

**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. 86 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 131 of 2020 & Original from Busambara Ward
Tribunal in Land Case No. 23 of 2020)*

MBASA CHITATA ----- APPELLANT

Versus

NOSI WARYOBA ----- RESPONDENT

JUDGMENT

16.03.2022 & 16.03.2022

Mtulya, F.H., J.:

On 25th June 2020, the **Basambara Ward Tribunal** (the tribunal) located at Musoma municipality was convened to hear and determine **Land Dispute No. 23 of 2020** (the dispute) between a son of Mzee Paulo Chikaka (the deceased), named Mr. Mbaso Chikaka (the appellant) and a daughter of Mama Bhoke Mgasa (the late Mama Bhoke), called Ms. Nosi Waryoba (the respondent). When the parties in the dispute were invited to register relevant materials in the case, they both claimed the land belonged to their parents, the deceased and the late Mama Bhoke, who were not parties or called in the dispute to testify.

The appellant on his part, as reflected at page 2 of the proceedings, conducted on 25th of June 2020 in the tribunal, he

claimed that: *Mimi namlalamikia Nosi Waryoba na Wenzake kukatalia kiwanja cha Baba yangu*, whereas the respondent on her part, as reflected at page 4 of the proceedings of the tribunal, conducted on 25th June 2020, she claimed that: *the land belongs to Mama Bhoke Mgasa, who had bought the land from Mzee Paulo Chikaka in 1993 at the rate of Tanzania Shillings Twenty Eight Thousands Only (28,000/= Tshs.) paid in two instalments.*

This court, noting the need of *locus standi* and silence on the part of the disputants to provide evidence on letters of administration of estates of the deceased persons, Mzee Paulo Chikaka and Mama Bhoke Mgasa, decided to invite the learned minds of Mr. Emmanuel Werema, who represented the respondent and Mr. Amos Wilson, who appeared for the appellant to submit on the issues, as part of cherishing the right to be heard as enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and directed by the Court of Appeal in the precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, [2003] TLR 251; **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018 and **Ponsian Kadangu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018).

It was fortunate in the present application both learned advocates were well aware of the enactment in section 66 of the **Advocate Act** [Cap.341 R.E.2019] which require learned counsels to be officers of this court and assist the court in arriving at justice to the parties safely and secure. Mr Wilson conceded that there are points of law which need to be addressed from the materials registered by the parties in the dispute. In his submission, Mr. Wilson stated that: first, the appellant filed the dispute as an individual person without evidence of a letter of administration of the estates of the deceased; second, the applicant claimed the land is currently occupied by the respondent and other persons [*wenzake*]. However, the so called *wenzake* were not mentioned in terms of names or joined in the dispute; and finally, the respondent also said she is disputing on her mother's land contrary to the law on *locus standi*.

With remedies available in such circumstance, Mr. Wilson submitted that the proceedings from the first day of the dispute when the parties registered the materials were a nullity which also renders any orders and decisions emanated from the tribunals to be at faults. Mr. Wilson finally prayed this court to nullify the proceedings and quash decisions of the lower tribunals from the first

day of the hearing of the dispute. This submission of Mr. Wilson was received well and supported by Mr. Werema for the respondent.

I perused and noted the defects on record and took steps to invite the learned minds to cherish the right to be heard as enacted in the Constitution and precedents of the Court of Appeal. It was fortunate that the learned minds were well aware of the law in *locus standi* and available remedies in circumstances like the present one, I think I have to join them hands in their submissions, unless there are good reasons to the contrary. I have no any sufficient reasons to fault their opinions.

It is obvious from the facts that the law regulating *locus standi* requires those with interest to initiate proceedings in courts, and failure to that, the whole proceedings shall be vitiated. That is the practice and directives of our courts of record (see: **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203); **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; and **Mwita Magongo v. Manyama Magesa Rwisa**, Misc. Land Case Appeal No. 68 of 2021).


The present parties were in land ownership dispute which is vividly claimed to have been in the hands of their parents. I may wish to decline in declaring any of the present parties the same land

to avoid multiplicity of suit and cherishing proper application of the laws (see: (see: section 42 & 43 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (Act) and precedents in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021; and **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017.

Having said so, I have decided to quash all decisions and orders, and set aside proceedings in both tribunals below for want of proper record of the court. I award no costs as the parties initiated and engaged in the dispute up to this level as lay persons and their wrong was blessed by the two tribunals below. Any interested party in the disputed land may wish to initiate fresh and proper proceedings in a competent body in accordance to the laws and practice regulating land disputes.

Ordered accordingly.




F. H. Mtulya

Judge

16.03.2022

This judgment was delivered in chambers under the seal of the court in the presence of the appellant, Mr. Mbaso Chikaka and the respondent, Ms. Nosi Waryoba and in the presence of their learned counsels, Mr. Emmanuel Werema and Mr. Amos Wilson.



F. H. Mtulya

Judge

16.03.2022