

THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO. 10 OF 2023

(Originating from the District Land and Housing Tribunal for Iramba at Kiomboi in
Land Application No. 01 of 2022.)

JOSEPH SONGELAE KATALA.....APPELLANT

VERSUS

WINTAPA ABEL NTULU.....RESPONDENT

JUDGEMENT

Date of Last Order: 16/10/2023

Date of Judgment: 07/12/2023

A. J. Mambi, J.

The appellant, **JOSEPH SONGELAE KATALA** is aggrieved by the decision of the District Land and Housing Tribunal for Iramba at Kiomboi (herein *the DLHT*). Initially the respondent sued the appellant and the other namely Godliver Peter Kabaigola at the DLHT alleging them to have trespassed into her 1 ½ acre parcel of land situate at Msisi Hamlet, Ruruma Village within Iramba District in Singida Region (herein *the suit land*). The applicant (now respondent) in her application prayed among others for the declaratory orders that she was a rightful owner of the suit

land and that the appellant pay Tsh 5,500,000/= for the destructed natural trees in the suit land. The respondent (now appellant) denied the allegations maintaining that he was the owner of the suit land.

Having heard from both parties, the DLHT was satisfied that the respondent (then applicant) proved her case on the balance of probabilities as required by law and declared that she was a lawful owner of the suit land. Having so decided the DLHT went ahead in granting an order restraining the appellant (then respondent) and Godliver Peter Kabaigola permanently from interfering with the respondent possession and occupation of the suit land. However, the DLHT declined to award Tsh 5,500,000/= as damages that was claimed by the respondent (then applicant) for the reason that there wasn't enough evidence to prove the said fact.

Dissatisfied by the decision of the DLHT, the appellant appealed at this Court faulting the said decision basing three grounds of appeal, to wit;

- 1. That, the trial tribunal erred in law and in fact to enter judgment in favour of respondent while the evidence adduced was contradictory.*
- 2. That, the trial tribunal erred in law and in fact to enter judgment in favour of respondent based on weak evidence adduced by the applicant and her witness.*
- 3. That, the trial tribunal erred in law and in fact to enter judgment in favour of respondent while the respondent had no locus standi.*

This matter was disposed off through written submissions whereby the appellant secured a legal representation from Mr. Cosmas P. Luambano-Learned Advocate and the respondent from Mr. Majaliwa Wiga-Learned Advocate.

Submitting for the appellant, Mr. Cosmas, the learned counsel for the appellant started with addressing this Court with respect to Exhibit P1 and P2 that was admitted by the DLHT. Mr. Cosmas contended that the admission of those exhibits without being first read to the parties was fatal as it deprived the right of the appellant to know the contents of the documents that were tendered. Reference was made on the decision of the court in **Mwinyi Mwinyi Jamal Kitalamba @ Igonzi and 40others vs R** (2000) TLR 508 and **Robinson Mwanjisi and 30others vs R** (2003) TLR 208.

With regard to the first and second ground of appeal, Mr. Cosmas submitted that there were contradictions on the evidence of the respondent and her witness PW2 (Mkumbo Kilimba). He argued that while PW2 in his cross-examination stated that the suit land belonged to their clan, the respondent in her evidence stated that she was given the suit land by her late father and on another note when replying to the assessors' questions she stated that the suit land was theirs.

Mr. Cosmas went on asserting that there were other contradictions with regard to the boundaries stated in the application with that in exhibit P1 and those stated by the respondent and her witnesses in their evidence. The learned counsel pointed out the contradictions in that while in the application the respondent identified the borders of her land to be on the Northern side it borders with Japhet Kasoza, southern side with Emmanuel Shan and Amos Matalu, Western side with Emmanuel Shani and Eastern side with Japhet Kasoza. PW2 in his evidence testified that the suit land bordered as follows, on the Northern side with Japhet Kasoza, Southern side with Emmanuel Shani/Emmanuel, Western side with Emmanuel Mapuga and Eastern side with Japhet Kasoza. On the other hand, PW3 testified that on the Northern side the suit land borders with Wintapa Abel Ntulu, Southern side with Emmanuel Shani, Western side with Emmanuel Petro and Southern side with Japhet Kasoza/Kishaga. On all those contradictions, Mr. Cosmas was of the view that went to the root of the case and weakened the respondent case.

