

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**MOSHI DISTRICT REGISTRY**  
**AT MOSHI**

**MISCELENEOUS LAND APPEAL NO. 07 OF 2022**

*(C/F Land Case Appeal No. 52 of 2020 before the District Land and Housing Tribunal  
for Moshi)*

**MAGRETH ELIBARIKI NDEKAO.....1<sup>ST</sup> APPELLANT**

**EVA NDEKAO.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**ABDALAH THOMAS NYOKA.....RESPONENT**

**JUDGMENT**

Last Order:06<sup>th</sup> June, 2023

Judgment:19<sup>th</sup> June, 2023

**MASABO, J.:-**

This is a second appeal. It originates from Mabogini Ward Tribunal, Moshi District in Kilimanjaro Region where the appellants, Magreth Elibariki Ndekeo and Eva Elibariki Ndekeo, were successfully sued over trespass into a parcel of land measuring three (3) acres the property of the respondent's mother one Madina Athuman. The Appellant's appeal to the District Land and Housing Tribunal for Moshi (the appeal tribunal) ended barren hence this appeal on the following grounds: -

1. That the appellate tribunal grossly erred in law and fact by failing to consider that the respondent did not have *locus standi*.
2. That, the appellate tribunal erred in law and fact by not ascertaining the actual suit land and boundaries.

3. That, the Appellate tribunal erred in law and facts in not faulting the act of the ward Tribunal visiting locus in quo before hearing of evidence was concluded.
4. That, the appellate tribunal erred in not finding that the Ward Tribunal acted without jurisdiction.
5. That, the appellate tribunal simply glossed over the judgment.

Brief facts of the case are that in 2019 the respondent went to the suit land to clear it. There he found an old man cutting trees in the suit land and when he asked him as to who allowed him to cut the same, he said it was Mama Paty. The Respondent informed him that he should tell Mama Paty that, he has found the son of the owner. Indeed, the old man told Mam Paty who in turn required him to stop doing anything on the land till the dispute is resolved. Thereafter, the matter was reported to the village Chairman where it resolved that the suit land belongs to the appellant.

The respondent was disgruntled, he instituted a land application in the Ward Tribunal. During hearing, he testified that; the land belongs to his mother who was given the same in 1982 by the then village government. The appellants on their part stated that the suit land belongs to their father who bought it from Juma Makarai in 1981. The trial tribunal found merit in the respondent's claims and granted his prayer. The appellants were aggrieved, they appealed to the District Land and Housing Tribunal alleging that the respondent had *no locus standi* sue them; the trial tribunal erred in not visiting the *quo* before finalising the hearing; the Ward Tribunal lacked jurisdiction and that

the Ward Tribunal decision lacked legal reasoning. The appeal was dismissed. Aggrieved further they lodged this appeal.

Hearing of this appeal proceeded in writing. The appellants had representation. They were represented by Ms. Elizabeth Minde, learned Counsel. The respondent had no representation. He fended himself. Both parties complied with the scheduling order by filing their submissions on time.

Submitting in support of the first ground of appeal, Ms. Minde argued that, when the Respondent instituted the claim before the Ward Tribunal, he had no *locus standi*. The record show that he filed the case representing his mother but the records are silent as to whether indeed his mother appointed him to prosecute the case. She argued further that, the first appellate tribunal in refusing the appellants' submission regarding the issue of *locus standi* referred to a letter dated 3/2/2020 appointing Abdallah. T. Nyoka the respondent to be her representative, the said letter is nowhere to be found in the trial tribunal's proceedings. She concluded that in absence of record in the proceeding showing appointment of the respondent raises serious doubts as when the said letter was received.

Submitting on the second ground of appeal, she said that, location and boundaries of the suit land was not identified. It was her argument that the respondent's claim was of three (3) acres of land but the record is silent as to which land constituted the suit land as no sketch map was drawn during the visit to the *locus quo*. Also, she submitted

that, the respondent and his witnesses namely S2, S3, S4 didn't state the boundary of the suit land. Consequently, the judgment remains vague as it does not indicate which land was disputed and what evidence supports the claim.

The complaint on the third ground is that the trial tribunal visited the *locus in quo* before hearing the parties. It was Ms. Minde's submission that, the visit was on 09<sup>th</sup> October 2019, whereas the appellant's case was heard on 5<sup>th</sup> March 2020 and 21<sup>st</sup> May 2020 respectively. The evidence of the respondent's witnesses was received on 4<sup>th</sup> June 2020. Consequently, the trial tribunal exposed itself to a danger of being a witness instead of being impartial. It was her submission further that, visiting *locus* should be done only when it is inevitable in order to clear doubts on issue of boundaries. He fortified her submission with the case of **Avit Thadeus Massawe vs. Isidory Assenga**, Civil Case No. 6 of 2017 and **Nizar M.H vs. Gulamali Gaizal Jan Mohamed** [1980] TLR 29.

