

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE SUB REGISTRY OF KIGOMA)**

**AT KIGOMA**

**MISC. LAND APPEAL NO. 30 OF 2022**

(Arising from District Land and Housing Tribunal of Kigoma in Land Appeal No. 173 of 2019 and originating from Land Application No. 02 of 2019 of Misezero Ward Tribunal)

**JUMA LUGENDO.....APPELLANT**

**VERSUS**

**AKISA KIRISTOPHA.....RESPONDENT**

**Date of last Order: 19/07/2023**

**Date of Judgement: 11/08/2023**

**JUDGEMENT**

**MAGOIGA, J.**

This is a second appeal against the judgment of the District Land and Housing Tribunal of Kigoma in exercise of its appellate jurisdiction in Land Appeal No. 173 of 2019 arising from Land Application No.01 of 2019 from Misezero Ward Tribunal in exercise of its original jurisdiction.


In a nutshell, at Misezero Ward Tribunal, the respondent herein **AKISA KIRISTOPHA** sued the appellant **JUMA LUGENDO** in Land Application No. 22 of 2019 for trespass on her plot which is located at Kilimahewa in Nalukinga Hamlet which she alleges to have bought from one Mashaka L.



Kabili on 25/4/2014. The trial Tribunal after hearing parties adjudged in favour of the respondent herein.

Aggrieved, the appellant herein unsuccessful appealed to the District Land and Housing Tribunal vide Land Appeal No. 173 of 2019 whereby after hearing the appeal, the appellate Tribunal on 01/12/2021 dismissed the appeal with no order as costs and affirmed the trial Ward Tribunal decision.

Still daunted, the appellant appealed to this court armed with four grounds of appeal couched in the following language, namely;


- 1. That the appellate Tribunal erred in law and fact for failure to make critical analysis and evaluation of evidence on record and hence reached into wrong decision;*
  - 2. That the appellate Tribunal erred in law and fact by upholding the decision of the Ward Tribunal of which the proceedings were initiated by the person who has no locus stand and eventually the decision was in favour of the same person;*
  - 3. That the appellate Tribunal erred in law and fact by not taking into an account that the suit was filed without stating the value of the land of which would have necessitated the pecuniary jurisdiction of the ward Tribunal*
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*4. That the appellate Tribunal erred in law and fact for not taking into account the development made by the appellant of building three permanent residential house and lived therein with his family for couple of years.*

On the above grounds, the appellant prayed this court to allow the appeal by quashing and nullifying the decision of the ward Tribunal and that of the District Land and Housing Tribunal and the appellant to be declared the lawful owner of the disputed land.

When this appeal was called on for hearing, the appellant enjoyed the legal services of Mr. Eliutha Kiviyiro, learned advocate, while the respondent was present unrepresented.

Mr. Kiviyiro started by dropping ground number 4 which was so marked. Submitting on the first ground of appeal the learned advocate told the Court that, their complaint is on the 1<sup>st</sup> appellate court failure to analyse the evidence and arriving at a wrong decision. He referred this court to the case of **Hassan Mzee Mfaume vs Republic [1981] TLR 167** in which it was held that the second appellate court can analyse evidence if not properly done by the 1<sup>st</sup> appellate court and consequently arriving at wrong decision or occasioned failure of justice.






The learned counsel went on telling the court that, according to the record, the respondent was applicant before Misezero Land Tribunal where she said to have bought the disputed plot in 2014 but in 2016 is when the appellant started construction of foundation. She tendered exhibit which showed the sale was between **Mashaka L. Kabili and Robert N. Christopher** while the appellant testified that he bought it from 2015, "**Hati ya Mauziano dated 10/6/2015 between Laurent Kabili and Juma Lugendo**". So, had the appellate Tribunal directed itself to the evidence on record, it would have reached a different decision.

The learned advocate strongly pointed out that, Robert Christopher was not a party to the proceedings. The respondent used a document not supporting her case.

On the 2<sup>nd</sup> ground, Mr. Kiviyiro faulted the decision of the appellate Tribunal that it was wrong because the person who sued had no locus stand to open the case since the document she used as a sale agreement refers to some one else. According to Kiviyiro, the respondent had no interest because no explanation was offered to connect her with Christopher. He prayed for this ground to be allowed and the court to overturn the concurrent findings of the lower Tribunals and give the appellant ownership of the land with costs.



The 3<sup>rd</sup> ground was as well dropped by the appellant's counsel.

On the other hand, the respondent opposed the appeal by stating that Robert Christopher bought the land in her own instruction and that it was her who paid the money therefore she had locus. She prayed the court to adopt the reply to the memorandum of appeal and invited this court to disallow the appeal with costs.

For the purpose of proper understanding of this appeal, I will also reproduce the reply which is to be taken as the submission on the part of the respondent as hereunder stated;

- 1. That, the 1<sup>st</sup> ground of appeal is vigorously disputed, this court lacks jurisdiction because this ground has been dealt by the District Land and Housing Tribunal and even if the court has jurisdiction the same is devoid of merits since the first appellate Tribunal analysed and evaluated the evidence on the record hence reaching a well-reasoned decision of upholding the decision of the trial Tribunal.*
- 2. That, the 2<sup>nd</sup> ground of appeal is vehemently disputed, the 1<sup>st</sup> appellate Tribunal was correct both in law and fact in upholding the decision of the ward Tribunal which was on the favour of the respondent since she had a locus to sue.*
- 3. That, the 3<sup>d</sup> ground of appeal is strongly disputed, this ground of appeal is afterthought as the same was not raised in the trial*




*Tribunal however the value of the subject matter was within the pecuniary jurisdiction of the trial Tribunal.*

*4. That, the 4<sup>th</sup> ground of appeal is strongly disputed, there are no developments unto the suit property by the appellant on his 5<sup>th</sup> ground of petition of appeal in the 1<sup>st</sup> appellate tribunal acknowledged to have been stopped to make developments and if he continued to make developments thereon it is his own downfall and it does not excuse him from being a trespasser.*

Having carefully gone through the grounds and reply of appeal and also the short submissions for and against the appeal, and after going through the evidence on record in the trial and first appellate Tribunal proceedings, I find the central issue for determination of this matter is whether the appeal has merit or not.

Coming now to the merits of this appeal, in particular, on the first ground of appeal, having carefully followed the rivalling arguments of the parties, and considered all argued and the record of appeal, in my own considered opinion, I find the arguments by Mr. Kiviyiro in this ground that the 1<sup>st</sup> appellate court's failure to analyse the evidence led at arriving at a wrong decision in this suit has merits for the reasons which I'm going to give hereunder.



**One**, as correctly argued by the counsel for the appellant, upon perusing the trial Tribunal's records, I have found that the respondent herein claimed ownership of the plot allegedly bought by her but tendered in her evidence exhibit which referred to another person and did not address the trial Tribunal as to why the document was so written. The document dated 25/4/2014 which read as follows; **YAH: KUMUZIA NDUGU ROBATI N. CHRISTOPHA**. It is evidently obvious that Mashaka L. Kabili sold his plot to **Robati Christoph**a and not to Akisa Kiristopha. Had the 1<sup>st</sup> appellate truly analysed the evidence on record and focus and considered the memorandum of appeal paraded before him, he could have reached a different decision altogether.

**Two**, the above state of affairs was caused by the 1<sup>st</sup> appellate Chairman who did not consider what was before him but determined the appeal generally. This was wrong. This Court as such give guidance to the District Land and Housing Tribunals in the country that when exercising their appellate jurisdiction to consider each and every ground raised before it. It is unsafe to consider the appeal generally but it can only do so very exception circumstances and sparingly, in particular, where serious ground on point of law is involved that can suffice to dispose of the appeal. The record of the trial court is obvious, the 1<sup>st</sup> appellate





chairman did not consider the grounds of appeal that were before him but for his own style opted to consider the appeal generally.

