

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND APPEAL NO. 50 2022

*(Originating from Application No. 150 of 2020 of the District Land and Housing
Tribunal for Mbeya)*

MTWA MERIMERI MHEWA1ST APPELLANT

SINGA LAISON DUWALA2ND APPELLANT

VERSUS

ISRAEL MUJUNI MAMBO1ST RESPONDENT

ASACK B. MAMBO2ND RESPONDENT

RULING

Date of last order: 17th October, 2022

Date of judgment: 6th March, 2023

NGUNYALE, J.

In the District Land and Housing Tribunal for Mbeya at Mbeya the respondents successfully sued the appellants in application No. 150 of 2020 for trespass of the land located at Izumbi Village within District of Chunya in Mbeya Region. They prayed to be declared the lawful owners of the suit land, order to restrain appellants from interfering with the suit premises, general damage to the tune of Tsh. 50,000,000/, costs of the suit and any other relief. Their claim was that they bought the suit land from one John Mhewa in 1988 since then they have been using it for agricultural and mining activities. They alleged that in 2020 the appellants

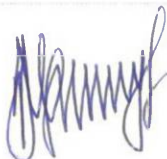


trespassed it. The first respondent testifies to hold power of attorney which was executed by the second respondent in his favour.

On the other hand, the appellants disputed the claim in their written statement of defence. They alleged that the suit land was given to the first appellant by his late father Merimeri Mhewa in 1970. They added that they have been using it for agricultural activities until in 2020 when the respondents invaded it.

In its decision the tribunal Chairman was satisfied that the respondents proved that they bought the suit land and have been in possession for long time. In addition, it found that evidence of the appellants that they were given was not proved by deed of gift and their evidence varied with pleadings. Eventually, the respondents were declared to be the lawful owners of the suit land. Aggrieved the appellants through Aman Angolwisye, learned advocate filed their memorandum of appeal containing five grounds of appeal, namely;

- 1. That the trial tribunal erred in law and fact when it held that, the respondents are lawful owners of the Disputed land.*
- 2. The trial tribunal erred in law and facts when abandoned the duty of evaluating the evidence of the appellant side.*
- 3. That the trial tribunal erred in law and fact when it issued injunction order against the appellants pending hearing of the main case while respondents failed to met the laid requirement of issuing the injunction.*
- 4. That the trial tribunal erred in law and fact when it failed to consider that John Mhewa had no power to sell the disputed land.*
- 5. That the trial tribunal failed to properly evaluate the evidence of the respondent as the result the judgment wrongly reflect the fact that the respondent got the whole disputed area by way of sale.*



When the appeal was called on for hearing the appellants were represented by Aman Angolwisye, learned advocate whereas the respondents enjoyed the service of Ladislaus Rwekaza assisted by Mbilu both learned advocates. The appeal was disposed through written submission. However, for the reasons that will be apparent soon, I find no pressing need to reproduce their submissions.

In the course of composing judgment, I noted some points of law to which the parties were invited to address the court, namely;

- 1. Whether the first respondent had locus standi based on the power of attorney filed on 10.08.2021 to institute and testify on behalf of the second respondent.*
- 2. What is the way forward on the noted shortcoming.*

When the proceedings were reopened, Ms. Jenipher Biko learned counsel appeared for the appellants, she submitted that the power of attorney did not authorise the first respondent to act for second respondent. She cited the case of **Monica Danto Mwansasu** (By Virtue of Power of Attorney of Atupakisye **Kapyela Tugalagha vs Israel Hosea**, Land Revision No. 2 of 2021. He added that the second respondent was not availed right to be heard, here he cited the case of **Asha Mohamed vs Anthony Masawe**, Civil Appeal No. 66 of 2022.

The respondents appeared through Mr. Mbiru learned counsel, he submitted that power of attorney executed by the second respondent authorised the first respondent to institute and prosecute the dispute under scrutiny. He added that this being the first appellate court have power to call additional evidence. He cited the case of **Ismail Rashid vs Mariam Msati**, Civil Appeal No. 75 of 2015 to support the point.



After considering the submission of the parties, I am now in the position to answer the issues raised. Starting with the first issue on *locus standi*. *Locus standi* is a principle which 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. *Locus standi* is a jurisdictional issue, it is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In the case of **The Registered Trustee of SOS Children's Villages Tanzania vs Igenge Charles & 9 Others**, Civil Application No. 426/08 of 2018, CAT at Mwanza (Unreported) the court stated

'a person whose rights or right has been infringed by another person can seek before the court a remedy or relief either personally or through an authorised agent In addition, if a person who brings action has no locus standi this puts to question the issue of the jurisdiction which must be considered at the earliest, be it by the parties or the court itself.'

From the above, the first respondent instituted and prosecuted the application in the Tribunal acting under power of attorney executed by the second respondent. He testified Isack (mdai Na. 2) ni mgonjwa, yupo Bukoba tangu Agost 2020. Alinipa nguvu ya kisheria msimamie shauri hili kwa niaba yake, exhibit P2. The law recognised suing under power of attorney, Order III rule 2(a) of the Civil Procedure Code [Cap 33 R: E 2022] provides that;

(2) The recognised agents of parties by whom such appearances, applications and acts may be made or done are-



(a) persons holding powers-of-attorney, authorising them to make appearances or applications and to do such acts on behalf of such parties.