On the issue of pecuniary jurisdiction of the Ward tribunal, she submitted that, the estimated value of suit land is Tshs. 9,000,000/= and not 3,000,000/=. She said that, since section 15 of the Land Court Dispute Settlement Act, Cap 216 provides that the pecuniary jurisdiction of Ward Tribunal is Tshs.3,000,000/=, the trial tribunal had no jurisdiction to determine the case subject to this appeal. In the foregoing, she prayed the court to nullify the proceedings on account of pecuniary jurisdiction.

On the last ground of appeal, she said that, the trial tribunal did not evaluate evidence adduced by each witness. Evidence adduced by S1, S2, S3, S4 didn't state as to who is the owner of the suit. She added that, the evidence of S2 is to the effect that, she saw the owner of the suit land one mama Josho in 1983-1985. She stated further that, the said mama Josho did not come again in the suit land. This fact was not considered. Another evidence not considered was the second appellant's evidence that they have been using the suit land for nineteen years that is from 1979-1998 and that the owner didn't visit or make a claim of said land. Conclusively, she prayed the appeal to be allowed with costs.

In reply on the first ground, the respondent submitted that the suit land is owned by his biological mother, the fact which was not objected by the appellants in their submissions. He proceeded that the fact which the appellants dispute is that he didn't present a power of Attorney to prove that he was authorised to act on behalf of his mother. It was his submission that, the requirement of formal and registered power of attorney is in accordance with section 8(1) of the Registration of Documents Act, Cap. 17 which is inapplicable in Ward Tribunals. On this he cited the case of **Joakim Lesuli vs. Barnabas Mallya**, Land Appeal No. 14 of 2020 (unreported). The respondent contended further that; a simple letter filed by the respondent in the ward tribunal was enough to represent his mother as this didn't occasion injustice on the part of appellants. Besides, the appellant had an opportunity, if he was prejudiced, to raise it in the ward tribunal but they did not. Hence, they cannot raise it at appeal stages.

It was the respondent's submission further that, the trial and appellate tribunal are not tied up by technicalities as per section 45 of the Land Disputes Courts Act, Cap. 216. He also argued the court to refer to overriding objective principle which calls on the courts to do away with technicalities. On the argument that the letter was inserted in the records when the issue of *locus standi* was raised, he argued that it is an afterthought and devoid of merit as it is not supported by any proof. The same should not be considered by this Court since the court is always guided by the records and not mere speculations presented by the parties.

On the second ground that the actual suit land and its boundaries were not ascertained, he submitted that, since the parties know the suit land and its boundaries and the same was not contested during trial, the complaint is baseless. Regarding the issue of visiting *locus in quo*, he submitted that, at any time the tribunal can visit the suit land. He contended that the appellants' complaint should not be considered as they have not stated how the tribunal became impartial after visiting the suit land before hearing the parties.

On the fourth ground of appeal, it was the respondent's argument that, the ward tribunal had pecuniary jurisdiction since the suit land was estimated to be Tshs. 3,000,000/=. It was his view that, if the appellants disputes this they could have tendered the valuation report disproving the estimated value. Submitting on the last ground of appeal, the respondent stated that the first appellate tribunal analysed the evidence by both parties and having found the respondent's

evidence heavier compared to that of the appellants, it ruled that the respondent proved the case to the required standards.

I have considered the submissions made by both parties as well as the records of the trial and the appellate tribunals and I am now in a position to determine the grounds of appeal. Before I determine them, let me state from outset that the two lower tribunals ruled in favour of the respondent. It is trite law that where there are concurrent findings of the lower courts, the second appellate court should not interfere with such consistent findings unless it is satisfied that there was misapprehension of evidence or miscarriage of justice or that an violation of principles of law has been occasioned (see the case of **Amratlal Damodar Maltaer & Another t/a Zanzibar Silk Stores vs. Jariwallat/a Zanzibar Hotel** [1980] TLR 31, **Samwel Kimaro vs. Hidaya Didas**, Civil Appeal No. 271 of 2018 (unreported) and **Fatuma Ally vs. Ally Shabani**, Civil Appeal No. 103 of 2009 (unreported). In the latter case, it was held that; -

Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, miscarriage of justice or violation of some principle of law or procedure. In other words, concurrent findings of facts by lower courts should not be interfered with except under certain circumstances.

Guided by the above position of the law, the issue is whether there was any misapprehension of evidence, miscarriage of justice or violation of principle of law or procedure. Starting with the first ground

on whether the respondent had the *locus standi* to institute land case No. 64/2020 at Mabogini Ward Tribunal. The law on *locus standi* is very clear as it has been litigated repeatedly in many cases. The landmark authorities, include **Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 and **Peter Mpalanzi vs. Christina Mbaruka** Civil Appeal No. 153 of 2019 (unreported). In the latter case which I extensively quote below, the Court of Appeal deliberated on the concept of *locus standi*, its rationale and the time at which it can be raised and resolved. It held thus:

Simply defined *locus standi* is the right or legal capacity to bring an action or to appear in court. In Lujuna Shubi Ballonzi vs. Registered Trustees of Chama cha Mapinduzi [1996] 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.

