani Jumanne Sinda**, Misc. Land Case Appeal No. 8 of 2012; and **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203).

This court is empowered and has consistently stated that it has additional mandate of ensuring proper application of the laws in lower courts and tribunals (see: section 42 & 43 of the Land **Disputes Courts Act** [Cap. 216 R.E. 2019] (Act) and precedents in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) & **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). This court, being the court of record, cannot justifiably close its eyes when it sees breach of the law in Regulation 3 (2) (b) of the Regulations and the principle of *locus standi* as stated in the precedents of this court and Court of Appeal.

Having said so, I have decided to quash the decisions and set aside proceedings of the tribunals below in the case and appeal. Any party who wish to initiate fresh and proper suit, may do so in a competent forum in accordance to laws regulating land matters. I award no costs in this appeal as the faults were caused by the parties and blessed by the tribunals and in any case, the dispute was not resolved to its finality.

It is so ordered.

Right of appeal explained.



F.H. Mtulya

Judge

23.02.2022

This judgment was delivered in Chambers under the seal of this court in the presence of the appellants, Mr. John Mabhai Makunja and Ms. Nyang'wana John Makunja, and in the presence of the appellant, Mr. Karega Pius Makunja.



F.H. Mtulya

Judge

23.02.2022