

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**DODOMA DISTRICT REGISTRY**

**AT DODMA**

**MISCELENEOUS LAND APPEAL NO. 15 OF 2021**

*(C/F Land Case Appeal No. 95 of 2019 before the District Land and Housing Tribunal  
for Singida at Singida)*

**DANIEL ENOCK ..... APPELLANT**

**VERSUS**

**YONA JUMANNE.....RESPONDENT**

**JUDGMENT**

Last Order: 4<sup>th</sup> August, 2023

Judgment: 11<sup>th</sup> August, 2023

**MASABO, J.:-**

This is a second appeal. It originates from Puma Ward Tribunal, Ikungi District in Singida Region where the appellant, Daniel Enock successfully sued the respondent who allegedly trespassed his land. The respondent, aggrieved by the decision of the trial tribunal, appealed to the District Land and Housing Tribunal where the decision of the trial tribunal was reversed and he was declared the owner of the suit land. Displeased by the reversal, the appellant has filed this appeal on the following grounds:

1. That, the land tribunal erred in law and in fact to declare the respondent the legal owner while the appellant has had a customary title deed.
2. That, the land tribunal erred in law and in fact making a judgment basing on weak evidence that was adduced by the respondent.

On 24<sup>th</sup> July the appeal was scheduled for hearing. Only the appellant appeared before me. He prayed that the appeal be heard *ex parte* the respondent as he has on several occasions defaulted appearance and declined service. His prayer was granted and the appeal was forthwith heard *ex parte* the respondent.

Submitting in support of the appeal, the appellant stated that, the tribunal erred in declaring the respondent the owner of the suit land while it belonged to him. He argued that, his ownership was not disputed and the finding that it was mortgaged is not true as no evidence was produced to prove the same. It was his submission that, the respondent had no locus to stand in defence of the case as he is not the owner of the suit land hence there is no dispute between him and the respondent. The dispute if any on the suit land should have been between him and the respondent's parents who were the original owners of the suit land. If the respondent was the owner of the suit land, he ought to have produced his title to prove his entitlement and *locus* to sue. He insisted that, the land is his as he has a title evidencing his ownership and the same bears the stamp of Ikungi District authorities. In conclusion, he prayed that his appeal be allowed.

The brief facts of the case as discernible from the record are that, the appellant sued the respondent in the trial tribunal for trespassing his land. In his statement of claim, he just stated that "Namlalamikia Yona Jumanne Kwa kosa la kuingilia eneo langu bila idhini yangu" literally translated as "I am complaining against Yona Jumanne as he has unlawfully trespassed into my land". Later on, during his testimony as PW1, he stated that he

acquired the land from the respondent's father one Jumanne Nyonyi, now deceased, in 1980 and that, he was given the same as gift by the late Jumanne Nyonyi. After being granted the suit land he cleared it and started using it. Later on, he processed and was granted a customary title. When asked whether he had proof that the late Jumanne Nyonyi gave him the suit land, he responded that he had none.

On his part, the respondent stated that the land did not belong to him. It belonged to his late father the late Jumanne Nyonyi and after his demise, the suit land has passed over to his family on behalf of which he was defending the claims as a representative of the family. He stated that the appellant was using the suit land after it was sold to him by his late father, the late Jumanne Nyonyi in 2006. Later on, on 14<sup>th</sup> January 2012, the late Jumanne Nyonyi's family redeemed the suit land after paying the appellant a sum of Tshs. 420,000/= and from then, they reacquired ownership of the suit land and started tilling it. After hearing both parties, the trial tribunal found the appellant's case stronger than the respondent's case henceforth declared the appellant the lawful owner of the suit land a decision which was overturned by the appellate tribunal. Hence the present appeal.

I have considered the submissions made by both parties as well as the records of the trial and the appellate tribunal. I am now in a position to determine the appeal. Before moving on to the two grounds of appeal, I prefer to start with the issue of *locus standi* which the appellant has raised in the course of his submission. Much as I understand that the law forbids the appellant to argue in support of a point not set out in the grounds of

appeal (Order XXXIX rule 1(2) of the Civil Procedure Code, Cap 33 RE 2019), I have found it imperative for this court to address and determine this point although it was not expressly set out in the grounds of appeal and the appellant neither sought nor obtained any leave from this court allowing him to submit in respect of the said point. My inspiration for departure is derived from the nature and bearing of the point raised.

