

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 40 OF 2022

(From the District Land and Housing Tribunal of Babati, Land Appeal No. 44 of 2021,
Originating from Ward Tribunal of Ufana in Application No. 6 of 2020)

JOEL DEEMAY.....APPELLANT

VERSUS

KRISTIANI GWANDU..... RESPONDENT

JUDGMENT

17 & 27/04/2023

MWASEBA, J.

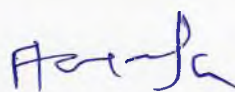
The appellant herein, Joel Deemay, filed an application at the Ufana ward tribunal claiming that the respondent herein closed a public road. On her side, the respondent denied the allegation and submitted that she did not close any public road and that the appellant already reported to the District Commissioner and the Ward Executive officer who visited *locus in quo* and decided that no public road was closed. They found that the respondent had all the documents to prove that she owns the land. After receiving the evidence from both parties, the trial ward tribunal decided that the claimed public road passes through the land of

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Gwandu Lohay, therefore, to avoid any dispute they decided to create another way behind the house of Gwandu Lohay.

The said decision of the trial tribunal did not please the respondent herein who successfully appealed to the Babati District Land and Housing Tribunal which nullified the proceedings of the trial tribunal for the reason that the secretary of the ward tribunal and ward executive officer were among the members of the tribunal and decided the dispute. Further, it was decided that the appellant herein had no *locus stand* to sue as he was neither a village chairman nor kitongoji chairman since the issue of public road is a public issue which involves the whole public in the village or kitongoji. Aggrieved by the decision of the 1st appellate court, the appellant is now before this court challenging the said decision based on the following reasons:

- 1. That, Hon. Chairman of the first appellate Tribunal erred in law and fact in finding that the appellant had no locus stand.*
- 2. That, Hon. Chairman of the first appellate Tribunal erred in law and fact in finding and guessing that the whole proceeding of the trial ward tribunal is a nullity on the ground that the secretary to the trial ward tribunal and ward executive officer participated and perhaps in delivering judgment.*

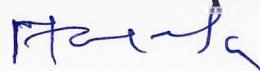


3. *That, the first appellate tribunal erred in law and fact in holding that the appellant did not follow the proper procedure in filing and hearing his claim under the Ward Tribunals Act, No. 7 of 1985 and the Land Disputes Courts Act, No. 2 of 2002.*
4. *That, the first appellate Tribunal erred in law and fact for failure to state the purported not followed procedure stated in paragraph 3 above.*

During the hearing of this appeal, which was done by way of written submissions, the appellant appeared in person unrepresented whilst Mr. Paschal Peter, learned counsel appeared for the respondent.

Starting with the first ground of appeal, the appellant complained that it was wrong for the 1st appellate court to rule out that he had no *locus stand* to file the application at the ward tribunal because he is the one who was affected most by the closure of the road. He supported his arguments with numerous cases including the case of **Attorney General vs Malawi Congress Party and Another**, Civil Appeal No. 32 of 1996.

Responding to this ground, Mr. Baraka, the learned counsel for the respondent submitted that, it was correct for the 1st appellate tribunal to rule that the appellant had no locus to sue at the trial tribunal since the right over a public way is not an individual claim but a public claim. He



submitted further that if the appellant needed that land, he could only negotiate with the respondent instead of filing an application at the ward tribunal as he did. Therefore, he prayed for this ground to be dismissed with costs.

Coming to the second ground of appeal, the appellant submitted that it was wrong for the 1st appellate court to nullify the proceedings of the trial tribunal for the reason that the secretary participated in the decision-making. He submitted further that as the secretary was the one who recorded all the evidence so his presence is inevitable and his name must appear in the column and that is a procedure in many wards' tribunals. However, the same does not mean he participated in the decision-making. Looking at the column of 22/11/2021 when a trial tribunal delivered his decision the secretary did not attend at all. Therefore, **Section 24(2) of the Ward Tribunal Act**, Cap 206 R.E 2002 was not violated.

Responding to this ground, Mr. Paschal, the learned counsel for the respondent argued that, it was correct for the 1st appellate tribunal to nullify the proceedings of the trial tribunal due to the act of the secretary of the tribunal to participate in the proceedings and decision-making contrary to the law. Thus, there is no merit on this ground.

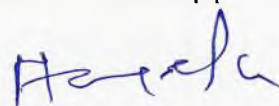
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As for the third and fourth grounds of appeal, the appellant submitted that the judgment of the 1st appellate tribunal did not meet the criteria of a good judgment as per **Regulation 20 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN No. 174 of 2003**. He argued further that the 1st appellate tribunal did not state which procedure was not followed and how it was violated. Thus, he prayed for the appeal to be allowed and for the decision of the 1st appellate court to be reversed.

Responding to these grounds, Mr. Paschal Peter, submitted that the 1st appellate tribunal was correct to rule out that the appellant did not follow the proper procedures as per the laws and prayed for these grounds to be dismissed. Therefore, he prayed for the appeal to be dismissed and the decision of the 1st appellate court to be upheld.

In a brief rejoinder, the appellant reiterated what he had already submitted in his submission in chief.

Having carefully considered the rival arguments advanced by the counsel for the parties and after having examined the record of the appeal, the main issue to be considered by this court in this appeal is whether the appeal has merit.



Starting with the first issue of *locus standi*, the appellant challenged the decision of the 1st appellate court nullifying the decision of the Ufana ward Tribunal since the appellant did not have *locus standi* to file an application in respect of the public road as he was neither the Village Ward Tribunal nor the Ward Executive officer.

In **Lujuna Shubi Ballonzi vs Registered Trustees of Chama Cha Mapinduzi**, Civil Case No. 214 of 1992 reported in [1996] TLR 203 (HC); where it was held that: -

"...in this country, locus standi is governed by common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court."

The same was held in the case of **Godbless Jonathan Lema vs Musa Hamis & 2 others**, Civil Appeal No. 47/2012, (CAT at Arusha, Unreported) the court of appeal approved the essence of *locus standi* as a matter of law, whereby it held that:

"Locus standi is a jurisdictional issue, it is a rule of equity 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 a sufficiently close relationship to it so as to give

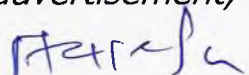
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a right which requires prosecution or infringement of which he brings the action."

In our present application, the appellant stated that he has interest as he is the one who is affected directly by the closure of the public road. However, he did not specify on how he is affected. The record shows that he was just challenging the closure of a public road and reported the matter to the ward tribunal. His interest was not shown clearly as he was neither the Village Executive nor Ward Executive Officer to file an application on behalf of the village. The said application was supposed to be filed by the village leaders or any person appointed to represent the village as mentioned herein above.

The same is provided under **Order 8 Rule 1 of the Civil Procedure Code**, Cap 33 R.E 2019 that:

"Where numerous person are having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested; but the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct."



See also the case of Director, **Rajani Industries Ltd vs Ally Kanuwa & 26 Others**, Civil Appeal No. 98 of 2009 (CAT at DSM, Unreported).

Thus, this court do subscribe to the decision of the District Land and Housing Tribunal of Babati that the appellant had *no locus stand* to file an application at the Ufana Ward Tribunal on behalf of the other villagers while he was not appointed as a representative.

In the upshot, the appeal before this court is with no merit and is hereby dismissed with costs.

Ordered accordingly.

DATED at **ARUSHA** this 27th day of April 2023.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE