UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

IRINGA REGISTRY

AT IRINGA

MISC. LAND APPEAL NO. 02 OF 2023

(Originating from Land Appeal Case No. 66 of 2021 in the District Land and Housing Tribunal of Njombe at Njombe by Hon. Gaudencia Fabian dated 31st October, 2022)

WILLIAM LUKAS TOLAGE ..... APPELLANT

VERSUS

ONOLINA MIKA KINYUNYU .....RESPONDENT

JUDGMENT

Date of the Last Order: **26.07.2023**
Date of the Judgment: **11.08.2023**

A.E. Mwipopo, J.

William Lukas Tolage, the appellant, was sued by Onolina Mika Kanyunyu, the respondent, before the Kidegembye Ward Tribunal in Civil Case No.41 of 2021 for trespassing into the land in dispute and cutting trees. After hearing the evidence from both sides, the trial Ward Tribunal dismissed the case and declared the appellant to be the lawful owner of

the land in dispute. The respondent was aggrieved by the decision and appealed to the District Land and Housing Tribunal for Njombe District at Njombe (DLHT) in Land Appeal No. 66 of 2021. The Njombe DLHT allowed the appeal and quashed the decision of the trial Ward Tribunal with cost. It also declared the respondent the rightful owner of the land in dispute and prohibited the appellant from trespassing into the suit land. The appellant was not satisfied with the decision of the DLHT, and he preferred this appeal with a total of four grounds of appeal as follows hereunder:-

1. *That, both the trial Tribunal and the appellate Tribunal erred in law and facts by entertaining the matter without having jurisdiction.*
2. *That, the first appellate Tribunal erred in law and facts when it varied with the decision of the trial Tribunal by holding in favour of the respondent who lacks locus standi.*
3. *That, the first appellate Tribunal erred in law and facts when it failed to re-evaluate the evidence properly and hence arrived at a wrong verdict.*
4. *That, the first appellate Tribunal erred in law and facts for holding in favour of the respondent based on weak evidence adduced by the respondent.*

During the hearing of this appeal, Mr Cosmas Kishamawe appeared for the appellant, whereas the respondent was absent. Mr Alatanga Nyagawa, a son-in-law of the respondent, informed this Court that the respondent is very old and sick. He said that it was not possible to bring

her to Court. Mr Alatanga Nyagawa prayed for the matter to be heard by written submission. The counsel for the appellant supported the prayer, and the Court ordered the hearing to proceed through written submissions. Both sides filed their submissions in accordance with Court's order.

In support of the appeal, Mr Kishamawe commenced by arguing grounds No.3 and 4 together. He submitted that the appellant and his family owned the disputed land through their late parents and grandparents. Ashery Nyato testified before the Ward Tribunal that Kadzembi Tolage, Tumwimbilage Tolage, Anzendile Mngongo, Kitakangala Tolage and Atupevilwe occupied the disputed land since the period of Chief Havanga Nyato in the early 1950s. The evidence was supported by Shadrack Kingililwe, who was born in the 1950s in the same village and has visited there several times to greet his grandparents after leaving the village. He said when his grandparents left, the land was placed under the care of his uncle Lukas Tolage. The respondent's father-in-law was invited to that village for preaching. The Tolage family, through Atupevilwe, decided to give them land as caretakers so that they could cultivate and make them survive for the time being. Lupelo Kihaka, the respondent's

father-in-law, was taking care of the land given to build a church, a house to leave while preaching, and the disputed land.

The counsel said the testimony of Ashery Nyato and Shadrack Kingiliwe was supported by the testimony of Wiston Sadatale, the neighbour to the disputed land and the family of Tolage, who testified that he knows the disputed land to be owned by the appellant's family. Wiston Sadale said he was present when Mama Atupevilwe showed the boundaries to the church. There was no dispute during that time. The act of the church asking Atupevilwe to aid them to know their boundaries shows the church acknowledging Tolage Family's presence as the owner of the said land. The church was the caretaker (an invitee ex gratia) to the said land, and they asked Mama Atupevilwe (the appellant's a mother) instead of the respondent's father-in-law. In the case of **Yerico Mgege vs. Joseph Amos Mchiche,** Civil Appeal No. 137 of 2017 Court of Appeal of Tanzania page 14, it was held that;

> *"An invitee cannot own land to which he was invited to the exclusion of his host, whatever the length of his stay, it does not matter that the said invitee had even made unexhausted improvements on the land on which he was invited."*

The first appellate Tribunal, the counsel said, failed to evaluate the evidence and testimonies provided by all witnesses from both sides during the hearing in the village land tribunal and hence arrived at a wrong verdict.

Regarding the 1st ground of appeal, he submitted that the respondent was claiming against the appellant's act of slashing down her trees of milingo. But the village land tribunal took it as a land dispute instead of a criminal matter. Hence, both tribunals lacked jurisdiction to entertain the matter.

Concerning the ground of appeal No. 2, the counsel contended that, according to the respondent's testimony, the respondent's father-in-law Lupelo Kihaka owns the disputed land. Thus, the respondent lacked locus standi to institute any claim against the appellant simply because she admitted that the land belonged to her father-in-law.