With respect to the third ground of appeal, Mr. Cosmas argued that the respondent lacked locus stand as in her evidence she produced a document showing that the suit land was given to her by her father while PW2 in his cross-examination stated that the suit land belonged to the clan. Due to the contradictions that he raised; Mr. Cosmas was of the view

that the respondent had no interest in the suit land for being not the owner giving her capacity to sue. Reference was made on **Lujuna Shubi Ballonzi vs The Registered Trustees of Chama Cha Mapinduzi** (1998).

In response, the respondent through her learned counsel disputed all grounds of appeal. With regard to the point on failure to read exhibit P1 and P2, Mr. Majaliwa for the respondent responded that it was an afterthought as the appellant raised in his submissions. The learned counsel urged this Court to disregard it since it was not a ground of appeal in his pleadings.

With respect to the first and second ground of appeal, Mr. Majaliwa contended that there were no any contradictions in the evidence from the respondent side. He argued that at the DLHT issues of boundaries were stated on the handover agreement while the main dispute at the DLHT was not on the boundaries but on trespass into the suit land by the appellant. Mr. Majaliwa asserted that the respondent on her part managed to prove her ownership of the suit land as required by the law making the DLHT to decide on her favour.

On the third issue that concerned locus standi, Mr. Majaliwa contended that the respondent was and is the owner of the suit land. He added that the respondent interest stems from her late father who handed

the suit land over to her before his demise. Being the owner of the suit land, the learned counsel contended, means she had locus stand to defend her interest over it against any trespasser such as the appellant.

Rejoining, Mr. Cosmas, with respect to the point of failure to read exhibits after their admissions, he contended that it was a point of law that could be raised at any stage of the proceedings. He referred this Court on the decision of the court in **Elibariki Malley vs Salimu H. Karata**, Civil Appeal No. 67 of 2022 and **William Sulus vs Joseph Samson Wajanga**, Civil Appeal No. 193 of 2019.

Before going further, I find it prudent to determine the issue of whether it was right for the appellant to raise another ground of appeal in his submissions while he did not do so in his memorandum of appeal. This is due to the fact that the appellant in his memorandum of appeal raised only three grounds of appeal, to wit; the first ground of appeal concerned contradictory evidence, the second ground of appeal concerned weak evidence and the third ground of appeal concerned locus standi. In this regard, there was nowhere the appellant complained on the failure of the respondent witnesses to read their exhibits that they tendered at the DLHT. In my view, raising a new ground of appeal at the submission level meant that the respondent was taken into unexpected surprise. It is trite law that where the appellant has filed his grounds of

appeal in his memorandum of appeal, he is barred from adding new ground(s) of appeal at the submission level. In my view, the party can only do so, by seeking the leave of the court to amend his ground(s) of appeal and the other party must be informed.

However, it is trite law, as it was submitted by the appellant in his rejoinder, that a point of law can be raised at any stage of the proceedings. Now, the question is, does failure to read an exhibit that has been admitted by the court/DLHT fatal in civil cases? The answer in my considered view is **NO**. This is because, in order to avoid parties in the case to surprise their opponents, the rules of procedure requires them to serve their opponents all documents that they intend to rely in their case. This done by attaching annexures in the plaint or application.

It is trite law that before admitting an exhibit during the hearing, the court is required to observe legal requirements for its admissibility. The witness must point out specific identification marks, brand or trade name or other peculiar features in relation to the exhibit to be tendered. The witness having pointed out the specific features of the exhibit then the said exhibit has to be shown to the opposing party for comment. The legal requirements which the court is required to satisfy itself before admitting exhibits in civil cases are: -

- (a) the competency of the witness to tender the exhibit (that is a maker, addressee, custodian, owner, possessor);
- (b) whether the exhibit was attached to the pleadings or included in a list of documents filed in court and
- (c) whether the exhibit is original.

