

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MOROGORO)

AT MOROGORO

LAND APPEAL NO. 91 OF 2022

(Arising from the Judgement of the District Land and Housing Tribunal for Morogoro in Land Appeal

No. 96 of 2021, originating from Ward Tribunal for Kibuko in Land Dispute No. 01 of 2021)

SALIMA ABDALLAH MOHAMI & 2 OTHERS..... APPELANTS

VERSUS

ALLY MOHAMED MNGELEZA..... RESPONDENT

JUDGEMENT

Hearing date on: 25/7/2023

(Arising from the Judgement of the

Judgement date on: 07/8/2023

No. 96 of 2021, originating from

Morogoro in Land Appeal

No. 01 of 2021)

NGWEMBE, JI. AN. RICH.

APPELANTS

This is a land dispute involving blood relatives concerning a piece of land which the original owners have rested in peace but the surviving kinsmen are in tag of war over those deceased persons' pieces of land.

The land in dispute is located in undisclosed village within Kibuko ward within the district and region of Morogoro. Further according to the records, the area of dispute is a ¼ an acre within three acres of land. It is disclosed further that the disputants were born and grew in the same

piece of land which comprises seven houses surrounding their family land including grave yard used to bury their beloved ones, their parents of and other relatives of the appellants are among. The source of

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dispute erupted when one of the appellants put bricks in one part of the land intending to build a permanent house. That is when the respondent came up fully armed to defend such piece of land equivalent to 1/4 of acre in the village at Kibuko ward.

Maybe I should briefly explain briefly the relationships of the disputants. According to the available records, the disputants have been living, built their houses and using their family land for more than 60 years ago and to date are still living therein. Abdallah Mohamed is the father of the appellants who welcomed the respondent into his family land and together lived therein for all those years peacefully. Even after his demise in year 1981 he was buried therein. The mother of the respondent called Hadija Rajabu when died was buried therein, Tatu Abdallah Muhami was buried therein. That the area has seven houses, among them two houses are occupied by the respondent. The rest are occupied by the appellants and another house is occupied by a grandchild called Abdallah Suguru. Those houses are said to have been built more than 15 years ago.

All those facts are undisputed by whoever. Thus, the learned advocates for disputants one advocate Niragira for the appellants and Abdul Bwanga for the respondent, on 9/6/2023, asked this court for time to try to reconcile the dispute as the disputants were blood relatives and the land in dispute is a family/clan land. When the appeal was called for recording their settlement on 19/6/2023, both advocates were frustrated by refusal of the respondent to settle the matter amicably, thus this court fixed a date for hearing.

On the hearing date, both advocates and their clients, agreed on the facts narrated above, However, advocate Niragira for the appellants

challenged strongly on the allegations of locus standi that none of the disputants petitioned for letters of administration of the deceased Abdallah Muhami. Added that the issue of adverse possession does not apply to family land by family member. Rested by a prayer that the appeal be allowed and the whole proceedings of tribunals be nullified.

In turn the learned advocate Abdul Bwanga briefly submitted that the respondent has been living in the suit land for more than 50 years. That the respondent owns 3 acres but the land in dispute is $\frac{1}{4}$ acres of the total land owned by the respondent. Further admitted that there was no probate for the deceased estate. Therefore, even the decision of the ward tribunal was nullity, because none of the disputants had *locus standi*.

From the outset, let me admit that land disputes know no family, relatives, clan or nationality. We have seen many wars are related or involves land. Even most national conflicts arise from ownership of land. But what is land? In our laws, both Land Law Cap 113 and the Village Land Act Cap 114 all carry similar definition in section 2 as quoted hereunder: -

Section 2 *"Land includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water"*

The same definition is provided for in the Village Land Act. However, in simple terms, land include all fixation permanently therein, save for the exclusion of minerals or petroleum, the rest are part of land. The

best-known Latin maxim of *Quicquid plantatur solo'solo cedit* meaning what is attached to land is part of land, or whatever affixed to the soil is part of the soil, however, in our laws the principle is modified by excluding minerals and petroleum.

Under the same section 2 of the Land Act which is similar to Village Land Act, defined unexhausted improvement is anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature. More interestingly is the definition of building as known by our land laws, that means any building or other structure made or assembled on, in or under any land and includes the land on, in or under which the building or structure is situate.

Having those definitions and explanations in mind, the question capable of determining this appeal conclusively is whether the appeal is merited and worth being considered by this house of justice. Due to the undisputed facts narrated above, and based on the submissions of the learned counsels when compared with the decision of the two tribunals, the following is obvious. First, the land in dispute is a family land whereas several houses are built therein and several other graves are in there; second, the area of dispute is not 3 acres rather is a $\frac{1}{4}$ an acre where the appellant did put some bricks for building a permanent house; third, none of the disputant has locus standi, in terms of being a holder of letters of administration of the deceased estate; *fourth*, the disputants are relatives who have lived together for more that 50 years;

fifth, the houses built therein are seven which were built more than 15 years ago, thus the principle of adverse possession cannot apply in a family or clan land which has unexhausted improvement as discussed above; *sixth*, the appellants though raised five grounds of appeal, but upon verifying on the real issue in dispute, advocate Niragira abandoned all grounds and argued as narrated above. Even the learned advocate for respondent did not respond and argue on those grounds of appeal rather conceded to what his fellow learned advocate submitted.

Having those undisputed facts in mind, yet the question remains, whether this appeal is merited for determination by this court? The answer to this question, goes to the root of the matter itself. In fact, after perusing inquisitively on all records from the ward tribunal to the district land and housing tribunal, I find the whole trials were misplaced and were found on misapprehension of real issue in dispute. There is in fact no dispute, rather parties were misguided, misapprehended and misadvised on the real issue. This court is at least satisfied as above exhibited that both lower tribunals acted without jurisdiction as the plaintiffs had no locus standi. The law is clear that courts will have no jurisdiction over any matter whose claimant lacks locus standi; see the cases of; **Lujuna Shubi Ballonzi Vs. Registered Trustees of Chama Cha Mapinduzi [1996] T.L.R 203, Ally Ahmad Bauda (Administrator of the Estate of the Late Amina Hussein Senyange) Vs. Raza Hussein Ladha Damji and others, Civil Application No. 525/17 OF 2016, CAT at Dsm and Gervas Masome Kulwa Vs. The Returning Officer and Another [1996] T.L.R 320.** And in the case of **Registered Trustee of SOS Children's**

Villages Tanzania Vs. Igenge Charles & Others (Civil Application 426 of 2018) [2022] TZCA 428, the court ruled inter alia thus: -

"In the premises, 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. Obviously, this is not the case on matters touching public interest litigation. 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."

The SOS Children's case is not much far from this at hand and the rule applies equally in our case. Since none of the disputant has locus standi over the family land originally found by the deceased, it means the whole struggles from the ward tribunal to district land tribunal are nullity hence nullified forthwith. This court having studied the nature of this dispute is of the hope that compulsory mediation may be much useful and fruitful if resorted to by the parties with bonafide intent.

However, if any of the parties intends to continue with this dispute to litigation, should first acquire locus standi before commencing any dispute in the court or tribunal. Otherwise, this appeal is merited and same is allowed. Each party to bear his/her own costs.

Order accordingly.

Dated at Morogoro in Chambers this 7th day of August, 2023.

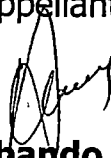


P. J. NGWEMBE

JUDGE

07/08/2023

Court: Judgment delivered at Morogoro in Chambers on this 7th day of August, 2023 in the presence of appellants and in the absence of Respondent.



A.W. Mmbando

DEPUTY REGISTRAR

07/08/2023

Court: Right to appeal to the Court of Appeal explained.



A.W. Mmbando

DEPUTY REGISTRAR

07/08/2023

