

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MOROGORO

MISC. LAND APPEAL NO. 13 OF 2022

(Arising from the Decision of the District Land and Housing Tribunal for Kilosa, at Kilosa in Land Appeal No. 35 of 2017, Originating from the decision of Magomeni Ward Tribunal in Land Case No. 5 of 2016)

HASSAN MAULID KUNDUMU APPELLANT

VERSUS

DOTTO STIVIN MDABWA RESPONDENT

JUDGMENT

12th June, 2023

M. J. CHABA, J.


This is a second appeal. It emanates from Magomeni Ward Tribunal in Land Case No. 5 of 2016 where the respondent successfully sued the appellant over a parcel of land measuring one and a half (1 ½) acres situated at Masanze area, in Magomeni Ward, within Kilosa District.

Aggrieved, the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Kilosa, at Kilosa (the DLHT) which dismissed his appeal upon upholding the decision of the trial ward tribunal. Still aggrieved, the appellant has brought the instant appeal before this Court seeking to challenge the impugned decision on the following four (4) grounds of appeal: -



1. *That, this honourable chairperson erred in law and facts by not discussing the fourth ground of appeal which put in question the locus standi of suing the appellant herein.*
2. *That, the honourable chairperson erred in law and facts by holding that the disputed land is a family land without any proof given.*
3. *That, the honourable chairperson erred in law and facts by not giving the findings on the issues and reasons for the decision.*
4. *That, the honourable chairperson erred in law and in facts by concluding the fourth ground of appeal concerning the failure of the respondent to join a necessary party to the suit, that it had no merit and without giving reasonable reasons.*

At the hearing of the appeal, the appellant was represented by Mr. Jovin Manyama, the learned advocate while the respondent never entered appearance in Court in spite of being severally served with the respective summons and substituted summons as well, which were affected through a Local Newspaper called Mwananchi Newspapers dated 4th March, 2023, 22nd March, 2023, and 1st April, 2023 respectively. His absence forced this Court to hear and entertain the instant appeal against him without his presence (the matter proceeded ex-parte) under Order XXXIX, Rule 17 (2) of the Civil Procedure Code [CAP. 33 R. E, 2019] (the CPC). The appeal was disposed of by way of written submissions.



Submitting in support of the appeal, Mr. Jovin Manyama silently dropped the 4th ground of appeal and submitted on the remaining three grounds but seriatim. On the first ground, the counsel argued that the disputed land was located to Stivini Mdabwa (the respondent's father), who had already expired at the time the matter landed before the trial ward tribunal, hence the proper person to sue in respect of the land in dispute was Stivini Mdabwa (the respondent's father) and his wife, Monica Mtaa.

To reinforce and support his contention, Mr. Manyama placed reliance on the cases of **Lujuna Balonzi v. The Registered Trustees of Chama Cha Mapinduzi** [1996], TLR 203 and **Chama cha Wafanyakazi Mahoteli Mikahawa Zanzibar (Horau) v. Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019 CAT at Zanzibar (unreported). He went on substantiating that, Dotto Stivini Mdabwa, could only sue the appellant in the capacity of being a legal representative if could have followed the legal requirements. Failure of which, the respondent herein had no **locus standi** to sue the appellant at the ward tribunal.

Turning to the second ground, Mr. Manyama submitted that, neither the respondent's parents nor his family were parties to this appeal for the first Appellate Tribunal to rule in their favour. In his opinion, since it is a settled principle of the law that, parties are bound by their own pleadings, but the respondent's parents/family were not mentioned as parties to the matter in the



pleadings for them to benefit from the matter, thus an irregularity on the party of the respondent herein.

As to the third ground, the learned counsel contended that, the tribunal summarily rejected the grounds of appeal without re-evaluating the evidence on record and / or making specific finding on the grounds of appeal. To fortify his contention, the counsel referred this Court to Regulation 20 (1) (a) – (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003) which provides for the contents of a tribunal's judgment to validate a good and quality judgment. He submitted that, this provision of the law was well interpreted by the Court in the case of **Sheikh Ahmed Said v. The Registered Trustees of Manyema [2005] TLR 61**. He averred that, on the basis of the above cited precedent, the first Appellate Tribunal's Judgment did not meet the requirements of the law. He therefore, invited this Court to re-evaluate the evidence on record for a reason that, the first Appellate Tribunal failed to do so when it performed her duty at the first appellate stage.

Mr. Manyama ended to submit by praying the Court to quash and set aside both the trial Ward Tribunal and first Appellate Tribunal's Judgment, Decree and any other orders emanated therefrom.

I have dispassionately considered and weigh the submission advanced by Mr. Manyama, the learned counsel for the appellant. I have further reviewed and considered the records of both lower tribunals as a whole, and found out



that, the only issue which needs consideration, determination and decision thereon is, whether this appeal has merits.

In answering the **first ground** which touches on the issue of **locus standi**, I wish to be guided by the settled principle regarding **locus standi** as voiced by the Court of Appeal of Tanzania through numerous decisions in our jurisprudence. A good example is the case of **Godbless Jonathan Lema v. Musa Hamis and Two Others**, Civil Appeal No. 47 of 2012, Court of Appeal of Tanzania, sitting at Arusha, where the test for **locus standi** was deliberated in detail. The Court observed 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 sufficient dose relation to it so as to give a right which requires prosecution or infringement of which he brings the action."

