

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MUSOMA DISTRICT REGISTRY**  
**AT MUSOMA**  
**MISC. LAND APPEAL NO. 93 OF 2021**  
*(Arising from Land Appeal No. 230 of 2020 in the District Land and Housing  
Tribunal for Mara at Musoma)*

**BETWEEN**

**SAMSON KUSAGA MAFWIRI..... APPELLANT**

**VERSUS**

**DEBORA OBADIA KUSAGA MAFWIRI..... RESPONDENT**

**JUDGMENT**

*21<sup>st</sup> & 29<sup>th</sup> March, 2022.*

**A. A. MBAGWA, J:.**

This is a second appeal which emanates from the District Land and Housing Tribunal in Criminal Appeal No. 230 of 2020. The appellant and respondent are relatives. The appellant, Samson Kusaga Mafwiri is a brother in law of the respondent in the sense that the respondent is a widow of the appellant's brother. The appellant successfully instituted a land dispute against the respondent in the Ward Tribunal for Saguti Ward.

The respondent, Debora Obadia Kusaga Mafwiri was dissatisfied with the decision of the trial Ward Tribunal hence she appealed to the District Land and Housing Tribunal for Mara (the appellate Tribunal). Upon hearing of the

appeal, the appellate Tribunal found the appeal with merits and therefore overturned the decision of the Ward Tribunal. In addition, it proceeded to declare the respondent a lawful owner of the suit land.

The appellant, Samson Kusaga Mafwiri was not amused by the appellate Tribunal's decision. He thus came to this Court to challenge it. The petition of appeal contained complaints which could be condensed into one main ground namely, that the complainant Samson Kusaga Mafwiri who instituted the case in the Ward Tribunal had no locus standi.

When the matter came for hearing, Mr. Amos Wilson, learned counsel appeared for the appellant whilst the respondent was represented by John Manyama, learned counsel.

Mr. Amos Wilson faulted the appellate Tribunal for declaring the respondent a lawful owner of the land in dispute despite its findings to the effect that the appellant had no locus standi. He submitted that since the appellant had no locus standi, the proceedings before the Ward Tribunal and subsequently before the appellate Tribunal were incompetent. The appellant's counsel beseeched this court to nullify the proceedings before the two lower Tribunals and set aside the resultant judgments.

Mr. John Manyama, counsel for the respondent did not oppose the appeal. He admitted that based on what is reflected on record, the appellant had no locus standi to institute the case. In addition, Mr. Manyama said that even the quorum of the Ward Tribunal was not duly constituted. He stated that the quorum did not indicate gender of the sitting members. Manyama submitted that by looking at the members' names, it appears that there were only two female members contrary to the dictates of section 11 of the Land Disputes Courts Act. He opined that the appropriate course to take was to nullify the proceedings of the lower Tribunals.

I have had an occasion to navigate through the record of appeal together with the unanimous submissions by the counsels. It is common cause in the evidence that the appellant, Samson Kusaga Mafwiri who instituted the case in the Ward Tribunal testified that the land in dispute belongs to his father. This is discerned from his testimony on 10<sup>th</sup> September, 2020. More so, on 17<sup>th</sup> September, 2020 the complainant's witness one Mzee Mangango stated before the trial Tribunal that he is the owner of the disputed land. Thus, as per the evidence on record, the land in dispute belongs to Mzee Mangango but the case was instituted by his son Samson Kusaga Mafwiri.

In view of the above, it goes without say that the appellant Samson Kusaga Mafwiri had no right to claim in the disputed land for the same belongs to his

father Mzee Mangango hence he had no locus standi. This anomaly was also observed by the appellate Tribunal at page 3 of its judgment but, to my dismay, it proceeded to determine the appeal on merits.

Furthermore, the ward Tribunal was composed of five members namely, Eliud Majogoro, Elizabeth Magabilo, Muyenjwa Muyenjwa, Hellena Njegere and Kuni John. Unfortunately, the list does not indicate gender. Apparently, it is only two names which look feminine to wit, Elizabeth Magabilo and Hellena Njegere. This is to say that the quorum was falling short of the requisite number of three women contrary to section 11 of the Land Disputes Courts Act. As such, the whole proceedings became nullity.

That said and done, I hold that the appellant Samson Kusaga Mafwiri had no locus standi to institute the suit as such the proceedings before the lower Tribunals were a nullity. Similarly, the proceedings were conducted before an improperly constituted Tribunal. Consequently, I nullify the proceedings and set aside the judgments of the two lower Tribunals. Parties are at liberty to reinstitute the suit subject to the requirements of law.

The appeal is therefore allowed. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.

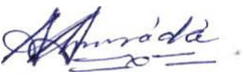


  
**A. A. Mbagwa**

**JUDGE**

**29/03/2022**

**Court:** This judgment has been delivered in the presence Magige Kusaga on behalf of the appellant and in the absence of respondent this 29<sup>th</sup> day of March, 2022.

  
**A. A. Mbagwa**

**JUDGE**

**29/03/2022**