

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**Misc. LAND CASE APPEAL No. 107 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in  
Land Appeal No. 104 of 2020 & Originating from Rabour Ward Tribunal in  
Land Dispute No. 6 of 2020)*

**LABAN AIRO ..... APPELLANT**

**Versus**

**OLWERO OBONYO ..... RESPONDENT**

**JUDGMENT**

07.03.2022 & 07.03.2022

Mtulya, F.H., J.:

On 16<sup>th</sup> March 2020, **Rabour Ward Tribunal of Rorya District in Mara Region** (the ward tribunal) was convened to determine **Land Dispute No. 6 of 2020** (the case), between Mr. Laban Airo (the appellant) and Mr. Olwero Obonyo (the respondent). On that date during statement recording the appellant stated, as reflected at page 36 of the typed proceedings, that: *sababu iliyonileta Barazani nimemlalamikia ndugu Olwero Obonyo kwa kuvaumia eneo la Airo Obonyo, ambaye ni marehemu* whereas the respondent on his part replied that: *Mimi maelezo yangu ni kwamba shamba ni la babu yangu. Baada ya kufa walikabidhiwa vijana wake wanne. Kila mmoja ana eneo lake pale. Mimi kama mmoja walinikabidhi kulinda eneo.*

After full hearing of the case, the ward tribunal decided in favour of the appellant. This decision dissatisfied the respondent who decided to approach the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) in **Land Appeal No. 104 of 2020** (the appeal) which was decided in favour of the respondent. The tribunal in its decision, at page 3 of the typed judgment, noted the defects on *locus standi* of the parties, but declined to tackle the issue of illegality for want of *locus standi*, instead it declared the respondent as a rightful owner of the land. The decision of the district tribunal did not satisfy the appellant hence preferred the present appeal and registered four (4) complaints in this court. However, after a thorough perusal of the record, this court noted the issues of *locus standi* as is shown in the typed proceedings of the ward tribunal in page 36 & 39 and decision of the district tribunal as is displayed at page 3.

As both tribunal below declined to determine the issue of *locus standi*, this court raised it *suo moto* and invited the parties to submit on the subjects, as part of right to be heard enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and cherished in the precedents of **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251 and **Judge In Charge, High Court at**

**Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44.

In his brief submission, the appellant stated that it is correct that they do not have *locus standi* and prayed to go back to his clan leaders and request them to convene a clan meeting to propose appointment of an administrator of the deceased's estates, the late Mzee Airo Obonyo. On his part, the respondent decided to invite Mr. Onyango Otieno, learned counsel, to argue the matter and submit on the issue of *locus standi*. In his submission, Mr. Onyango submitted that the parties had stated all in the ward tribunal and mentioned original owner of the land. To his opinion the proceedings may be set aside and decision quashed to avoid continuous and multiplicity of suits on the same land. Mr. Onyango, finally stated that after finalisation of the legal matters, any party may prefer an application to appropriate forum with authority to decide land disputes.

I entirely agree with the learned mind in Mr. Onyango and the appellant. The present dispute was initiated, heard and determined to the finality by the lower tribunals without proper parties. In 1996 this court imported the common law principle of *locus standi* in the decision of **Lujuna Shubi Balonzi v. Registered Trustees of Chama**

**Cha Mapinduzi** [1996] TLR 203, and stated that: *locus standi* is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The statement remain undisputed to date and this court cannot depart from its previous statement, unless there are good reasons. In any case, there is currently plenty of precedents in favour of the position (see: **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).

I am equally aware that clan of family members in our laws may initiate proceedings or defend suits against their clan or family lands. However, the same must be in accordance to the law, especially when the property in dispute belonged to the deceased. Failure to that, the issue of *locus standi* may crop up at any stage of proceedings and since the issue relates to legality of the matter, may vitiate proceedings from the start of the dispute.

In the present appeal, it is obvious that there is improper application of the laws regulating *locus standi* in our lower tribunals and cannot be allowed to remain on record. This is a court of law and has additional duty to ensure proper application of the laws (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**, Land Case Appeal No. 12 of 2021 & **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

Having said so, and considering both parties had no *locus standi* in both tribunals below, I have decided to quash the decision and set aside the proceedings of the lower tribunals for want of proper record of the court. Any interested party may initiate fresh and proper suit in a competent body entrusted with determination of land disputes, in accordance with the laws regulating land and *locus standi*. I order no costs as the fault was caused by the lay persons and blessed by the tribunals below.

Order accordingly.



F. H. Mtulya

**Judge**

07.03.2022

This judgment was delivered in Chambers under the seal of this court in the presence of the appellant, Mr. Labani Airo and in the presence of the respondent, Olwero Obonyo and his learned counsel, Mr. Onyango Otieno.



F.H. Mtulya

**Judge**

07.03.2022