

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 119 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Application No. 119 of 2015)*

SAMO KITENGERA APPELLANT

Versus

SOSPITER MWENGE MARWA

NYANSAMBO MARWA

}

..... RESPONDENTS

JUDGMENT

01.06.2022 & 01.06.2022

Mtulya, J.:

This court was invited today to determine an issue on *locus standi* in a land dispute between Mr. Samo Kitengera (the appellant) on one hand and Mr. Sospiter Mwenge Marwa & Mr. Nyansambo Marwa (the respondents) on the other, filed in **Land Appeal Case No. 119 of 2021** of this Court. The appellant had registered his first ground of appeal in the following words, in brief, that:

That, the learned chairperson erred in holding that the appellant had no locus standi to institute the suit.

The protest of the appellant was from the holding of the **District Land and Housing Tribunal for Mara at Musoma** (the

tribunal) in **Land Application No. 119 of 2015** (the application) in the third paragraph of page five of the judgment, that:

Katika mazingira haya mleta maombi anadai mali ya watu wengine. Hivyo, hakuwa na mamlaka ya kufungua na kuendesha shauri hili.

The reasoning of the tribunal is found at the same page in the second paragraph, that:

Hakuna ushahidi wowote uliotaka kuonesha kuhama kwa umiliki wa wazazi wake mleta maombi kwenda kwake.

Today morning, when the appellant was summoned to explain his ground of appeal, he abandoned other four (4) grounds of appeal in favour of the first. In his opinion, the record is obvious and certain that the disputed land belongs to him save for the complaint on *locus standi*. In explaining the first ground, the appellant briefly stated that the disputed land belongs to him and he was given by his mother, named Mama Perezia Mkami Kitengera in 1986. In order to bolster his argument, the appellant alleged that he was given in presence of his relatives and to date no any of the relatives is complaining on his ownership.

The submission was protested by the respondents, who hired and invited Ms. Mary Joakimu to argue the appeal. In her

submission Ms. Joakimu stated that the land belongs to Mama Perezia Mkami Kitengera who was marshaled in the tribunal as prosecution witness number three (PW3) and testified that the land belongs to her and nowhere he mentioned the appellant as rightful owner of the disputed land.

According to Ms. Joakimu, the appellant tendered allegations in the tribunal without proof of any evidence hence the tribunal declined to decide in his favour. In bolstering her argument, Ms. Joakimu cited the authorities of this court and Court of Appeal in **Rujuna Shubi Balonzi v. The Registered Trustees of the Chama cha Mapinduzi** [1996] TLR 203 and **Marwa Mahende v. Republic** [1998] TLR 249 contending that *locus standi* is important and any person who brings a matter in court of law should be able to demonstrate that his right or interest has been interfered.

However, in her turn on available remedies, Ms. Joakimu prayed this court to uphold the decision of the tribunal as the respondents have established their case in the tribunal. In her opinion, the respondents had tendered evidences and proved that they occupied the disputed land undisturbed since 1984. In order to justify her submission with the support of authorities, Ms. Joakimu stated that the law enacted in Item 22 Part I of the **Law of Limitation Act** [Cap 89 R.E. 2019] (the Law of Limitation) provides for twelve (12) years period of time limitation whereas the respondent have been in occupation of disputed land for more than

thirty (30) years. In a brief rejoinder, the appellant had a brief reply that the respondent were invitees and the Law of Limitation cannot apply in their favour.

I have glanced the record of this appeal and found that the appellant initiated the application in the tribunal on 29th September 2015 claiming ownership of land located at Mkiringo Sub-Village within Nyankanga Village in Butiama District of Mara Region against the respondents. In his testimony, as reflected at page 7 of the proceedings of the tribunal conducted on 14th November 2018 he declined to state on how he acquired the land. His important wording in the testimony were that: *the disputed land is mine. My parents stayed in it for a long time.*

One of his parents was marshaled as PW3 during the hearing of the application, and her testimony is reflected at page 14 of the proceedings of the tribunal conducted on 20th May 2020. She testified that:

The disputed land is mine and my husband Kitengera.

We were allocated by the village when Mwalimu Nyerere moved people from forests in 1986.

It is this evidence of PW3 which turned the course of the application hence the complaint on *locus standi* was registered in this court in search of proper record of the application in the tribunal. It is unfortunate that the record of the tribunal in the

application is silent on whether PW3 had given the land to the appellant or any evidence of transfer from PW3 to the appellant. I am aware that Ms. Joakimu prayed this court to declare the respondents as rightful owners of the disputed land for the reason of long stay, whereas the appellant protested on ground that invitees cannot enjoy the right enacted in the Law of Limitation. In such circumstances, this court cannot go into the details of the merit of the case in an obvious and vivid display of the appellant and PW3 at the tribunal in the application.

From the established practice of this court and the Court of Appeal, when one of the parties has no *locus standi*, an application before the tribunal and its associated proceedings become incompetent. This court as a court of law and justice. It cannot declare either party as a rightful owner of the land in an appeal stage originated from the incompetent application. That is the directive of our superior court, the Court of Appeal (see: **Ramadhani Omari Mbugani v. Asia Ramadhani**, Civil Application No. 173/12 of 2021)

The directive is now certain and settled and this court has produced a bunch of precedents on the subject (**Denis Kuboja Mbuge v. Loyce M. Wambura**, Land Appeal Case No. 44 of 2021; **Said Kahana Rwaki v. Nsanda Mshauri Sagire**, Misc. Land Appeal Case No. 3 of 2022; **Alfred Mawirei Odi Vs. Isack Onyango**

Ochuodho, Misc. Land Case Appeal No. 69 of 2021; and **Mwita Magongo Vs. Manyama Magesa Rwisa**, Misc. Land Case Appeal No. 68 of 2021).

In the end, I decline to declare either party in the present appeal as a rightful owner of the disputed land. This is a court of law and cannot cherish irregularities in cases filed in lower tribunals or courts (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021).

Having said so, I have decided to quash the decision of the tribunal in the application and set aside all proceedings from when the appellant initiated the application in the tribunal in favour of necessary standing. I do so under the authority of section 42 and 43 (1) (a) & (2) of the **Land Disputes Courts Act** [Cap 216 R.E. 2019].

I decline to order costs in the present appeal as the fault was caused by the appellant, but blessed by the tribunal enjoying legal minds of the learned counsels who appeared in the application and Chairman. In any case, I did not pronounce any of the party to be the rightful owner of the disputed land hence the contest may take new course in search of justice to the parties.

Ordered accordingly.

Right of appeal explained.



F. H. Mtulya

Judge

01.06.2022

This judgment was delivered in chambers under the seal of this court in the presence of the parties and in the presence of Ms. Mary Joakimu, learned counsel for the respondents.



F. H. Mtulya

Judge

01.06.2022