

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

LAND APPEAL NO. 69 OF 2021

*(Arising from the ruling and order of the District Land and Housing
Tribunal for Geita, in Land Revision No. 09 of 2020)*

JULIUS KUPERWA.....APPELLANT

VERSUS

FAMILIA YA KAFUKU MUNDAMUSHIMU..... RESPONDENT

RULING

31st March & 5th April, 2022.

ITEMBA, J.

This ruling is in respect of a petition of appeal preferred by the appellant, against the decision of the District Land and Housing Tribunal herein DLHT, for Geita, delivered on 22nd October, 2021.

The brief context of this matter is that; respondents under the name of **Familia ya Kafuku *Mundamushimu*** filed a land dispute against the appellant before Bukokwa Ward Tribunal. They explained before the ward Tribunal that they opted to institute a land dispute as a family because their father named Kafuku Mundamushimu, had passed away on 13/12/1990. A decision was entered in their favor. The appellant filed an application for revision before the DLHT and one of the grounds was that

the respondent did not have *locus standi*. The said application was dismissed hence this appeal.

The petition of appeal has set out four main grounds of contention in respect of the decision sought to be quashed. These are:

- 1. That despite being shown the glaring irregularities and illegalities in the proceedings of the trial ward tribunal, the learned district land and housing tribunal chairperson made a grave error in law and in fact by failing to exercise the district tribunal's revisionary powers and jurisdiction over ward tribunal, hence miserably failing to address and rectify the glaring and incurable irregularities and illegalities at the ward tribunal.*
- 2. That the learned district land and housing tribunal chairperson made a grave error in law and fact by deviating from content and context of the application before the tribunal, and misdirecting herself in making an ruling on matters which did not form part of the application for revision before the court, hence leading, to a total misapplication of law thus a miscarriage of justice.*
- 3. That the trial district land and housing tribunal chairman erred in law and in fact by disregarding the contention that the*

respondent had no legal capacity to sue or be sued, so even if the appellant went back to the trial ward tribunal, the suit would still proceed under an illegality and irregularity relating to the locus of the respondent herein to sue or be sued. The district tribunal ought to have nullified the proceedings of the trial ward tribunal in order that the suit do proceed with the rightful and lawful parties.

4. That generally, the trial district land and housing tribunal chairperson grossly erred in law and in fact by failing to thoroughly, exhaustively and adequately scrutinize the whole pleadings and submissions from both parties, hence failing to find and realize that the respondent's suit at the ward tribunal was dead on arrival, hence the trial tribunal consequently reached unreasonable and unjustifiable decision.

In consequence of the alleged errors, the applicant prays for a trio of orders as follows:-

- 1. The ruling and order of the trial tribunal be quashed.*
- 2. The proceedings of the ward tribunal be revised.*
- 3. Costs of the suit to be borne by the respondent.*

When the matter came for hearing, the appellant was represented by Ms. Stella Sangawe while the respondent enjoyed the service of Mr. Muhingo Musa, both learned counsels.

The counsel for the appellant decided to argue all grounds of appeal collectively. She contended that, there were irregularities committed in the Ward Tribunal and District Land and the DLHT. That, the DLHT had power to revise the decision of the ward tribunal but it did not exercise that power.

It was her contention that the respondent had no *locus standi* before the ward tribunal because the disputed property belongs to the deceased, hence the proper person to institute a case against appellant was supposed to be an administrator of the estate of the deceased.

Her prayer to this court is to nullify both ward and district tribunal's decisions and order trial de novo.

On his part the counsel for the respondent Mr. Muhingo conceded to the preliminary objection raised the arguments by the learned counsel for the respondent. In his arguments, he cited the decision of the High Court in the Case of **Nyabayungu Ndimila vs Emanuel J. Opulukwa** Misc. Land Case No. 23 of 2013 where the appellant was found not to have *locus standi* as there was no proof that the appellant was appointed

as an administrator. Lastly, he prayed for this court to nullify the whole proceedings of both tribunals and order the case to start afresh.

Deducing from the application and submissions made by the parties, the issues that arises for determination is whether the respondent lacks *locus standi* before the court.

Locus standi simply means the right or legal capacity to bring an action or to appear in a court. In the decision of ***Lujuna Shubi vs Registered Trustees of Chama Cha Mapinduzi*** (1996) TLR 203, Samatta, J (as he then was) had the following to say on *locus standi*.

"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that this right or interest has been breached or interfered with. The high court has the power to modify the applied common law so as to make it suit local conditions."

Further, in ***Chama Cha Wafanyakazi Mahoteli na Mikahawa Zanzibar (HORAU) vs Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar***, Civil appeal No 300 of 2019 (Unreported) the Court of Appeal stated that:

"We observed that, although the learned High Court Judge struck out the respondent's notice of preliminary

*objection for being improperly moved, still the issue regarding appellant's locus standi was very vital and we think, the High Court ought to have considered it. **This is due to the fact that, the appellant's claims could not be established by a person who is not entitled to claim before the court.***" [Emphasis supplied]

Therefore, any party which institute a suit before the court must be entitled to do the same.

In this matter, I find that, as the owner of the plot in dispute is one Kafuku Mundamushimu who is the deceased, the respondent had no right to sue the appellant before the ward tribunal. Since the family doesn't have legal personality, it lacks capacity to sue or be sued. It is the administrator or executor of the deceased estate who has powers to sue in all causes of action which survived the deceased. This is rightly laid down under **section 100 of the Probate and Administration of the Estates Act**. The said section reads;

"An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living."

To emphasise, in the case of **Omary Yusuph (Legal Representative of the Late Yusuph Haji) vs. Albert Munuo**, Civil Appeal No. 12 of 2018, CAT at Dsm (Unreported), the Prime Court had this to say;

*"...It is our considered view that the existence of legal rights is an indispensable pre-requisite of initiating any proceedings in a Court of Law. **In this particular case, since Yusuph Haji had passed away, according to the law it is only the lawful appointed legal representative of the deceased who can sue or being sued for or on behalf of the deceased...**"*[Emphasis is added]

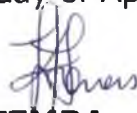
Based on the above I agree with both parties to this appeal that the respondent had no *locus standi* to sue the appellant over the suit land. Both tribunals erred in law in entertaining the claims by the respondent.

As the result, the appeal is allowed. I hereby nullify the entire proceedings of the Ward Tribunal and the District Land and Housing Tribunal, quash and set aside the respective rulings and judgments and direct that any action in respect of the propert(ies) belonging to the deceased be commenced by or against the legal representative or administrator of estate of the late Kafuku Mundamushimu.

I make no orders as to costs.

Right of appeal duly explained.

DATED at **MWANZA** this 5th day of April, 2022.



L. J. ITEMBA
JUDGE
05.04. 2022

Judgment delivered at Mwanza this 5th day of April 2022, in the presence of the appellant in person, Ms Stella Sangawe Advocate for the appellant, Mr. James Kafuku, a family member of the respondent and Mr Pascal Court Clerk.



L. J. ITEMBA
JUDGE
05.04.2022