According to the Black's Law Dictionary, 9th Edition, at page 1290 the power of attorney is defined as follows:

'1. An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. An ordinary power of attorney is revocable and automatically terminates upon the death or incapacity of the principal. 2. The authority so granted; specifically, the legal ability to produce a change in legal relationship by doing whatever acts are authorized.'

Flowing from the above definition, it is clear that a deed of power of attorney is executed by the principal in favour of the agent. In other words, by a deed of power of attorney, an agent is formally appointed to do all acts and deeds specified therein, on behalf of the principal, which when executed will be binding on the principal as if done by him. In the case of **Hauliers (T) LTD & Another vs Mohamood Mohamed Duale**, Civil Appeal No. 7 of 2018, CAT at Dar es Salaam (Unreported) the court stated;

'... the grant of a power of attorney is, in principle, no more than the grant of a form of agency. Here, we wish to emphasize that the scope of the power of attorney is for the agent to exercise such powers to the extent donated to him. He cannot use the power of attorney for his own benefit.'

Under scrutiny is the power of attorney executed on 10.8.2020 and admitted as exhibit P2 in the Tribunal. For better reference I have reproduced it in extenso;

SPECIAL POWER OF ATTORNEY

to **ALL WHOM THESE PRESENT SHALL COME**, I the undersigned **ISACK BIGILENYEMA MAMBO**, having permanent address at Mbeya but now in Bukoba.

This Power of Attorney is created this 2nd day of AUGUST 2020.



WHEREAS I am desirous of appointing an ATTORNEY to deal with my affairs in respect of my **Primary Mining Licence No. 001418SWZ located at Izumbi within Chunya District** due to sickness and oldness as I am unable travel and attend my affairs.

NOW THESE PRESENTS WITNESSETH: -

1. That, **I ISACK BIGILENYEMA MAMBO**, do hereby ordain, nominate and appoint **ISRAEL MUJUNI MAMBO** of Chunya Mbeya as my true and lawful Attorney for me and on my behalf in respect of the **said Primary Mining Licence located at Izumbi within Chunya District.**
2. That, the said Attorney shall have powers and authority to institute both civil and Criminal proceedings, to sign all documents on my behalf, to represent me any Judicial proceedings, to prosecute and defend any judicial proceedings on my behalf in Courts and tribunals or to conduct any negotiations related thereto, to accept service of, to enter appearance on my behalf in any judicial proceedings or before other officer whatsoever and for me and in my name to commence, defend and to conduct any action or other proceedings related to my affairs in respect of the **said Primary Mining Licence No. 001418SWZ.**
3. I declare that I have never given any order or Power of Attorney to any other person and that, if such person impersonates or alleges to have been appointed by me as my Attorney or agent in respect of the said Primary Mining Licence on the land located at Izumbi Chunya, I expressly revoke and cancel such order, Power of Attorney and or authorization and order the said Attorney to the needful.

IN WITNESS WHEREOF, the parties have set their hands on the date, month and year herein below appearing.

From the bolded part of the powers of attorney, there is nowhere indicated that the first respondent was given special power of attorney by the second respondent to lodge the application in the tribunal as it was testified. The power of attorney was for the first time disclosed when PW1 was testifying in the tribunal. The power of attorney is clear that the first respondent was mandated to deal with any matter concerning primary



mining licence No. 001418SWZ which is not the case here. Therefore, the purported special power of attorney is not supported by its contents as already elucidated.

Apart from the power of attorney being silence, the matter was not pleaded in the application. It should be noted that pleadings are the basis upon which the claim is founded, it is settled law that, parties are bound by their own pleadings and that any evidence produced by any of the parties which is not supportive or is at variance with what is stated in the pleadings must be ignored. I have perused the application filed by the respondents and nowhere they pleaded that the first respondent was holding power of attorney of the second respondent.

Even if it was to be assumed that the first respondent had power of attorney as the respondent's counsel would wish to hold, the same ought to be reflected in the title of the parties, that is the citation of the case has to indicate that he is suing under power of attorney. Flowing from the above I find that the first respondent had no *locus standi* to lodge and prosecute Application No. 150 of 2020 in the tribunal for himself and second respondent on the purported special power of attorney.

As for the remedy, the appellants' counsel prayed the proceedings and judgment of the tribunal to be nullified, the respondent had nothing to add, on his part the power of attorney was proper. Having considered the defects of the power of attorney, the same go to the very root of the status of the parties which rendered the application in the tribunal a nullity. The first respondent lacked *locus standi* to institute the case on behalf of the second respondent.



In the end, for the above given reasons, I therefore, nullify the proceedings, judgment, decree and any order emanating from the Application No. 150 of 2020. If the 1st respondent so desires, he may commence action as the agent of the second respondent in accordance with the dictates of the law. No order to costs as the matter was raised by the court *suo mottu*.

DATED at MBEYA this 6th day of February, 2023




D.P. Ngunyale
Judge

Ruling delivered this 6th day of March 2023 in presence of Jenipher Biko for the appellant and Lucia Richard for the respondents.


D.P. Ngunyale
Judge