

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPEAL NO. 52 OF 2018**

(Arising from Kilombero/Ulangu District Land and Housing Tribunal at Ifakara in Land Appeal No. 250 of 2016;  
Originating from the Ifakara Ward Tribunal in Land Application No. 39 of 2016)

**LUCAS JOHN MKUYA.....APPELLANT**

**VERSUS**

**HONORATH M. URASSA.....RESPONDENT**

Date of last Order: 20.01.2020  
Date of Judgment: 09.03.2020

**JUDGMENT**

**V.L. MAKANI, J.**

This is an appeal by LUCAS JOHN MKUYA. He is appealing against the decision of the Kilombeo/Ulangu District Land and Housing Tribunal at Ifakara (the District Tribunal) in Land Appeal No. 250 of 2016 (Hon. L.R. Rugarabamu, Chairman). The matter originated from Ifakara Ward Tribunal (the Ward Tribunal) in Land Case No. 39 of 2016.

At the Ward Tribunal the appellant claimed that the suit land which was at Mkuya area belonged to his father it was invaded by the respondent in 1999. On the other hand, the respondent said he bought the suit land from one Tiem Fusi who had bought the said piece of land from the appellant's father John Mkuya. The respondent presented as exhibits sale agreements between John Mkuya and Tiem Tiem Fusi another one between Tiem Fusi and himself. The Ward and District Tribunals all decided in favour of the respondent on the basis

of the sale agreements and the long stay of the respondent in the suit land without interruption.

The appellant is dissatisfied with the decision of the District Tribunal which confirmed the decision of the Ward Tribunal and has filed this appeal with the following grounds:

- 1. That the District Land and Housing Tribunal erred in law and fact for stating that the respondent is the lawful owner of the disputed land without considering that the sale agreement between the respondent's vendor one Tiem Fusi and John Mkuya bears no signature of the said parties.*
- 2. That the District Land and Housing Tribunal erred in law and fact by delivering judgment in favour of the respondent by considering that the cause of action is time barred, whilst the disputed arose in 2016 whereby the respondent had hired one Kennedy Njakachai to cut down the trees from the disputed land which was owned and used by the appellant and his family until the said invasion.*
- 3. That the District Land and Housing Tribunal erred in law and fact by entering judgment in favour of the respondent without considering that her witnesses were absent at the trial and during the visit of the disputed land.*

The appeal was argued by way of written submissions. The appellant's submissions were filed gratis by Ms. Irene Felix Nambuo, Advocate from the Legal Aid Clinic, Legal and Human Rights Centre. The respondent's submissions were drawn and filed by Kelvin Tadei Luambano, Advocate.

As for the 1<sup>st</sup> ground Ms. Nambuo said the Ward Tribunal failed to evaluate the adduced sale agreement as it did not contain the signatures of Tiem Fussi, John Mkuya and Rolant Mkuya the witness. She said the neighbours of the suit land where not aware of the sale namely Chambulilo Omari and George Mpwapwa but the Ward Tribunal disregarded this fact.

As for the 2<sup>nd</sup> ground Ms. Nambuo said the dispute arose after Kennedy Njakachai invaded the suit land and harvested teak trees without the consent of the appellant's family. She said the dispute arose in 2016 when Kennedy Njakachai cut down the trees so the cause of action was in 2016. She relied on section 5 of the Law of Limitation Act, CAP 89 RE 2002.

As for the third ground Ms. Nambuo said all the Tribunals erred by relying on the vague statement of one Ally Njakachai who failed to appear together with the respondent during the visit. She said the respondent failed to bring witnesses to corroborate the statement of Njakachai. She further prayed for the court to re-evaluate the evidence it being the first appellant court. She relied on the case of **Future Century Limited vs. Tanesco, Civil Appeal No. 5 of 2009 (CAT-DSM)**(unreported).

Ms. Nambuo also submitted that the respondent failed to prove that there was contract as there was no proof of the authenticity of the sale agreement according to section 13 of the Law of Contract Act CAP 345 RE 2002. She further stated that since there were no

signatures of the late John Mkuya it proved that Tiem Fussi had no good title to sale the suit land to the respondent as alleged. She cited the case of **Farah Mohamed vs. Fatuma Abdallah [1992] TLR 205 (HC)** which held he who doesn't have legal title to land cannot pass good title over the same to another. She prayed for the appeal to be allowed and the decisions of both Tribunals be quashed and set aside, and the appellant be declared the lawful custodian of the disputed land and the sale agreement between the late John Mkuya and Tiem Fussi be nullified.

In his response Mr. Luambano, Advocate prayed for the court to adopt the Reply to the Petition of Appeal. He further stated that the District Tribunal ruled out that the appellant has no locus standi to sue on this matter. He said the appellant had not appealed against this finding of the District Tribunal.

As for the first ground Mr. Luambano stated that Counsel for the appellant had raised a new issue of inheritance which was not subject of argument in the Tribunals and therefore should not be entertained. He said the process of inheritance has not been backed up with evidence as it is not shown how the land was transmitted from the appellant's grandfather to his late father and then later to him. He said the main reason is that to date there is no Letter of Administration or any written evidence of those two estates. He relied on section 80(1) of the Probate and Administration of Estate Act CAP RE 2009. He said there is no law that compels parties to the sale to involve neighbours. He said neighbours are only necessary to confirm

boundaries and so their involvement in the sale agreement is only optional. He pointed out that the appellant had never been a party to the contract and therefore he is not allowed to raise any alarm concerning the said contract. He said if there were any queries on the contract then he ought to have brought one Tiem Fussi. He said the sale agreement between John Mkuya and Tiem Fussi was legally signed by both parties hence a legal and enforceable contract. He said the issue of signatures was raised in the Tribunals but the appellant opted not to argue on this issue and it was not even argued in the first appellate Tribunal.

