

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 03 OF 2023

(Arising from Land Application no. 19 of 2021 in the DLHT Ulanga)

AGRIPINA PETER LIUNGULUMA APPELLANT

VERSUS

HAMISI MOHAMEDI NYAMBI 1ST RESPONDENT

IMELDA MPUNGA 2ND RESPONDENT

DAUD MANDOGOYA 3RD RESPONDENT

ABDU MSANGULE 4TH RESPONDENT

STEFAN NDENGA 5TH RESPONDENT

DAMAS SHITOKOTA 6TH RESPONDENT

MAGRETA GWAWA 7TH RESPONDENT

ISMAIL MUSA 8TH RESPONDENT

HAMISI LIKABAGA 9TH RESPONDENT

SIPENSIHOZA KUMBA 10TH RESPONDENT

WILSON KUMBA 11TH RESPONDENT

BETODI NKANAWA 12TH RESPONDENT

RULING

Date of last order: 30/06/2023

Date of Ruling: 22/09/2023

BEFORE G. P. MALATA, J

In the District Land and Housing Tribunal (DLHT) for Ulanga at Mahenge, the appellant herein brought Land Application against the respondents for trespass over his land measuring approximately 40 acres located at Mzizima Area, Gombe Village on Lukande Ward in Ulanga District.

In nutshell the facts of the case, at the DLHT depicts that, the appellant who testified as SM1 at the DLHT stated that as the administrator of Late Peter Liunguluma, that the land in dispute is measured 40 acres located at Mzizima Hamlet in Gombe Village within Lukande Ward in Ulanga District. The land is bordered with Ndalula hill on the west, Windi Hill on the East, Edgara Lihambalimu on the south and on the North, there is Ngongola Magugu forest. It was the appellant further evidence that his father acquired the land through clearing the bush in 1960.

The dispute over the land started in 2017 when there was formalization of land, where the respondents appeared and said that, the land belongs to them. The appellant went to the Village office to seeking reconciliation which turn futile. Thereafter the applicant filed the application to the DLHT.

At the DLHT the appellant testified as the administrator of Estate of Late Peter Liunguluma against the 12 trespassers (the respondents) and stated that, she was appointed the administrator in 2012, the appellant produced

the copies of letter of administration, Form no. IV and VI of the estate of Peter Liunguluma, and the same were collectively admitted as Exhibit P-1.

The evidence of the appellant was supported by SM2 Petronila Liunguluma who testified that, the late Peter Liunguluma was her father and he owned the farm at Mzizima in Gombe village, Lukande Ward measured 40 acres which he acquired by clearing the forest. This was done before she was born. The dispute started during the formalization of the land to get customary right of occupancy.

SM3 Patience Daniel Nagashala testified that, the disputed land is at Gombe village Mzizima Hamlet, Lukande Ward and measured 40 acres, he further testified that he was once a Village chairman from 2014 to 2019 and the appellant went to the office to complain that, there is a trespass in the farm.

On the part of the respondents, each of them testified that, he/she came ownership of the land in dispute by allocation by the Village Authority.

The DLHT decided in favour of the respondents the decision which aggrieved the applicant hence this appeal armed with eight grounds of appeal as follows;

1. That, the District Land and Housing Tribunal erred in law and facts in entertaining and giving decision in a case without visit to the (locus in quo) Land in dispute.
2. That, the District Land and Housing Tribunal erred in law in entertaining a case which he is not sure of the actual measurement of the farm.
3. That, the District Land and Housing Tribunal chairman erred in law and facts by giving uncertain and below required standard of judgment.
4. That, the District Land and Housing Tribunal erred in law and facts in giving judgement without listening the whole defence evidence.
5. That, the District Tribunal chairman erred in law and facts in making decisions without the proof of the Village General meeting whether it allocated the land to the respondents as required by law.
6. That, the District Tribunal chairman erred in law and facts in disregarding the evidence that the appellant and her relatives are indigenous and are in the same village to date who depend on their livelihood on the land in dispute before trespass by foreigners from other regions.

7. That, the District Tribunal chairman erred in law and facts for not suomoto calling the neighbors bordering the land in disoute as witnesses for the court.

8. That, the District Tribunal chairman entertained the case without jurisdiction dated 22/03/2023.

Based on the aforementioned grounds the appellant prayed that, this appeal be allowed, the respondents to build the graves they destroyed in the bid to destroy the evidence of the appellant, payment of TZS. 20,000,000 for cutting 26 bamboo plants, 106 oranges trees and 11 mango trees, payment of TZS. 15,000,000 for the house destroyed by the respondents in order to destroy the evidence of the appellant.

The appeal was heard orally, the appellant was represented by Mr. Edwin Msigwa learned advocate while the respondents were represented by Mr. Michael Mteite, learned counsel.