*Locus standi*, conceptually understood as the right to seek a remedy/institute a proceeding or to defend a right before a court of law (**Chama Cha Wafanyakazi Mahoteli Na Mikahawa Zanzibar (horau) vs Kaimu Mrajis Wa Vyama Vya Wafanyakazi Na Waajiri Zanzibar, Civil Appeal No. 300 of 2019**, CAT (unreported) has been acknowledged and termed a jurisdictional issue. Citing with approval the decision of the Malawi Supreme Court of Appeal in **The Attorney General v. The Malawi Congress Party & Another**, Civil Appeal No. 32 of 1996, the Court of Appeal of Tanzania in **Godbless Jonathan Lema v. Mussa Hamis Mkangaa & others**, Civil Appeal No. 47 of 2012 (unreported) held that *locus standi* is jurisdictional. This being the case, it is crucial that it be determined because it is now a settled principle that owing to its very nature, an objection on jurisdiction can be belatedly raised and determined at any stage of the suit even on appeal (see **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70 and **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009, CAT.

As regards the merit of the appellant's contention on this point, he has submitted that the respondent has no locus as he has no title over the

suit land and he was not its original owner as it belonged to his father, Jumanne Nyonyi, who is now deceased. Considering that the appellant is the one who instituted the complaint before the ward tribunal, his contention is basically that he sued a wrong person as the land belonged to the respondent's father not the respondent. This fact is well acknowledged on the trial tribunal's record. As demonstrated in the factual background of this appeal as summarised above, when called upon to defend himself the respondent told the tribunal that he was wrongly sued and that he was just there as a representative of his family as the suit land belonged to his late father, Jumanne Nyonyi, and after his demise, it passed on to his family, the respondent inclusive.

This being the case, it was crucial for the record to indicate that the respondent was sued on his representative capacity but that was not the case. No document was presented to show that he was sued on his representative capacity. The record shows that he was sued on his personal capacity which was materially wrong. Having been notified by the respondent that he was standing on a representative capacity, the tribunal ought to have demanded evidence of such representation or instructed the appellant to sue the respondent in his representative capacity but it proceeded notwithstanding. This was a serious anomaly. Dealing with a similar issue in **Abdulatif Mohamed Hamis vs Mehboob Yusuf Othman & Another**, Civil Revision 6 of 2017, the Court of Appeal held that:

We have purposely supplied emphasis on the extracted entry to underscore the fact that the 1<sup>st</sup> respondent's ownership of the suit land was not in her personal capacity, rather, it was on account of her being the legal

representative of the deceased. Thus, in our view, to the extent that the suit land was vested upon the 2<sup>nd</sup> respondent by virtue of her capacity as the deceased's legal representative, any suit with respect to that property ought to have been instituted against her in that capacity.

Having made the above observation above, the Court quashed and set aside the lower courts proceedings. Also, in **Ramadhani Omari Mbuguni vs Ally Ramadhani and Asia Ramadhani**, Civil Application No. 173/12 of 2021 (unreported), the Court of Appeal held that:

"Letters of administration being an instrument through which the applicant traces his standing to commence the proceedings, was in our view an essential ingredient of the application in whose absence the Court cannot have any factual basis to imply the asserted representative capacity. It is now a settled law that, where, like the instant case, a party commences 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. See for instance, **Ally Ahmed Bauda (Administrator of the Estate of the Late Amina Hossein Senyange) vs Raza Hussein Ladha Damji and Others**, Civil Application No. 525/17 of 2016 (unreported)"

On the strength of these authorities, since the proceedings from which the present appeal originated is marred by a similar defect, they cannot escape the consequences. Accordingly, and to the extent above stated, the appeal is allowed. The proceedings, judgment and decree of the appellate tribunal are quashed and set aside for being based on nullity

proceedings of the Puma ward tribunal which are also quashed and set aside. The appellant is at liberty if he so wishes, to correct the anomaly and reinstitute his claim against a proper party. Considering that the appeal has been dissolved on a point not expressly set out in the grounds of appeal, I will order no costs.

**DATED** and **DELIVERED** at Dodoma this 11<sup>th</sup> day of August 2023



A handwritten signature in blue ink, appearing to be "J. L. MASABO", is written over a circular stamp.

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