Reference can be made on Order VII Rule. 14, 15 and 18; and Order XIII Rule. 1; and 11 of The Civil Procedure Code [Cap. 33 R.E. 2019] and Section 64(1) of the Evidence Act [Cap. 6 R.E. 2019].

It should be noted that where there is no objection from the opposing party and the exhibit has passed its admissibility test the court may admit it. In admitting the exhibit, the court has to record it with a special mark for purposes of identification.

Going through the records, this Court is satisfied that the DLHT adhered fully with civil legal requirement in admitting exhibit P1 and P2. In this regard, the claim by the respondent that exhibit P1 and P2 were admitted in contravention of the law has no merit. That being the case this Court finds that the additional ground of appeal concerning exhibits that was raised by the appellant lacks merit.

Going to the grounds of appeal raised, submissions made thereof and the records before me, I find one major issue which is whether the DLHT,

in its decision, assessed properly the evidence before it. In other words, the issue is whether the respondent proved her case as required by law in civil cases.

With respect to the first and second ground of appeal, the appellant counsel contended that there were contradictions in evidence of the respondent and her witness in that whereas PW2 in his cross-examination stated that the suit land belonged to "our clan", the respondent in here evidence stated that she was given the suit land by her late father and when responding to assessors' questions she stated that the suit land "is ours". Going through this submission I am of the considered view that it is worthless to overturn the tables. I hold so because the evidence that was adduced and the response made by the respondent witnesses did not weaken the respondent case. After all, PW2 stated that the suit land belonged to their clan as the respondent was his relative. In my considered view, PW2 did not mean the suit land belonged to the clan of the appellant instead he was corroborating the evidence of the respondent who stated that the suit land is "ours". Furthermore, the evidence of the respondent and her witnesses that she was given the suit land by her late father was supported by exhibit P1 a handing over agreement between the respondent and her late father.

On the other hand, the appellant counsel in his submissions pointed out contradictions relating to the borders of the suit land. However, going throughout the records I find that the main contention of the respondent at the DLHT was on ownership of the suit land and not on its borders. That notwithstanding, even if I am to hold that the dispute was on borders of the suit land still there is no significant contradiction with respect to the names of the persons bordering the suit land. I hold so because the names of the persons that their lands borders with the suit land pointed in the application are significantly similar with that which was mentioned by PW2 and PW3 in their evidence. The only thing that I noticed is the alternating of the names with respect to directions. In my view this is a minor contradiction that cannot change the decision of the DLHT as it does not go to the root of the dispute. That said I find that the first and second ground of appeal are non-meritorious.

Coming to the third ground of appeal, that the respondent lacked locus standi to sue. Locus standi in law is a capacity for one to sue at the court of law over his interest. Worth at this juncture making reference to Lord Denning in a persuasive case of **K v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd** [1966] 1QB 380 at 400-1 had once observed that:

"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him- But it will listen to anyone whose interests are affected by what has been done."

Worth also making reference to **Lujuna Shubi Ballonzi**,*supra*

where the court held that;

"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with."

In the instant case the respondent showed that she owned a suit land, that, that suit land was trespassed by the appellant and Godliver Peter Kabaigola who fenced it and finally cut down trees on it. This, in my view, was enough evidence to show the respondent had locus standi enabling her to present her case against the appellant and another at the DLHT. That being the case, once again this Court finds that the third ground of appeal lacks merit.

Lastly, going through evidence of the parties and the judgment of the DLHT I am satisfied that the evidence from the respondent side was strong and proved her case on balance of probabilities as required by law in civil cases. Furthermore, this Courts finds that the DLHT, in its decision, assessed properly the evidence before it.

That said, I have no reason to fault the decision made by the District Land and Housing Tribunal for Iramba rather than upholding it. In the

circumstance, I find that this appeal lacks merit and is hereby dismissed in its entirety. No orders as to costs.

Order accordingly.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke at the end.

A. J. MAMBI

JUDGE

07/12/2023