Mr. Msigwa conjoined the 1st and 2nd ground of appeal and argued that, the DLHT erred in law by failure to visit the locus in quo. By so doing DLHT failed together the core dispute of the land. He submitted that, even the measurement seems to be different as stated by the parties. The appellant stated that, the land in dispute is 10 acres. The respondents did not mention the size of the claimed land, failure to visit the locus in quo

and actual disputed land was in contravention of the law. This court has principled that, it is important to visit the locus in quo.

In the case of **Shabani Said Mmambo vs. Hamis Mkumbuo and another** Land Appeal no. 108 of 2018 Hon. Maige, J as he then was stated that, it is important to establish the size of land in dispute. As for failure to visit the locus in quo this court has principled that, it is the discretion of the court, but when there is conflict on the size of land the court/ tribunal has to visit the locus in quo.

Submitting on the third ground of appeal, he submitted that, the judgement doesn't qualify to be the judgment as it has no reasons for determination thus contravening principles governing writing of judgement.

The 4th ground was withdrawn by the appellant.

As to the 5th ground Mr. Msigwa submitted that, there was no meeting from the general village meeting allocating land to the respondents and Bitoni Nkanawa was not among the leaders of Gombe.

Submitting on the 6th ground the learned counsel stated that, the appellant inherited the land from her father one Peter Liunguluma who acquired the same by clearing the bush and has been there up to 1984 when he passed away, since the land has been under the administrator one Peter Liunguluma.

Regarding the 8th ground of appeal, he submitted that the DLHT had no jurisdiction to entertain the dispute as the dispute had to start from authority of the lowest grade, the dispute at hand was to be filed at the Ward Tribunal not DLHT, he cited the case of **Entrepreneurs Financial Center (EFC) and another vs. Kenedy Alex Nyambori**, Civil Appeal no. 17 of 2015 and **Saidi Abdallah Doga vs. Ally Omary Fanga**, PC Civil appeal no. 28 of 2002.

In reply thereof, Mr. Mteite learned counsel for the respondent started his submission by raising the preliminary objection that, the matter before the DLHT was time barred as the late Peter Liunguluma passes away in 1984 and the case was filed in 2021. The Respondents were allocated with the Land Allocating Committee of Gombe Village in 1995 and that they have been in occupation of the land since then, thus the application before DLHT was time barred.

Replying to the preliminary objection raised by the counsel for the appellant, Mr. Msigwa stated that there is no objection as the purported objection need evidence, he prays for it to be rejected. Rejoining on what he has already submitted Mr. Mteite submitted that the raised preliminary objection on time barred which need to be considered by this court on the

basis of what transpired in 1995 the appellant is required to be filed within 12 years.

On the 3rd ground of appeal, Mr. Mteite submitted that, the judgement is correct and is written in accordance with Oder XX rule 4 of the Civil Procedure Code, Cap. 33 R.E.2019.

Submitting on the 5th ground of appeal Mr. Mteite stated that, based on evidence on record, the land was allocated to the respondents by the Village authority and others inherited from their parents. That, Bitoni Mkanawa was chairperson of Gombe Village from 1994 to 1999, 1999 to 2004, 2009 to 2014, his evidence is among the best evidence as he was the village chairperson during the time.

As to the 6th ground of appeal, the appellant failed to exhibit her administratrix as there was no letter of administration. The letter of administration indicates that the deceased passed away on 16/12/2012 at Gombe village and it confirmed by Form no. IV while the evidence shows that, he passed away on 1984. Further the law provides that, the probate cause has to be filed where the deceased resides. In the instant case, the probate cause was instituted at Ifakara Mjini Primary Court which is within Kilombero District while the deceased was residing at Gombe village within Ulanga District.

As to the last ground, the application before the Ward Tribunal was filed by the appellant and now, they are challenging their own deeds, the legal requirement was to be done by the applicant. However, following Written Laws Miscellaneous Amendment Act no. 3 of 2021, section 4 of section 45 as amended, the issue is overtaken by events the issue is non-starter. He prayed for the decision of DLHT to be upheld and the appeal be dismissed with costs.

By way of rejoinder Mr. Msigwa submitted that, had these to say;

As to the 5th ground, he stated that there is no village allocating committee, all the respondents did not offer any proof to that effect and Betodi has never been a leader of Gombe Village.

With regards to the 6th ground, the appellant took the administratrix of Peter Liunguluma Livulala who passed away in 1984. However, the date, month and year as per form no. IV speaks on a different story.

On the outset that, it should be noted that, in the cause of submitting for and against the appeal, the learned counsels raised issues which attracted points of law touching;

1. locus standi and
2. Time bar.

The above two points was submitted in due course as raised in the submission but since it touches the root of the matter, this court has

decided to deal with it first as they are capable of disposing of the matter at hand.

To start with, in the case of **Barclays Bank Tanzania Ltd vs. Tanzania Pharmaceutical Industries and 3 others**, Civil Application no. 62/ 16 of 2018, CAT at Dar es salaam (unreported), the court of appeal had these to say;

"It is important to understand that a matter of legal stance and which may raise legal implication or otherwise described as a point of law can be raised at any time."

