

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

**MISCELLANEOUS LAND APPEAL NO. 36 OF 2022**

(Arising from the District Land and Housing Tribunal for Kondoa in Land Appeal No. 21 of 2021)

**MOHAMEDI OMARI MWINYI.....APPELLANT**

**Versus**

**ROMANI DOO .....RESPONDENT**

**JUDGMENT**

Date of Last Order: 07<sup>th</sup> August 2023.

Date of Ruling: 25<sup>th</sup> August 2023.

**MASABO, J:-**

The appellant in this appeal is disgruntled by the decision of the District Land and Housing Tribunal of Kondoa (first appellate tribunal) which allowed the respondent's appeal from the decision of Chemba Ward Tribunal in Land Case No. 21 of 2021. The brief background of the appeal is that, the appellant sued the respondent in the trial tribunal claiming the respondent has trespassed into the land of his deceased father, the late Omary Mwinyi. He told the trial tribunal that the suit land belonged to his father since 1974. During *Operation Vijiji*, he moved to another village called Dalai leaving the farm in the hand of the respondent's father. Meanwhile, he regularly visited the farm and at no material time did he relinquish his ownership to the respondent's father. Later on, the appellant and his siblings wanted to redeem the land back but the respondent refused claimed that the same belonged to him. On his part, the respondent claimed ownership of the suit

land. He told the trial tribunal that he has been uninterruptedly enjoying ownership and occupancy until in 2020 when the appellant started to claim that the land belonged to his late father.

Having weighed the evidence before it, the trial tribunal resolved the dispute by declaring the respondent as the owner of ten (10) acres which he had been using while it vested the remaining ten acres of what appeared to be a virgin land as the land belonging to the appellant's father. The partial success was short lived as it was reversed by the first trial tribunal which vested the whole land into the respondent. Hence this appeal based on the following paraphrased grounds;

1. That, the Honourable Chairman erred in law and in fact by holding that the Respondent herein is the lawful owner of the land in dispute basing on the weak and contradictory evidence of the Respondent.
2. That, the Honourable Chairman erred in law and fact as boundaries and measurement of the dispute land were not identified and ascertained.
3. That, the Honourable tribunal erred in law and fact by holding that the land in dispute belongs to the respondent while the land belongs to the appellant's father (deceased) since 1960.
4. That, the Honourable Chairman erred in law and in fact not to consider the fact that the appellant's sister occupied the land for 33 years.
5. That, the Honourable Chairman erred in law and fact by deciding the suit basing on the opinion of assessors who never visited the suit land.

6. That, the Honourable Chairman erred in law and in fact by deciding the case without considering that the respondent had no locus to sue the appellant.

At the *viva voce* hearing on 07<sup>th</sup> August 2023, all the parties appeared before me in person and unrepresented. Submitting in support of the appeal, the appellant adopted his grounds of appeal and stated that the appellate tribunal erred in stating that he gave the respondent the suit land without specifying the land he allegedly gave the respondent. He said that he has no problem with the decision of the ward tribunal which gave the respondent part of the land but he is enraged why the appellate tribunal reversed such decision and gave all the land to the respondent. On the issue of *locus standi*, he submitted that, the respondent had no *locus* to sue him as the land belongs to him.

In reply the respondent submitted that the suit land is his he cleared it in 1987. In the year 1989 and 1990 other people came to the area and are now his neighbors. He occupied and used the land uninterruptedly until 2021 when the appellant's sister came and asked to rent one acre of his land. Later on, she complained and claimed that the land is theirs and because of that, a dispute started and it was reported to the village council which declared the respondent the owner of the suit land. The appellant was unhappy, he took the matter to the ward tribunal where the respondent was declared owner of ten (10) acres and the rest six (6) were given to the appellant. He appealed to the first tribunal which held that the whole land is

his. Concluding, he prayed that the decision of the appellate tribunal be upheld as it was correct.

In rejoinder, the appellant submitted that when the respondent appealed to the first appellate tribunal, he did not state the actual size of the suit land. Thus, it was materially wrong for the ward tribunal to hold that the whole land belongs to the respondent. He reiterated his submission in chief that the ward tribunal was correct when it held that the appellant's land is ten (10) acres only and the rest is the respondent's.

