

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA
LAND APPEAL NO. 18 OF 2023**

(Emanating from the District Land and Housing Tribunal for Kilwa at Kilwa Masoko
in Misc. Application No. 6 of 2022, originating from Masoko Ward Tribunal in Land
Case No. 82 of 2021)

HARIDI AHMAD KHATIBU ----- APPELLANT

VERSUS

FAMILIA YA NGUNGUNI ----- RESPONDENT

JUDGEMENT

Date of last Order: 05.12.2023

Date of Judgment: 12.03.2024

Ebrahim, J.:

The appellant herein had initiated a case at Masoko Ward Tribunal, Kilwa District claiming that the respondent encroached on his land allegedly to be the property of the late Binfi Ahmadi Hatibu (Bi. Mkenge) from year 1940. The case was decided in favour of the respondent.

After the decision of the Ward Tribunal for Masoko, the appellant did not appeal against the decision hence the time lapsed. Thereafter, the appellant herein knocked at the door of the District Land and Housing Tribunal for Kilwa at Kilwa seeking for extension of time to lodge his appeal. The District Land and Housing Tribunal for Kilwa at Kilwa dismissed the appellant's application for failure to adduce sufficient reasons for the delay. Disgruntled by the dismissal order, the appellant preferred the instant appeal raising two grounds of appeal as follows:

1. *That, the trial Chairman erred in law and fact by holding that the appellant had no sufficient and reasonable grounds to warrant the extension of time so that the appellant can file an appeal out of time, while the appellant has reasonable grounds.*
2. *That, the trial Chairman erred in law and fact by failing to observe that there are illegalities in the impugned judgment of the trial ward tribunal in suit No. 82 of 2021 which are enough to warrant extension of time to the appellant to appeal out of time. The two illegalities are;*
 - i. *That, the first illegality is in the sense that the trial ward tribunal decided suit No. 82 of 2021 on merits and pronounced judgment while knowing that currently, the position of the law is that the Ward Tribunal has no jurisdiction to pronounce judgment, this was an illegality sufficient to warrant extension of time to appeal;*

- ii. *That, the second illegality is that the respondent is not a legal person capable of suing or being sued as it has no locus stand;*

Based on the foreside grounds, the appellant prayed for this court to allow the appeal and set aside the trial Tribunal's decision with costs.

At the hearing of this appeal and upon agreement by the parties, the court ordered the appeal to be argued by way of written submission and set a schedule thereat. Both parties adhered to the set schedule. Both parties appeared in person, unrepresented.

Submitting in support of the appeal, the appellant presented the salutary that an principle in extension of time that it is not automatic but it is granted at the discretion of the court judiciously exercised. To cement his contention, he cited the case of **R vs. Yona Kaponda & 9 Others** [1985] T.L.R 84, where the Court emphasized on the fact that the court should not only consider if there are sufficient reasons for the delay but also the reasons sufficient enough for extending time.

Arguing on the 2nd ground of appeal, the appellant emphasized on a settled principle of law that once an application for extension of time raises a ground of illegality, it is sufficient reason to grant the

extension so as to correct the said illegality. To bolster his argument, he cited the case of **Transport Equipment LTD vs. DP Valambhia** [1993] TLR 91 where the Court of Appeal held that;

"When the point at issue is one alleging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose to ascertain the point and if the alleged illegality is established, to take appropriate measures to put the matter and the records right."

The appellant pointed out two illegalities; the 1st illegality is that the trial Ward Tribunal decided case No. 82 of 2021 on merits and pronounced judgement contrary to Section 13 (1) of the Land Disputes Court Act, [Cap. 216 R.E 2019] which provides for the function of the Ward Tribunal to mediate and assist parties to arrive at a mutual agreement. He commented that the Ward Tribunal has no jurisdiction to adjudicate the disputes rather it is only vested with jurisdiction to mediate.

He pointed out the 2nd illegality that the respondent is not a legal person capable of suing or being sued as it has no locus standi. The appellant cited the cases of **Lujuna Shubi Balonzi vs. Registrar of**

Chama cha Mapinduzi (1996) TLR 203; and **Gervas Masome Kulwa vs. the Returning Officer and Another** (1996) TLR 320 which were cited with approval cited in the case of **Ally Ahmed Bauda (Administrator of the estate of the late Amina Hussein Senyange) vs. Raza Hussein Ladha Damji and Others**, Civil Application No. 525/17 of 2016 (Unreported). In **Ally Ahmed Baudas case** (Supra) the Court held that the matter of locus stand is not the matter of evidence but rather the matter of law as it goes to the jurisdiction of the court. He stated further that locus standi is based on the right of a person to be legally capable to sue and or being sued. He went on to define the term person to mean natural juristic persons. Thus the appellant argued that in the case at hand the respondent herein is neither a natural nor juristic person and had DLHT granted the extension of time, such issue would have been addressed. He prayed for the appeal to be allowed with costs.

Responding to the submissions by the appellant, the respondent contended that the appellant did not comply with **Section 20 (1) of the Land Disputes Court Act, [Cap. 216 R.E 2019]**; and he did not adduce sufficient reasons to warrant extension of time. He cited the

case of **Tanzania Fertilizer Company (T) and Another**, Civil Application No. 45 of 2000 (Unreported) on page 7 where the Court of Appeal held that;

"All in all, the delay is a delay even if it was for two days."