See also the case of **Peter Mpalanzi vs. Christina Mbaruku**, Civil Appeal no. 153 of 2019, CAT at Iringa (unreported), where the court stated that;

"Further, locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by the court at the earliest opportunity or once it is raised. In the instant case, the High Court Judge, was, with respect, wrong when he brushed aside the issue of locus standi once raised before him. the issue ought to have been considered by the High Court regardless of having been improperly raised or raised at a late stage."

Locus standi can be defined as a right founded on a legally recognised interest in the matter in dispute, to initiate legal proceedings.

In the present appeal, the appellant sued as an administratrix of the estate of the late Peter Liunguluma Livulala who passed away in 1984. That being the case, the appellant's locus standi to have a right to initiate legal proceeding in circumstances must be preceded by letter of administration appointing her as administratrix. In other words, the locus standi by the appellant to have right to initiate legal proceeding is rooted from the letter of administration granted by the Court.

The evidence on record depicts that, the letter of administration was issued to the appellant appointed her as administratrix of the estate of the late Peter Liunguluma on 21/05/2018. The letter indicates that, the late Peter Liunguluma passed away on 16/12/2012 at Gombe-Mahenge within Ulanga District. The letter was issued by the Primary Court of Ifakara which is within Kilombero District (FORM NO. IV). The letters of administration were tendered and admitted in court as exhibit P- 1, which is the only evidence to prove the locus standi of the appellant.

Exhibit P-1 depict that; *first*, the letter was granted by Ifakara Primary Court on 21/05/2018, *two*, the deceased is Peter Liunguluma, *third*, Agripina Peter Liunguluma was the appointee in the said letter of

administration, **fourth**, the deceased Peter Liunguluma passed away on 16/12/2012.

From the said exhibit and the evidence of the appellant, is in contradiction in that, **first**, the appellant stated that the deceased passed away on or before 1984 while exhibit P-1 shows that he passed away on 2012, **second**, the appellant in her testimony stated that, she was appointed to be administrator in 2012 but the letter presented before this court (exhibit P1) shows that the administrator was appointed on 2018.

However, as per the appellant's oral testimony, it is stated that, Peter Liunguluma passed away in 1984.

The above was the respondents' submission through Mr. Mteite learned counsel and Mr. Msigwa for the appellant did not refute that, piece of evidence but ended admitting it as it came from the evidence on record.

As stated earlier, the locus standi of any person acting on behalf of the deceased come from letter of administration. In the present case, letter of administration shows that, the deceased of which the letter was issued to the appellant to administer his estate passed away on 16/12/2012 and not in 1984 as stated by the appellant in her evidence.

The present letter of administration is not relation to the deceased who passed away in 1984, thus there is no letter ever been sought and granted

to any interested person to administer the estate of the late Peter Liunguluma who passed away in 1984, the appellant inclusive.

Further, it is on record that, the deceased Peter Liunguluma lived at Gombe Village within Ulanga District. It is evident that, within Ulanga District there are primary Courts vested with jurisdiction to entertain all disputes arising from within including matters of issuance of letter of administration.

The appellant herein applied for a letter of administration at Ifakara Primary Court within Kilombero District which is outside the geographical jurisdiction of Gombe Village where the late Peter Liunguluma lived up to his demise. This concludes that, the Ifakara Primary Court and Kilombero District Court had no geographical jurisdiction to entertain any application for issuance of letter of administration and any dispute touching the interest which were within Ulanga District Court. Section 3 of the Magistrates' Courts Act, Cap.11 R.E.2019 gives guidance on the matter and provides that;

- (1) There are hereby established in every district primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.*

(2) The designation of a primary court shall be the primary court of the district in which it is established."

Apparently, it is unfortunate that the anomaly missed the eyes of the District Land and Housing Tribunal else it could have been redressed timely before this appeal was pursued.

In the event therefore, it goes without saying that, since the appellant had never acquired locus standi by being appointed administratrix by the court vested with jurisdiction in respect of the late Peter Liunguluma Livulala who passed away in 1984, then it is with no malingering of doubt that, the appellant travelled and worked under fictitious and illegal letter of administration. Worse indeed, this court, was in dilemma as why the appellant decided to apply for the letter outside the jurisdiction where both appellant and the deceased lived.

For the position given, I am inclined to agree with Mr. Mteite that appellant had had never been appointed administrator thus had no locus standi to initiate any legal proceedings on behalf of the late Peter Liunguluma Livulala. This point of law disposes the appeal before this court.

Further, I hereby nullify the appointment of appellant as administratrix by Ifakara Primary Court. Since all proceedings were initiated by the appellant who had no locus standi, I hereby vacate all proceedings and decisions by

land tribunals which resulted to the present land appeal. I therefore dismiss the appeal with costs.

IT IS SO ORDERED.

DATED at **MOROGORO** this 22nd September 2023.



G. P. MALATA

JUDGE

22/09/2023

RULING delivered in **MOROGORO** in chambers this 22nd September, 2023.

Right of appeal explained to the parties.



G. P. MALATA

JUDGE

22/09/2023