In reply, the respondent submitted jointly on the 3rd and 4th grounds of the appeal. He said the evidence adduced by the appellant was weightless to the extent of not proving the case. The respondent successfully proved her case.

Regarding the second ground of appeal, he submitted that the District Land and Housing Tribunal was right to decide the ownership after considering the respondent's prolonged use of the suit premise. The respondent started using the suit premise in the 1940s after being given by his church leaders, who acquired the land from Chief Havanga. The trial Ward Tribunal proceedings reveal that this dispute was instituted in 2021, more than 80 years later, after smooth utilization by the respondent. Hence the respondent enjoys a good title over the suit premise. The appellant is a grandson of the said family (Tolage family) and is not an estate administrator of the subject matter in this dispute. The burden of proof lies with the one who alleges, as elaborated in the case of **Joseph John Makame vs Republic [1986] TLR 44.**

The respondent said in contention to the 1st ground of appeal that the trial tribunal was supposed to deal with and find out whether the destroyed trees belonged to the respondent. The Tribunal found the owner of the trees and land in dispute. A judicial organ could only entertain the dispute if it were well informed about the ownership of the subject matter. Thus, the dispute reported to the trial ward tribunal was not a criminal case.

Having read the rival submissions, the main issue is whether this appeal has merit.

In determining this appeal, I will consider the grounds of appeal as provided in the appeal petition. I'll start with the 2nd ground of appeal as it touches the issue of locus standi of the respondent herein to institute the suit. The counsel for the appellant contended that the respondent's testimony reveals the disputed land is owned by the respondent's father-in-law, Lupelo Kihaka. In the reply submission, the respondent said she started using the suit premise in the 1940s after being given by church leaders who acquired the said land from Chief Havanga. The trial Ward Tribunal proceedings reveal that this dispute was instituted in 2021, more than 80 years after smooth utilization by the respondent. Hence the respondent enjoys a good title over the suit premise. The appellant is a grandson of the said family (Tolage family), and he is not an estate administrator of the said subject matter in this dispute.

The parties herein raised and argued the issue of locus standi in the appeal before the Njombe District Land and Housing Tribunal. One ground raised by the respondent in the appellate Tribunal was that the trial Ward Tribunal erred in entertaining the case in which the appellant herein had no

locus standi. Strangely, despite the facts that the appellate Tribunal found the respondent sued the wrong party as the appellant is not the owner of the suit land, proceeded to declare the respondent the rightful owner of the suit land.

Locus standi is a right or capacity to sue or bring action against another or to appear before the Court in a proceeding. The same is possible where a person has an interest in the proceeding. In the case of **Lujuna Shubi Balonzi vs. Registered Trustees of Chama Cha Mapinduzi [1996] TLR 208**, it was held that:-

> *"In this country, locus standi is governed by Common law. According to that law, in order to maintain proceedings successfully, a plaintiff or applicant must show not only that the Court has the power to determine the issue but also that he is entitled to bring the matter before the Court."*

In **Godbless Jonathan Lema vs. Mussa Hamis Mkangaa and 2 Others**, Civil Appeal no. 47 of 2012, Court of Appeal of Tanzania, at Arusha (Unreported), held on page 11 that in common law, for one to succeed in an action, he must not only establish that his rights or interests were interfered with but must also show the injury he had suffered above the rest. The Court of Appeal went on to quote with

authority the decision of the Malawian Supreme Court of Appeal in the case of **The Attorney General vs. Malawi Congress Party and Another**, Civil Appeal no 32 of 1996, whereby it had this to say:-

> *"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."*

From the above-cited decisions, a person has the right to sue where her/ his right has been interfered with and has suffered injury. The party could only institute a suit if he/she has locus standi. In the case of **William Sulus vs. Joseph Samson Wajanga**, Civil Appeal No. 193 of 2019 Court of Appeal of Tanzania at Mwanza (unreported), on page 10, it was held that:-

> *"Essentially, locus standi is the legal capacity or competency to bring an action or to appear in Court. It is a long-settled principle of law that for a person to institute a suit, he/she must have locus standi."*

In the instant case parties, the evidence in the record shows that the respondent is not the owner of the suit land. In her testimony at the trial Ward Tribunal on 30.08.2021, the respondent said that the land in issue

belongs to Lupelo Kihaka. There is nothing to show that the respondent had any legal authority to institute the suit on behalf of the landowner. On the other hand, as it was rightly observed by the appellate District Land and Housing Tribunal, the respondent sued the wrong party in the Ward Tribunal. In his testimony before the Ward Tribunal, the appellant said the land in dispute belongs to his grandfather, Luben Torage. The evidence in the record shows that both the appellant and the respondent had no locus standi in this case. This issue alone disposes of the case as it goes to the jurisdiction of the trial Ward Tribunal to entertain the matter.

Therefore, the appeal is allowed. The proceedings, judgment and orders of the Kidegembye Ward Tribunal and the District Land and Housing Tribunal for Njombe District at Njombe are quashed and set aside accordingly. The proper owner of the suit land are at liberty to institute the suit in accordance with the law. Each party has to bear its own costs of the suit as they both have no locus standi. Orders accordingly.

THE HIGH COURT OF TANZANIA

A. E. Mwipopo
JUDGE
11/08/2023