**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA SUB-REGISTRY**

**AT MBEYA**

**MISC. LAND APPEAL NO. 5 OF 2023**

*(Arising from the District Land and Housing Tribunal for Songwe at Mbozi in Land Appeal No. 62 of 2021, Originated in Mpande Ward Tribunal in Land Case No. 1 of 2021)*

**KULWA HITRA MWANDEMBWA.....APPELLANT**

**VERSUS**

**SARA MFWOMI.....RESPONDENT**

**JUDGMENT**

*27th October & 16th November, 2023*

**MPAZE, J.:**

In this appeal, the appellant KULWA HITRA MWANDEMBWA is challenging the decision of the District Land and Housing Tribunal for Songwe (the DLHT) in Land Appeal No. 62 of 2021.

The facts leading to this appeal are simple. The issue at hand does not revolve around the ownership of the land; rather, it pertains to the occupation and utilization of public land. In 2021, the appellant initiated legal action against the respondent, SARA MFWOMI, before the Mpande Ward Tribunal (WT). The appellant's claim centered on the alleged

intrusion by the respondent into her unfinished hut (kibanda)(hereinafter disputed place) that she had been constructing at the TAZARA market (soko) in Tunduma township .

The appellant claimed that in the year around 2011, she initiated the construction of the hut but was halted midway. Several years later, in 2019, when she returned to complete the building, she discovered the respondent using the space for a food-selling business. Despite her requests for the respondent to vacate the premises, there was no compliance. Subsequently, she brought the matter before the WT.

On the contrary, the respondent maintained that neither she nor the appellant, nor anyone occupying the area around the disputed place possesses lawful ownership, instead they are all trespassers.

Having considered the evidence adduced by the parties the WT concluded that the disputed place be divided into equal shares between the parties. It is considered that since the hut has two rooms each should occupy a single room.

Unpleased with the WT decision, the respondent lodged an appeal to the DLHT, on the ground that the WT erred in entertaining the matter due to the claimant lacking locus standi. Confirming this point the DLHT

allowed the appeal and nullified the proceedings and judgment of the WT.

Discontented with the findings of the DLHT, the appellant brought the instant appeal, raising four grounds. However, during the submission one ground was abandoned remained three which are;

1. That the first appellate tribunal erred in law for dismissing the appeal on the ground that, parties had no locus standi instead of struck out the same.
2. That, the trial chairman erred in law and fact for raising and determining new issues of the coram of Ward Tribunal members, without giving parties an opportunity to be heard on the same.
3. That the trial Chairman erred in law and fact for failure to analyse the evidence in(sic) record and hence reached to unfair decision.

At the hearing, the appellant was represented by advocate Jennifer Biko while the respondent was through the service of advocate Lucas Luvanda. The appeal was disposed of by way of written submissions.

Advocate Biko, supporting the appeal, argued on the first ground that the DLHT made an error. He pointed out that the records indicated it was the respondent who lacked locus standi, as the appellant had informed the WT that he was granted the disputed place by witnesses, Mzee Mwasiposya and Mzee Mwansimba, both of whom were called as

witnesses. Advocate Biko contended that since the appellant was the one instituted a suit against the respondent, questioning her locus standi was illogical. she emphasized that the law does not require one to have locus standi to be sued.

Ms. Biko contended that if the DHLT found the matter to be incompetent, the appropriate remedy should have been to strike it out rather than dismiss it. She supported her viewpoint by citing the cases of **Ngoni Matengo and Cooperative Marketing Union v. Alli Mohamed Osman** (1959) EA 577 and **Charles Limeheja vs. Republic**, Criminal Appeal No. 10 of 2020.

On the contrary, Mr. Luvanda contended that the DLTH was justified in determining that the parties lacked *locus standi*. He argued that the evidence given by both parties showed that the disputed place did not belong to either of them. Advocate Luvanda illustrated this point with the testimony provided by the appellant and her witnesses, emphasizing that both the appellant and the respondent had no ownership claims over the disputed place.

Advocate Luvanda further argued that the contention by the appellant's counsel, suggesting that the matter should be struck out instead of dismissed, was untenable since both remedies essentially

convey the same meaning. Therefore, according to him, the DLHT was correct in both declaring the appellant lacked *locus standi* and in striking out the matter.

I need to address this ground of appeal first. The central issue is whether the DLHT was justified in concluding that both the appellant and respondent lacked locus standi. Advocate Biko contends that the appellant did have *locus standi*, citing the appellant's statement before the WT that the disputed place was apportioned to her by Mzee Mwasiposya and Mzee Mwansimba.

Upon a thorough examination of the record, particulary the evidence adduced by the parties before the WT, it is apparent that the respondent explicitly admitted to tresspassing into the disputed place. She openly stated that whoever present there is a trespasser, underscoring the fact that the land is owned by the Government or is deemed public property.