*Locus standi* is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it-see **Godbless Lema vs. Mussa Hamis Mkanga and Two Others**, Civil Appeal No. 47 of 2012(unreported). Further, *locus standi* is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised.



From these authorities, it is apparent that *locus standi* is one of the thresholds of instituting a suit. It has a bearing on the jurisdiction of the court or tribunal and much it is preferable that it be raised at the earliest opportunity, it can be raised and determined at any time in the proceeding and that includes in the second appeal such as the one at hand. If in the end it is established that when instituting the suit, the party had no *locus standi*, the suit shall be deemed incompetent and the proceedings thereto shall be vitiated as it would entail that the court/tribunal had no jurisdiction to entertain it.

Back to the case at hand, the tribunals' records and submissions by the parties show that the issue of *locus standi* was not raised in the ward tribunal. It was raised at the first appellate tribunal as the first ground of appeal. The first appellate tribunal ruled out that, the objection was unmeritorious as the respondent was appointed by her mother one Madina Athuman to represent her in the suit vide a letter written on 03<sup>rd</sup> February 2020. In line with the first appellate tribunal's finding, the appellants have argued and I agree with them that, as the matter originated from the ward tribunal the applicable law is section 17(1) and 18 of the Land Dispute Courts Act (Cap 216 RE 2019) section 13(1) of the Ward Tribunal Act which, read together, they regulate standing and representation before ward land tribunal. As per these provisions, an application before the tribunal may be commenced by a natural person or a corporate body and in the case of natural person, appearance before the tribunal may be made on his behalf by a relative or a member of a household.

The application from whom this application emanates was instituted by a natural person. It is not in dispute that, the person who instituted the application is not the owner of the suit land. He claims to have instated the same in the capacity of a representative of his mother one Madina Athuman. The immediate issue to be determined is whether the representation was in order. In answering this question, I have found the wisdom of the Court of Appeal in **Ramadhani Omary Mbuguni vs. Ally Ramadhani and Another**, Civil Application No. 173 of 2021 (unreported) quite illuminating. In this case, the Court had this to say regarding matters instituted under representative capacity;

It is now settled law that a party commencing proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing.

For matters originating from the tribunal such as the present one, there is yet one more requirement, namely obtaining a permission from the respective tribunal. The requirement is found under section 18(2) of Land Disputes Courts Act which provides as follows;

18(1). N/a

(2). Subject to the provision of subsections (1) and (3) of this section, a ward tribunal may permit any relative or any member of the household of any part to any proceeding, upon request of such party to appear and act for such party. [The emphasis is mine].

My scrutiny of the record to ascertain compliance have come up with two observations. First, the record is silent as to whether the said

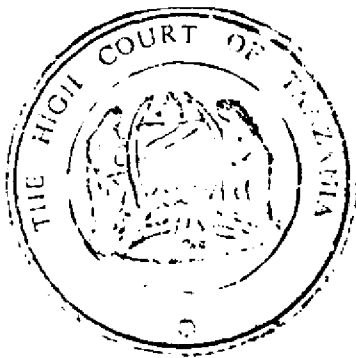
representation was pleaded at the institution of the application. At most it shows that, the letter by Madina Athuman from which the representative authority is inferred, was landed in the tribunal on 21/5/2020 whereas the application was instituted on 3/2/2020. Further revelation from the record is that, at the time when the letter was produced before the tribunal hearing of the application had commenced. Much it was still on the applicant case, the respondent who was the applicant had already testified as PW1 on 5/3/2020. Those who testified on and the respondent herein had already testified. Those who testified on 21/5/2020 were Issa Petro Msimba (PW2) and Filipo Mbaraga Kajjire (PW3), owners of the owners of farms neighbouring the suit land and Juma Haji Kisamo (PW3) a former Village Executive Officer who was involved in the allocation of the suit land. None of these appears to have produced the letter or said anything as regards the respondent's representative capacity. Be it as it may, the fact that representative capacity was not pleaded at the institution of the application is undisputed.

Subsequent to the above, the record is silent on whether the respondent obtained the permission of the tribunal to appear in representative capacity, a fact which suggests that the requirement for permission under section 18(2) of Land Disputes Courts Act was offended. The first ground of appeal is found meritorious and upheld. Having uphold the first ground of appeal, I see no need to proceed to the remaining ground as this sole ground is capable of disposing of the appeal as, in my considered view, the foregoing, constitutes a sufficient ground for interfering with the finding of the trial and appellate tribunal

as there appear to be a misconception of the law on *locus standi*, and in consequence, they entertained a matter which was incompetent for want of legal standing.

Accordingly, the appeal is allowed with costs. The proceedings, decisions, judgement and orders of Mabogini Ward Tribunal and the District Land and Housing Tribunal for Moshi are quashed and set aside.

**DATED** and **DELIVERED** at Moshi this 19<sup>th</sup> day of June 2023



A handwritten signature in black ink, appearing to read "J.L. MASABO".

**J.L. MASABO**  
**JUDGE**