

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPEAL NO. 57 OF 2020**

**(C/F Complaint No. 3 of 2019 at Kiranyi Ward Tribunal, Land Appeal No. 87 of 2019 in the District Land and Housing Tribunal for Arusha at Arusha.)**

**OMARI MBWANA.....APPELLANT**

**VERSUS**

**DANIEL LOISUJAKI.....RESPONDENT**

**JUDGMENT**

**06/10/2021 & 27/01/2022**

**GWAE, J**

This is a second appeal by the appellate. It emanates from the decision of Ward Tribunal of Kiranyi within Arumeru District in Arusha (Trial tribunal) in which the respondent, Daniel Loisujaki successfully sued the appellant, Omari Mbwana for a trespass over a piece of land which he alleged to be his.

The appellant was dissatisfied with the trial tribunal decision, he thus unsuccessfully appealed to the District Land and Housing Tribunal (Appellate Tribunal). The appellate tribunal held among other things that; the trial tribunal had jurisdiction since there was not tangible evidence that the suit

land worth Tshs. 5,000,000/= and that, the appellant was properly sued by the respondent in the trial tribunal as necessary party as opposed to the seller, a proper party

Still Aggrieved, the appellant appealed to the court armed with four (4) grounds of appeal namely;

1. That, the learned Chairperson erred in law and in fact for upholding the decision of the ward tribunal and declare the respondent as the lawful owner of the disputed land without considering the appellant to be the lawful purchaser of the said land as the result he pronounced a shameless decision.
2. That, the Chairperson erred in law and in fact in applying the case of **Juma B. Kadala vs Laurent Mnkande** [1983] TLR 103 which among other things supported the appellant contention; as the result the first appellate tribunal delivered a bad decision.
3. That the Chairperson erred in law and in fact for opined that the appellant was properly sued though he had already sold the land to another person without considering that the appellant also bought the same from another person who was not joined and or sued much as the appellant herein as the result a shoddy decision was pronounced.
4. That the appellate tribunal erred in law and in fact for dismissing the appeal while the trial tribunal had no pecuniary

jurisdiction to entertain the matter before it as a result a bad decision was pronounced.

Before going to the merit of the appeal, this court finds it imperative to give brief background giving rise to this dispute between the parties, it is as follows; that, on the 19<sup>th</sup> January 2015, the appellant and one Monica Loisujaki Mollel entered into a contract of sale of a parcel of land measuring 10 x 8 paces (Suit land) playing a role of buyer and seller respectively. The sale price of the suit land was at the rate of Tshs. 1, 500,000/=. That, it had been the contention by the appellant and seller (respondent's young sister) that, the said Monica primarily sold the suit land to the appellant in order to cover the medical expense in favour of her late father who was by then seriously sick and admitted.

The records further show that during the sale of the suit land by the respondent's sister, there were witnesses including, the respondent's sisters (Rebeca Loy Mollel and Helena Loy Mollel) as well as ten cell lead and village authority but the respondent was not present as he was in Kenya. That, after the death of the respondent's late father, the respondent came to learn that the suit land was trespassed by the appellant.

When the matter was called on for hearing before me, the appellant was represented by Mr. Richard Manyota from Legal and Human Rights Centre, the respondent on the other hand appeared in person unrepresented. With the leave of the court the appeal was disposed of by way of written submissions which I shall consider them while determining the grounds of appeal.

However, upon my careful perusal of the records of the lower tribunals and parties' submission, I have come to learn that the locus standi of the respondent who initiated these proceedings is questionable as a result I postponed writing judgment to wait for the parties to address the court on the issue of the respondent's locus standi.

Addressing the court, the appellant told that, the court that the previous owner of the land in question were the respondent's parents but the respondent instituted the matter without the consent of his parents that is why there were misunderstandings within the family adding that the suit land is currently owned by one Magwere Mussa whereas the respondent admitted to have filed this matter in personal capacity.

I now turn to the issue whether the respondent had locus standi in instituting the land dispute in the trial tribunal. The issue of locus standi, in my considered view, is very important as far as institution of cases in courts of law is concern. Without it, person who has no interest in a property would effectually institute a case against another as doing so would eventually yield chaos and even endless of litigation in our courts. Therefore, locus standi in private litigation is very important unless and until when a case is all about a constitutional litigation or any other matter of public interests (See **Magambo J. Masato and 3 Others v. Esther Amos Bulaya**, Civil Appeal No. 199 2016 (unreported CAT-full bench).

Though the doctrine of Locus standi is governed by common law yet our courts and tribunals have to ensure that the one who files a case has locus standi to parcels of the land customarily owned since by doing so it will assist the court to declare a person as a lawful owner of the suit land in exclusion of others or declaring a person (administrator or executor) suing in the capacity of a deceased person or suing as next kin or representing a group of persons (representative suit). This legal position has consistently been emphasized in a chain of judicial decisions for instance in **Lujuna Shubi Balonzi Senior v. Registered Trustees of CCM** (1996) TLR 213,

**Oysterbay properties and another v. Kinondoni Municipal Council and others**, (2011) 2 EA 315).

In our case, the parties have admitted that the respondent was not the owner of the suit land except the respondent's parents. Therefore, it is certainly clear that the respondent lacked locus standi when instituting the case unless he had exhibited letters of administration of his late father or he had in his possession a family letter authorizing him to sue on behalf of his family which is not the case.

An Issue of suing a person who has locus standi is very pertinent in litigation since by suing a person who has no locus standi or who is a dead person may render a decree ineffectual or inexecutable (see **Lujuna Shubi Balonzi, Senir vs. Registered Trustee of Chama Cha Mapinduzi, CCM** (1996) TLR 203. For instance, if the appellant is left being declared by our courts as lawful owner of the suit land whilst the suit land is the property of the deceased and his widow (PW2, Maria Naibala) whose evidence was to the effect that, the respondent is her son and the suit land is hers ("Daniel ni mtoto wangu na neo nil langu"). The respondent will obviously be a lawful owner of the disputed land in exclusion of other children of PW2 which may probably cause to multiplicity of other land cases.

More so, I am of the decided opinion that, as was rightly complained by the appellant that, the trial tribunal wrongly ordered the said Monica Mollel to refund Tshs. 1,500,000/=in favour of the appellant since she was not a party to the proceedings. Being a mere witness, in increasingly view, does not make a person to be a party to the proceedings. Worse still, the one who is in actual possession the suit land as per the appellant is one Mangwere Mussa has not bee joined

In the upshot, exercising the revisional power vested to the court under section 43 of Cap 216, the proceedings, judgment and any ancillary orders of the tribunals below are quashed and set aside accordingly. The respondent's family is advised to convey the family meeting to appoint an administrator of the respondent's late father or the family authorizes the respondent to institute the dispute in writing. And in order to make a decree of a tribunal to be effectual in future, let the buyer, seller and one in actual possession be sued jointly before a tribunal of competent jurisdiction. Given the fact that, the dispute is involving siblings, I refrain from ordering costs of this case

Order accordingly.



  
**M. R. GWAE,**  
**JUDGE**  
**27/01/2022**