Contrarily, the appellant's testimony did not assert ownership of the land. Instead, she claimed to have initiated the construction of a hut at the disputed place. According to her account, government intervention forced her to halt construction, and after a considerable period, she was given permission to resume development. However,

upon her return, she found the respondent already occupying and using the disputed place.

The appellant's two witnesses, Mwasiposya and Mwansimba, admitted to apportioning the disputed place to the appellant, but they did not state that the disputed place belonged to them. For clarity, Mwasiposya was recorded to say;

> '... *Hili eneo wanalogombania mimi nimeshitakiwa kwasababu ya vibanda na vyoo.* ***Tuliambiwa tumevamia na ni kweli mimi ndiye nilikuwa mpimaji****. Kwa eneo linalogombaniwa mimi nilimpa Kulwa (mama Fadhili)....'*( Emphasis added).

On his side, Mwansimba said that;

> '... *Nimeshtakiwa kwa ajili ya eneo hili mpaka soko likapatikana. Nilishtakiwa kwa kujenga vibanda na choo,* ***hivyo lilikuwa kosa la uvamizi na jinai.***
>
> *Tuliendelea hadi tulipopewa stop order na mama Fadhili akiwa mmoja wao....*(Emphasis added).

In light of the evidence presented, it cannot be defenetely concluded that either the appellant or the respondent laid claim to ownership of the land. Therefore, I diverge from Advocate Biko's argument suggesting that the appellant successfully established ownership over the disputed place.

Given the circumstances, I agree with the DHLT's determination that both parties lacked *locus standi*. This alignment is supported not only by the DLHT's explicit decision on the appellant's lack of *locus standi* but also by the similar finding of the WT, which concluded that both the appellant and the respondent were trespassers.

Given this situation, the next question revolves around the remedy in a case where the applicant or plaintiff lacks *locus standi*. Advocate Biko argued that the appropriate order was to strike out the matter, while Mr. Luvanda argued that there is no clear demarcation between dismissal and striking out.

In my opinion, neither dismissal nor striking out is an appropriate order in this case. The issue of *locus standi* goes to the jurisdiction of the court where a matter is filed. Jurisdiction is a fundamental aspect in the dispensation of justice, and it must be addressed by a court before any other issues are decided.

The issue of jurisdiction can be raised by any party or by the court *suo motto* at any stage of the proceedings, even at the appellate stage, as seen in the decision of the Court of Appeal of Tanzania in the case of **Richard Julius Rukambura v. Issack Ntwa Mwakajila and another**, CAT Civil Application No. 3 of 2004 (unreported). This holding

is in line with a previous decision of the same Court in **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and 20 others**, CAT Civil Appeal No. 8 of 1995 (unreported).

Thus, when the irregularity pertains to the jurisdiction of the court, the appropriate remedy available to the appellate court is to nullify, quash, and set aside the proceedings, judgment, and any resultant orders.

I have read the impunged judgment of the DLHT, and it neither dismissed nor struck out the matter. Instead, it quashed the proceedings and the judgment of the WT. It appears that the use of Kiswahili language in the order might have posed challenges for the counsel in interpreting the order accurately.

The DHLT phrased the order as follows: "*Mwenendo na hukumu ya baraza la kata imefutwa*," which translates to "*The proceedings and judgment of the Ward Tribunal have been quashed.*" This choice of words is distinct from "*kutupilia mbali*" or "*kufukuza*," which mean dismissal and striking out, respectively.

Now, whether the DLHT was proper with its order. I hastily held that it was not. This is because it was supposed to firstly nullify the proceedings and judgment then proceed to quash and set them aside,

this aligns with the principles outlined in the case of **Samwel Gitau Saitoti @ Saimoo @ Jose & Others vs The Director of Public Prosecutions** (Criminal Application 73 of 2020) published on the website www.tanzlii.go [2021] TZCA 554, which underscores the importance of appropriately ordering the nullification of proceedings. Adhering to established legal procedures is crucial for maintaining procedural fairness and upholding justice.

That being said and done, this court finds that the first ground of appeal is sufficient to resolve the entire appeal. Consequently, there is no need to proceed with determining the remaining grounds.

In circumstances therefore, I invoking the revisional power of this Court under section 43 (1) (b) of the Land Disputes Courts Act, Cap. 216 R.E 2019, I proceed to nullify the proceedings and the judgments of the Ward Tribunal, and the District Tribunal. Subsequently, I quash the proceedings and judgments of the two lower tribunals and set aside any resultant orders. Considering the nature of the case I make no orders as to costs.

It is so ordered.

**Dated** at **Mbeya** this 16th November, 2023.

**M.B. MPAZE**

**JUDGE**

**Court:** Judgment delivered in the presence of both the appellant and respondent and in the presence of Ms. Jennifer Biko for the appellant and also holding brief of Mr. Enock Luvanda for respondent.


**M.B. MPAZE**

**JUDGE**

**16/11/2023**