IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLENEOUS LAND CASE APPEAL NO.107 OF 2020

(From Land Appeal No. 31 of 2019 of District Land and Housing Tribunal for Kibaha, originating from the Ward Tribunal of Msoga Ward in Application No.64 of 2018)

HAMADI APATAE.....APPELLANT

VERSUS

IDDI FOROZA.....RESPONDENT

JUDGMENT

Date of Last Order:15.07.2021

Date of Ruling: 20.08.2021

OPIYO J.

The appellant is challenging the decision of the District Land and Housing Tribunal for Kibaha based on the ground that appellate tribunal erred in law by not taking into account the reality that, the appellant is the lawful owner of the disputed land and was duly appointed administrator of the estate of the late Apatae Omari Munda who was the original owner.

The dispute between the two parties above has its roots from the Ward Tribunal of Msoga Ward, hereinafter called the trial tribunal. It was complained by the appellant before it that, the respondent did trespass on the suit land, measuring 13 acres by cutting down trees (Mikuza) planted in the said land. The trial tribunal after conducting a full trial, made a decision in favour of the respondent. Mr. Apatae appealed to the 1st appellate tribunal unsuccessfully, leading to the instant appeal.

Hearing of the appeal was by way of written submissions, the appellant appeared in person while the respondent enjoyed the legal services of Mr. Elisaria Mosha, learned Advocate.

To bring his appeal home, the appellant maintained that, the trial tribunal did not satisfy itself if the respondent had a power of Attorney to sue or defend as he claimed that the land in question belonged to his grandfather. He contended that, it is a mandatory requirement for one to have a *locus standi* to institute a suit against another, the thing that was lacking in this case. He argued that the respondent had no *locus standi* to the case at the trial tribunal, therefore the whole decision of the trial tribunal is a nullity, as there is no any respondent's rights that have been interfered with. He cited the case of **Godbless Jonathan Lema versus Hamis Mkanga & Others, Civil Appeal No. 47 of 2012(unreported), for the authority that:-**

> *"In common law in order for one to succeed in an action, he must not only establish that his rights or interests were interfered with but must also show the injury he had suffered above the rest."*

In reply the counsel for the respondent argued that, the appellant showed the letters of Administration at appellate stage, the same was not produced during the trial stage. This is against the laws as provided for under section 51 of the Land Disputes Courts Act, Cap 216 R.E 2019 and Order XXXIX Rule 27(1) of the Civil Procedure Code, Cap 33 R.E 2019. Also, the same was emphasized in the cases of George **Anagnostou and**

Another and Another versus Emanuel Marangakis and Another, Civil Application No. 46/01 of 2018 and **Haystead versus Commissioner of Taxation (1920) A.C 155.** Above all the attached letters of Administration has nothing to do with the disputed land, since the person from whom the appellant alleged to have inherit the said land as per the records of the tribunal and the person named in the letter of administration are two different persons.

In his rejoinder, the appellant argued that, it is not disputed that the appellant is not the original owner of the suit land rather he had inherited the same from his late father. Also, the letters of administration were produced during the trial, but the trial tribunal ignored it. He insisted that he remained quiet at the trial tribunal after his documents were rejected (letters of administration) because he was a layman not aware of the procedures, therefore procedural rules should not be used to deny him justice. He cited the case of Ramadhan Nyoni versus Haule and Co. Advocate (1996) TLR 71, where it was stated that,

> *"That, where a layman, unaware of procedural process, tries to get before court, procedural rules should not be used to defeat justice; the applicant falls in the premises of that decision and justice to him in this case is to be allowed."*

He also referred provision of Constitution of the United Republic of Tanzania, of 1977, under Article 107A (2) for the same authority on giving precedence to substantive justice rather than legal technicalities in administration of justice.

The records and submission of both parties have been thoroughly considered. Basically, the appellant has faulted the 1st appellate tribunal for not taking into account the reality that, the appellant is the lawful owner of the disputed land and was duly appointed administrator of the estate of the late Apatae Omari Munda who was the original owner. Furthermore, in his submissions he insisted that the trial was supposed to take into consideration that the respondent had no *locus standi*. However, the records show that, it is the appellant himself who instituted the case against the respondent at the trial tribunal. He is therefore bound by what he pleaded in his complaint as plaintiff. He is the one who sued the respondent for trespass and in trespass one sues whoever he thinks is interfering with his peaceful occupation and ownership. Therefore, as a plaintiff he was the one who was obliged to establish his *locus standi* and ownership. The issue of appellant's *locus standi* was not an issue at trial, worth complaining about that the court failed to recognize his letter od administration of the original owner. The trial tribunal decided the matter in strength of the evidence before it not on the capacity of parties to sue or be sued. And on the locus standi of the respondent as note earlier it is the appellant who sued him as a trespasser, how come he questions his capacity to be sued. Could he have done the same if he would have won against the respondent?, as the deceased could not trespass ones land, the respondent was sued on his personal capacity not representative capacity.

His claim that the tribunal did not consider his case is in my view misconceived. By the way, cases are won on the strength of evidence and not otherwise. The findings of the 1st appellate tribunal are clear that it found the decision of the trial tribunal to have merits therefore there was no need to interfere with it {see page 5 of the judgement of the 1st appellate tribunal}. Looking at the records of the trial tribunal, I find myself joining hands with the 1st appellate tribunal that the same are free from any errors. The decision is correct based on the evidence presented by the parties before it. As I have already said here in above, cases are won by strength of evidence, the one whose evidence is heavier than the other takes it all as a winner. In our case, the respondent's evidence was found to be stronger than that of the appellant, since both cannot tie, then the trial tribunal declared the respondent to be the rightful owner of the suit land **see Hemed Said versus Mohamed Mbilu (1984) TLR 113 HC.**

I therefore agree with the concurrent findings of the lower tribunals because indeed he failed to discharge this task. He failed to establish his interest for the area that the appellant cleared. The tribunals did not give the right of ownership to the respondent individually over the property to question his locus but that of his grandfather after establishment that his late grandfather bordered the appellants land contrary to what the appellant had shown previously in the records. The only task of the tribunals was to see if the appellant as plaintiff suing in trespass had established his ownership. Which they found, he didn't.

Based on these findings, I find no reason to interfere with the concurrent findings of the lower tribunals. Appeal is therefore dismissed. No order as to costs.

Ordered accordingly.

M.P. OPIYO,

JUDGE

20/8/2020