

**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. 112 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Application No. 77 of 2020)*

NYARUFUNJO KIRONGO ----- APPELLANT

Versus

NYANYAMA MAGESA MAFURU ----- RESPONDENT

JUDGMENT

09.03.2022 & 09.03.2022

Mtulya, F.H., J.:

On the 5th day of May 2020, Nyanyama Magesa Mafuru (the respondent) sued Nyarufunjo Kiringo (the appellant) at the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 77 of 2020D** (the application) for a piece of Land located at Nyamagera hamlet within Nyegina village of Nyegina Ward in Musoma District of Mara Region.

During the hearing of the case on the 9th day March 2021, as displayed at page 9 of the typed proceedings of the tribunal, the appellant is recorded to have said that: *the previous owner of the land was my grandmother, one Nyamagere Futela. She was allocated the land by village council in 1975. The death of my grandmother [occurred] in 1994....*This statement was noted by this

court and *sou moto* raised it before the learned counsels of the appellant and respondent Mr. Emmanuel Gervas and Mr. Godwilly Mweya, respectively, when the suit was scheduled for hearing today afternoon. The learned counsels were invited to state on the legal status of the statement, as part of the right to be heard enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251.

In brief reply of the raised issue, Mr. Gervas submitted that the proceedings and evidence tendered in the tribunal show that the land in dispute belong to the deceased, Nyamagere Futela and the appellant was sued in his individual capacity without any *locus standi*. To his opinion, and for the interest of justice, the proceedings and decision in the tribunal be quashed in favour of proper record of this court as the dispute should have not proceeded any further without first determining the point of *locus standi* as it was stated in the case of **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203.

On his part Mr. Godwilly did not protest the submission registered by Mr. Gervas save for difficulties involving in appointing

administrators of estates of deceased persons. Finally, he prayed this court to maintain the order of the tribunals so that the respondent can occupy and use the land in dispute pending appointment of the administrator of the estates of the deceased, Nyamagere Futela.

I have heard the learned minds and all are in consensus that the suit before the tribunal was supposed to end since when the appellant alleged that the land does not belong to him but his grandmother, Nyamagere Futela who expired in 1994. I am aware of many available precedents that hold lack of *locus standi* vitiates proceedings and decisions of courts and tribunal (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; **Misana Masondere & Three Others v. Milengo Magesa**, Land Case Appeal No. 90 of 2021; and **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** (supra).

With the remedies available in such cases, the practice shows that the proceedings are set aside and decisions quashed as they originated from nullity proceedings. In any case, this court is empowered with additional mandate to ensure 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 **Misana Masondere & Three Others v. Milengo Mageza** (supra); **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.

In the final analysis, I have decided to quash the judgment and set aside proceedings of the tribunal in the application, as I hereby do. Any interested party who wish to initiate fresh and proper suit, may do so in competent forum in accordance to laws regulating *locus standi* and land matters. I award no costs in the present appeal for various reasons. First, the fault was caused by the parties and blessed by the tribunal in the application on 9th March 2021 when it cropped up; second, the learned counsels, Mr. Gervas and Mr. Mweya acted as officers of this court in putting record of this court right; and finally, the dispute between the parties was not resolved to its finality on merit.

It is so ordered.

Right of appeal explained.



A handwritten signature in blue ink, appearing to read "F. H. Mtulya", with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

09.03.2022

This Judgment was delivered in Chambers under the seal of this court in the presence of the respondent, Nyanyama Magesa Mafuru and his learned counsel Mr. Goodwilly Mweya and in the presence of the appellant's learned counsel Mr. Emmanuel Gervas.

A handwritten signature in blue ink, appearing to read "F. H. Mtulya", with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

09.03.2022