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. I will start with the sixth ground of appeal. In this ground of appeal, the appellant has complained that the respondent had no *locus standi* to sue him. The record show that, this is not the first time this issue has been raised. It was raised in the first appellate court through the fourth ground of appeal where the appellant complained that:

"The trial ward tribunal erred in law and facts by deciding the case in favour of the respondent herein without considering that the respondent herein did not have locus standi to sue the appellant. The appellant avers that, the respondent lied to the ward tribunal that the land in quo was of his late father hence he didn't prove that he is the administrator of the estate.

However, this issue was not determined. It was left undetermined after the appellate tribunal allowed the appeal based on the second ground of appeal by which it concluded there was sufficient proof that the land belonged to the respondent. As the issue was left undetermined and the appellate has raised it at this stage, it is incumbent that it be determined.

Conceptually, *locus standi* is understood as the right or legal capacity to bring an action or to appear in a court (see the case of **Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203(HC), **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) and **Peter Mpalanzi vs Christina Mbaruka**, Civil Appeal No. 153 of 2019 [2021] TZCA 510 (TANZLII). By its nature, it was crucial that it be raised at the earliest opportunity to assist the tribunal to determine whether, the application was competent but as stated above, it was not raised at the trial stage. It surfaced as an issue at the first appeal but again, it was left undetermined. Thus, the immediate question is whether or not it can be entertained at this stage. The answer is in the affirmative not only because it was left undetermined by the appellate tribunal but, because the position is now settled that the issue of *locus standi* being a jurisdictional issue can be belatedly raised and determined. In **Godbless Jonathan Lema vs. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 CAT (unreported), the Court of Appeal cited with approval the decision of the Malawian Supreme Court in the case of the **Attorney General vs. Malawi**

**Congress Party and Another**, Civil Appeal No. 32 of 1996, which stated that: -

Locus standi is a jurisdiction issue. It is a rule of equity 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 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 protection or infringement of which he brings the action.

And, in the case of **Peter Mpalanzi** (supra), the Court held that the issue of *locus standi* is to be considered regardless of having been improperly raised or raised at a late stage. Thus it was crucial for the appellate tribunal to resolve it and since it did not, this court being a second appellate court is obligated to determine and resolve it.

While scrutinizing the record to ascertain and appreciate the respondent and the appellant's contention as to *locus standi*, I have observed that the appellant's complaint before the trial tribunal was not on his personal account. He was vindicating the right of his family. In his statement of claim, he briefly stated that: Mimi namlalamikia ndugu Roman Doo kwa kukataa na shamba letu la familia". The evidence in support of his claim also loudly speak that he was suing on behalf of his family which wanted to redeem the land left by their late father one Omari Mwinyi. This being the case, it was imperative for the appellant to demonstrate a representative capacity, but none was demonstrated.

It is now a settled law that, a person suing in the place of a deceased person must demonstrate that he is suing in the representative capacity and the proceedings must vividly demonstrate so. In the case of **Omary Yusuph vs. Albert Munuo**, Civil Appeal No. 12 of 2018 [2021] TZCA 605 (TANZLII), the Court of Appeal underscored this requirement that when it stated that only the lawful appointed legal representative of the deceased can sue or be sued for or on behalf of the deceased (also see the case of **Swalehe Juma Sangawe (as administrator of the late Juma Sangawe and Another vs. Halima Swalehe Sangawe**, Civil Appeal No. 82 of 2021 [2022] TZCA 595(TANZLII), Court of Appeal at Moshi.

As the appellant in the present case purported to be suing in the representative capacity, he ought to have demonstrated his capacity as legal representative of the late Omari Mwinyi. Since he did not and he rendered no authorization from the deceased's family (heirs) on whose behalf he purported to stand, I find merit in the contention that the appellant had no *locus standi* to institute the claim at the trial tribunal against the respondent.

In the foregoing, I find the issue of *locus standi* meritorious and with this finding I see no need to proceed to the remaining grounds as this issue sufficiently disposes of the appeal. Accordingly, the appeal is allowed. The proceedings, decisions, judgment and orders of Chemba Ward Tribunal and the District Land and Housing Tribunal for Kondoa are quashed and set aside. As the issue that has disposed of the appeal was raised at the first appellant



stage but overlooked, it is in the interest of justice that the parties share the costs by each of them shouldering its respective costs.

**DATED** at **DODOMA** this 25<sup>th</sup> day of August, 2023.



A handwritten signature in blue ink, consisting of a stylized 'J' and 'M' with a horizontal line through them.

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