The same stance was again taken by the Court of Appeal of Tanzania in the case of **The Registered Trustee of SoS Children's Villages Tanzania v. Igenge Charles**, Civil Application No. 426 of 08 of 2018, in which it borrowed a leaf from our neighbour in Malawi, in the case of **The Attorney General v. Malawi Congress Party & Another**, Civil Appeal No. 32 of 1996, and proceeded to articulate that: -

"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 another case of **Peter Mpalanzi v. Christina Mbaruka (Civil Appeal 153 of 2019) [2021] TZCA 510 (Tanzlii)**, the Court once again dealt extensively with the concept of locus standi, and elucidated that:

"Simply defined locus standi is the right or legal capacity to bring an action or to appear in a court. In Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi (1996) TLR, 203, Samatta, J., (As he then was) had the following to say on locus standi:

"Locus standi 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. The High Court has the power to modify the applied common law so as to make it suit local conditions."

Reverting to the present appeal, it is undisputed fact that, the respondent is not the legal owner of the suit land in dispute. This is so because, after a cautious scrutiny of the Court records including the handwritten proceedings of a trial Ward Tribunal, the respondent on being cross-examined by the appellant, he stated that the land in dispute did belong to his deceased's father. For clarity,



I find it imperative to quote the relevant passage from the proceedings of the trial ward tribunal which carries the evidence hinted above: -

*“.....**Hassan Kundumu**: Shamba ambalo unalilalamikia ulilipata vipi?*

***Dotto Stivini** : Shamba hilo ni la baba yangu mzazi ambaye alikuwa anaitwa Stivini Mdabwa ambaye amefariki tangu mwaka 2013.*

***Hassan Kundumu** : Wewe umekuja hapa kutoa malalamiko kama nani?*

***Dotto Stivini** : Nimekuja hapa kutetea shamba la baba yangu.....”.*

As it can be depicted from the excerpt above, it is apparent that the respondent instituted the case at the trial ward tribunal fighting for the parcel of land which he believed that the same was owned by his deceased's father. As the law stands, under section 71 of the Probate and Administration Act, [CAP. 352 R. E, 2019], it is only the lawful appointed administrator of the deceased's estate who has the power to sue or be sued in respect of the property allegedly to be owned by the deceased. For ease of reference, section 71 of the Probate and Administration of Estates Act (supra), provides that: -

"After any grant of probate or letters of administration, no person other than the person whom the same shall have been granted shall have power to sue or prosecute any suit or otherwise act as a representative of the deceased, until such probate or letters of administration shall have been revoked or annulled".



From the above cited provision of the law, the same is clear that the law (section) does not allow or even authorize a person to represent a deceased while he is not the administrator or administratrix of the estate(s) of the deceased. This provision of the law has been interpreted in various decisions pronounced by the Apex Court of the Land and this Court. [See the cases of **Kagozi Amani Kagozi** (An Administrator of the estate of the Late Juma Selemani) **v. Ibrahim Seleman**, Land Appeal No. 2 of 2019, and **Zuhura Bakari Mnutu v. Ali Athumani**, Miscellaneous Land Case Appeal No. 9 of 2015, HCT at Mtwara (All unreported). For instance, in **Tatu Adui v. Malawa Salum and Another** (supra), this Court held inter-alia that: -

"Only administrator of the estate who is also a personal legal representative of the deceased can sue or be sued over the estate."

What can be captured from the above-quoted decision is that, for a person to have **locus standi** to sue or to be sued on the estate of the deceased, he/she must be appointed by the Court to hold such capacity as an administrator / administratrix of the deceased's estate. Therefore, I am in accord with the learned counsel for the appellant that, since the respondent had no direct complaint(s) against the appellant, then it goes without saying that, at the material time had no **locus standi** to institute a case before the trial ward tribunal in his own capacity. It follows therefore that, the trial ward tribunal erred in law and fact upon entertaining the respondent's claim without inquiring

into the matter and properly evaluated the evidence tendered before it. In this regard, I find that this ground of appeal has merit.

Consequently, since the respondent had no **locus standi** to institute this case at the trial ward tribunal, for sure both decisions of lower tribunals cannot stand. For that, reason, I see no reason to labour on the remaining grounds of appeal because, this ground alone suffices to dispose of the entire appeal.

Having so determined, the next question is, what is the remedy and/or way forward for the parties to this case? As it is certain that the appellant was wrongly sued by the respondent at the trial ward tribunal, I proceed to quash and nullify the decisions of the DLHT for Kilosa, at Kilosa which upheld the erroneous decision issued by the Magomeni Ward Tribunal. In similar way, I declare the proceedings and the judgment of Magomeni Ward Tribunal in Land Case No. 5 of 2016 a nullity. Ordinarily, after quashing and nullifying the decisions of both lower tribunals, I would have ordered a re-trial of the matter before the same trial tribunal. However, presently the position of the law has changed. Under sections 45 and 46 of The Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, The Ward Tribunal does no longer have powers to determine land matters.

In the upshot and for the foregoing reasons, this appeal has merit and it is hereby allowed. A party who still wishes to pursue this matter may institute the suit afresh by or against the administrator / administratrix of the estates of the deceased pursuant to the current law. It is further the holding of this Court



that, for the interest of justice, the tribunal vested with the powers to entertain the matter shall discharge her duty in the presence of all parties. I make no order as to costs. **It is so ordered.**

DATE at MOROGORO this 12th day of June, 2023.


M. J. Chaba

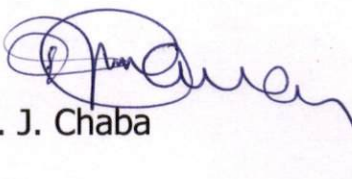
Judge

12/06/2023

Court:

Judgment to be delivered by the Honourable Deputy Registrar.




M. J. Chaba

Judge

12/06/2023