

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. 99 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal No. 163 of 2020 & originating from Namhula Ward Tribunal
Land Dispute No. 4 of 2020)*

EMMANUEL BARERE }
RINDEGE WASHA } **APPELLANTS**

Versus

MAGAGA CHACHA WISARE **RESPONDENT**

JUDGMENT

25.02.2022 & 25.02.2022

F.H. Mtulya, J.:

The appellants in the present appeal, Mr. Emmanuel Barere and Rindege Washa were jointly and together sued by Mr. Magaga Chacha Wisare (the respondent) at **Namhula Ward Tribunal** (the Ward Tribunal) in **Land Dispute No. 4 of 2020** (the case) for the land located at Kalukerere.

The appellants appealed against the decision of Ward Tribunal in the **District Land and Housing Tribunal for Mara at Musoma** (the District Tribunal) in **Land Appeal No. 163 of 2020** (the appeal) and finally in this court in **Misc. Land Case No. 99 of 2021**. Their main reason is that the land in dispute does not belong to them, but occupy, use and taking care of it on behalf of the real owner, Mr.

Barere Kidendei, their father. In their claim from the Ward Tribunal is that the land belongs to their father who occupied the land since 1996 as he was allocated by Kalukekere village authorities and has been occupying and using the land since then without any interruption by any person whatsoever. However, the appellants alleges that in 2020 they were sued in the Ward Tribunal in the case and informed the members in the Ward Tribunal on the real owner of the land, but the Ward Tribunal declined to consider their evidences without plausible explanation. The appellant prayed the same to the District Tribunal and before this court when they were invited for hearing on 25th February 2022.

I have scanned the record of this appeal and found that on 19th June 2020 when the dispute was scheduled for hearing at the Ward Tribunal the first appellant stated that:

*Mimi sitambui kama nimevamia shamba la huyu Mzee
kwa sababu shamba ninalima ni la Baba yangu ambalo
alligawiwa na Serikali ya Kujiji cha Kalukekere mwaka
1996. Eneo hili lilikuwa ni pori...*

On his part the second appellant contended that:

*Siyo kweli kwamba nimevamia shamba la Mzee Magaga
kwa sababu shamba ambalo nimelima ni la Mzee
Barere.... shamba hili Mzee Barere alikuwa analitumia*

tangu zamani na mpaka sasa kuna mipaka yake yote na hatujavuruga hiyo mipaka. Shamba hili tumeachiwa tu kwa kulitumia na kulilinda.

However, without inviting Mr. Barere as witness or party of the suit to defend the case against him, the Ward Tribunal on 8th July 2020 decided the dispute and declared the appellants as rightful owners. It stated that: *Shamba hilo ni mali halali ya wadaiwa Ndugu Emmanuel Barere na Rindege Washa.* The Ward Tribunal held so without taking any trouble to question the status or *locus standi* of the parties in the dispute. The reasoning of the Ward Tribunal is found at the third, but last page of the decision:

Katika kielelezo 1 cha wadaiwa kinathibitisha bila shaka kuwa eneo hilo lilikuwa wazi toka mwaka 1974 hadi 1996. Lilikuwa pori. Kamati ya Ustawi wa Jamii ilimgawia shamba hilo Mzee Barere Kidendei, Baba Mzazi wa mdaiwa wa kwanza na kuwa mali yake halali...

This decision dissatisfied the respondent hence preferred the appeal at the District Tribunal which noted the defects at page 4 of its judgment but declined to abide with the laws regulating *locus standi* and declared the respondent as a rightful owner of the land. The District Tribunal ordered further the respondent to occupy and use the land in dispute until when Mr. Barere Kidendei is called to

defend his case. This is one of the unfortunate decision in the circumstances like the present one. It is unfortunate because the law is settled and certain that lack of *locus standi* on either party amounts to illegality and may vitiate the lower tribunals.

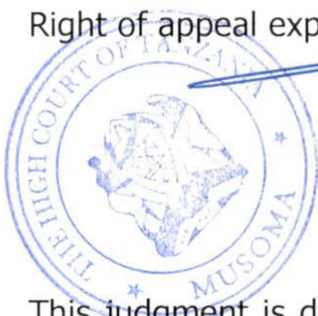
In the present appeal, it is vivid that there was illegality in the proceedings of the lower tribunals hence decisions emanated from the same proceedings cannot remain on record for want of proper record and cherish of the common law principle of *locus standi*. There is a large family of precedents which support the position (see: **Misana Masondere & Three Others v. Milengo Magesa**, Land Case Appeal No. 90 of 2021; **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; **Mwita Magongo v. Manyama Magesa Rwisu**, 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.

Having said so and noting this court has additional mandate to ensure proper application of laws under the powers in in sections 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**, Land Case Appeal No. 12 of 2021 & **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, and considering interest of justice, I have decided to set aside proceedings and quash decisions of the lower tribunals for want of proper record. Any interested party may institute proceedings in accordance to the laws regulating land disputes. I award no costs in this dispute as the parties are lay persons who initiated legal proceedings without following the legal procedures and were blessed by the lower tribunals. In any case, the dispute was not resolved to its finality.

It is so ordered.

Right of appeal explained.




F.H. Mtulya

Judge

25.02.2022

This judgment is delivered in Chambers under the seal of this court in the presence of the appellants, Mr. Emmanuel Barere and Mr. Rindege Washa and in the presence respondent, Mr. Magaga Chacha Wisare.


F.H. Mtulya

Judge

25.02.2022