**Three,** the Law of Evidence is clear on the proof by documentary evidence, i.e. Section 100(1) of the Law of Evidence Act, [Cap 6, RE 2019]. The position is that where document is reduced into writing, no other evidence shall be given to prove the terms of such document except the document itself. For easy of reference the said provision provides as follows:

***"Section 100(1) When the terms of a contract, grant, or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act."***

Expounding the above position of the law, the Court of Appeal of

Tanzania in the case of **Tanzania Fish Processors LTD vs**

**Christopher Luhanyula**, Civil Appeal No. 21 of 2010 CAT at Mwanza

their lordships had this to say ***" that when a document is reduced***

***into writing no evidence shall be given in proof o f its term ...***

***the sub-section is premised on the fact that the document is***



***supposed to speak by itself...***" (Emphasis is mine).

It follows, therefore, that where there is documentary evidence, the content of the document shall tell it all on what was agreed upon, on what terms and what capacity.

However, the respondent in the instant case testified and tendered in the trial Tribunal a sale agreement which was relied upon by the both trial and 1<sup>st</sup> appellate Tribunal in reaching their decisions in proof of ownership in land. But no plausible explanation and production of evidence on balance of probabilities was offered on the variance of the names between the document and the respondent. The problem is whether the said document bearing a name of a different person can be relied and/or said to be a proof of ownership by the respondent. The answer must be in the negative due the reasons and law cited above. On that note, I find merits in the first grounds of appeal.

On the next ground of appeal which is couched on the wrong decision by the first appellate court to decide basing on the proceedings initiated by the person who has no locus stand. The counsel for the appellant submitted that, it was very wrong for the 1<sup>st</sup> appellate court to reach its decision without considering that the respondent had no interest because no explanation was offered to connect her with Robarti (the buyer). On the part of the respondent, she only insisted that Robarti Christopher



bought the land in her own instruction and that it was her who paid the money therefore she had locus.

Locus stand is a Latin word to mean **"place of standing, the right to bring an action or to be heard in a given forum"** as defined in **Black's Law Dictionary** Ninth Edition, by **Bryan A. Garner**.

This principle was well stated in the land mark case of **Lujuna Shubi Ballonzi Snr vs. Registered Trustees of CCM [1996] TLR, 203** where it was stated that:

*"Locus stand is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with"*

In my considered view and observation, this ground can not detain me much as it has already discussed in the first ground above that, prove of ownership of a land which was bought is the sale agreement. Therefore, as correctly argued by the learned counsel for the appellant, the respondent did not show any connection between the buyer and her. Nor did she show that she gave power of attorney to Robarti to buy the land in dispute on her behalf. In the absence of all these vital piece of evidence, then, without much ado, I find merits in the second ground of appeal,



consequently, I proceed to allow this ground that the respondent had no locus stand as I held in the first ground above to bring this action.

In the premise and without hesitation, in exercise of my powers under section 43(1) (b) of the Land Disputes Courts Act, [Cap 216 R.E.2019] hereby quash and set aside the whole the proceedings, judgement and decree of the trial Tribunal as well as that of the District Land and Housing Tribunal because the whole proceedings were incompetent for want of locus standi on the part of the respondent to institute the same. It is further advised that, interested party, if any, can institute fresh proceedings to claim ownership of the land in dispute in a Tribunal with competent jurisdiction to try the same. Much as the errors were committed by the trial Tribunal and 1<sup>st</sup> appellate Tribunal, I allow the appeal with no order as to costs

Dated at Kigoma this 11<sup>th</sup> day of August, 2023.



A handwritten signature in blue ink, consisting of a series of vertical strokes followed by a horizontal line.

**S. M. MAGOIGA**

**JUDGE**

**11/08/2023**