As for the second ground Mr. Luambano said the proceedings show that the appellant was complaining that the suit land was invaded in 1999 and not 2016 as is the case in his submissions in this case. He said the issue of Kennedy Njakachai cutting trees was in 2016 and invading the suit land is new evidence which is not allowed in a second appeal.

As for the third ground Mr. Luambano said that it is not necessary to bring all witnesses during any point of trial, including the visit to the disputed land. He said it is enough to prove the case on balance of probability. He went on submitting that the respondent brought witness that he found necessary for his case, what the Tribunal needs to consider is the weight and credibility of the witnesses and not the number. He said during the whole time of trial the appellant has always said that the suit land belonged to his father, who sold it to Tiem Fussi. He said the appellant also admitted that he

did not have Letters of Administration of the estate of his father and so the lower Tribunals could not decide in favour of the appellant. He said the grounds and claims of the appellant have no legs to stand and so he prayed for the appeal to be dismissed with costs and the decision of the Tribunals be upheld.

In rejoinder Ms. Nambuo reiterated what he basically said in the main submissions and emphasized that the cause of action was in 2016 when Kennedy Njakachai invaded the suit land. She said the issue of locus was noted at the District Tribunal and so it shows that the proceedings at the Ward Tribunal were not proper. She insisted for the appeal to be allowed with costs.

I wish to point out from the outset that this is a second appeal in which this court can only interfere with the concurrent findings of facts of the Tribunals below if it is shown that there is misdirection or non-direction on evidence or completely misapprehension of the substance, nature and quality of evidence resulting in unfair decision (see **DPP v. Jafari Mfaume Kawawa (1981) TLR 14**).

I have carefully considered all the circumstances surrounding this case. Having done that I strongly feel that there was an important area which the Tribunals below failed to address themselves and I respectfully think that had the lower Tribunals seriously considered issue they may have come to a different conclusion.

I have gone through the submissions by Counsel and also the records of the Ward and District Tribunals. I will consider the issue of locus standi which was raised in the Reply to the Petition of Appeal and of which all Counsel had an opportunity of addressing. This issue was also noted by the District Tribunal in its judgment. Locus standi is a principle which determines jurisdiction of the court and when it is raised then the court has to not and address it at the earliest possible time which unfortunately both the Ward and District Tribunals failed to do so.

In its judgment the District Tribunal duly established that the appellant did not have mandate to prosecute the case. At page 2 to 3 of the typewritten judgment, the Chairman stated:

*"It is true that the appellant is claiming a suit premise as a property of his late father and also admitted of having no legal right to appear and prosecute this case on behalf of the owner who is his late father; I could not trace any evidence from the trial tribunal case record that the appellant had such mandate to institute this case as he did. In the case of **Kisalage Elias Nyaga vs. Masele Mayunga and four others, the High Court (Land Division) at Tabora (unreported) Application No. 34 of 2009** the court held that whoever is suing over the property of the deceased must establish and substantiate with document that is a legal representative of the deceased."*

Having established that the appellant did not have the mandate (locus standi) to initiate the application, then the subsequent order was for the proceedings in the Ward Tribunal to be declared a nullity and the decision therein be quashed and set aside. The rationale is easy to

comprehend, in that, since the initiator of the case had no mandate, there was thus nothing to act upon.

In the Kenyan case of **Momanyi (suing on behalf of the late Masira Onsase) vs. Omwoyo & Another, Case No. 167 of 2016** in the **Environment and Land Court at Kisii** which is highly persuasive, the court was encountered with a similar situation and had this to say:

*"The letters of administration are to the plaintiff in the present suit, meaning that as at 8<sup>th</sup> June 2016 when he filed the suit he never had any letters of administration to the deceased estate. The suit is incompetent and filed in abuse of the process of the Court. The suit was null and void ab initio and cannot be sustained."*

Basing on the above cited case, it was improper for the Ward Tribunal and most importantly the District Tribunal to have proceeded with the case and subsequent orders, after noting the defect that the appellant was not appropriately mandated to file the land application at the Ward Tribunal while he was not an appointed Administrator of his father's estate.


On the face of it the appellant was suing in his capacity not on behalf of his late father. I therefore hold that, the appellant's act of suing in his name and filing the suit at the Ward Tribunal without having the Letters of Administration renders the whole of the Ward Tribunal's proceedings and decision null and void ab initio. Similarly, the proceedings of the District Tribunal are also null and void as they are based on the proceedings of the Ward Tribunal.



For the reasons stated above, I find no reason to evaluate the remaining grounds of appeal related to ownership of the suit land and others as in essence there was nothing before the Ward and District Tribunals. The appellant may decide, if he so wishes, to file another application in accordance with the law.

The appeal is therefore dismissed with costs, and the proceedings of the Ward and District Tribunals are quashed, and the judgments are accordingly set aside.

It is so ordered.

  
**V.L MAKANI**  
**JUDGE**  
**09/03/2020**