Replying on the 2nd ground of appeal the respondent started by citing the case of **Charles Richard Kombe vs. Kinondoni Municipal Council** (Unreported) where it was held that;

"From the above definitions it is our conclusion that for a decision to be attacked on the ground of illegality, one has to successfully argue that the court acted illegally for want of jurisdiction, or for denial of the right to be heard or that the matter was time-barred."

He contended also that the appellant's application did not mention any of those illegalities to warrant extension of time to appeal.

Arguing on the issue that the respondent was not a legal person capable of being sued; the respondent submitted that it was the appellant who sued the respondent at the Ward Tribunal; and he is now complaining about the capacity of the respondent in this case. Therefore, it is an afterthought, he said.

On the issue of the jurisdiction of the Ward Tribunal to decide a matter on merit and pronounce judgement; the respondent agreed that there is an amendment of **Section 13 of the Land Disputes Court Act, [Cap. 216 R.E 2019]** and the primary jurisdiction of the Ward Tribunal is under **Section 13 (1) of the Land Disputes Court Act, [Cap. 216 R.E 2019]** which is to mediate only. The appellant argued that the Ward Tribunal had no jurisdiction to decide the case on merit and to pronounce judgement; but he did not state when the amended law started to operate, he argued.

In his rejoinder submission, the appellant reiterated his written submission in chief.

I have dispassionately followed the rival submissions by the parties.

I would straight away go to the 2nd ground of appeal on the issue of illegality. The first illegalities pointed out by the appellant is that the trial Tribunal had no jurisdiction to entertain the matter. The primary function of the Ward Tribunal is to secure peace and harmony in the area for which it is established. Mediation is one of the methods insisted by law to assist parties to the dispute to arrive at a mutually

acceptable solution on any matter concerning land. This objective is stipulated under **Section 13 (1) of the Land Disputes Court Act, [Cap. 216 R.E 2019]**. According to the **Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021**, which became operative on, 11th October, 2021 the Ward Tribunal was no longer vested with adjudication powers. The Ward Tribunal remained with powers to mediate only. Going through the records, I found that the case was filed at the Ward Tribunal on 04.11.2021 and during that time the Masoko Ward Tribunal had no jurisdiction to adjudicate on land matters.

Therefore, the jurisdictional issue raised by the appellant stemming from ground of appeal No. 2 (i) is meritorious:

Moving to the 2nd illegality on the locus standi of the respondent; the issue is whether the respondent is a natural or juristic person. In other words, whether the 2nd respondent is a legal person with capacity to sue or be sued.

In the instant case, the appellant sued Familia ya Ngunguni. A family unit being neither a natural person nor a juristic entity (corporate body) is devoid of locus standi and cannot sue or be sued in its

name. Thus, it was a fatal anomaly to designate the 'Family ya Ngunguni' as the respondent.

A civil action like the one which was filed by the appellant in the trial Tribunal can only be instituted against a natural person or as in this case a juristic entity created and recognized by law. A suit instituted against a non-existent respondent or defendant as the case may be, is void ab initio.

In the case of **Change Tanzania Limited vs Registrar Business Registration & Licencing Agency** (Civil Appeal No.3 of 2021) [2023] TZCA 17598 (5 September 2023) at page 10, it was observed that;

"....., in any judicial proceeding, the capacity of the parties is a crucial matter that goes to the root of a suit and, on that account, being fundamental, it can be raised at any stage of the proceedings even after judgment upon appeal, but preferably at an early stage to enable a mindful court to resolve that issue before delving into the merits of the matter."

The Court on page 12 further holds that;

*"Now, as stated earlier, it is trite that, **a non-existent person or entity can neither sue as a plaintiff nor be sued as a defendant.** In this connection, we find it expedient to clarify our*

position that, **parties initiating civil proceedings must be either natural persons who are alive or their recognized legal representatives and juristic entities recognized by law.**" [Emphases added]

Although the issue of locus stand of the respondent was raised by the appellant; he cannot be allowed to benefit from his inaction as he was legally bound to sue a proper person who is capable of being sued. In the case of **KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another** (1972) E.A. 503, wherein it was held that;

"no court will aid a man to drive from his own wrong."

Before I pen off, I would feel obliged to equally discuss the locus standi of the appellant in consideration of the fact that he was claiming the land alleged to be the property of the late Binti Ahmadi Hatibu (Bi Mhenge).

However for now, that issue is just food for thought and be reserved for another appropriate.

In the upshot, the appeal is dismissed on the reason that the appellant had sued a none existing legal entity. (The respondent). Hence, the case was void from the very first stage. No appeal could come out of an illegally instituted matter irrespective of the fact that

the matter originates from an application for extension of time. I therefore nullify and set aside all the proceedings from Masoko Ward Tribunal which adjudicated the matter without jurisdiction to do so; and the application at the DLHT as well as all the resultant orders and decisions made therefrom. A party wishing to institute a case must follow the law and set rules of procedure subject to time limitation. Considering the circumstances of this case that the Masoko Ward Tribunal acted without jurisdiction. I give no order as to costs. Each party shall bear its own costs.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim

JUDGE

Mtwara

12.03.2024