

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

MISC. LAND APPEAL NO.81 OF 2021

(Arising from the District Land and Housing Tribunal for Kibaha at Kibaha in Land Appeal No. 89 of 2020 Originating from Kongowe Ward Tribunal in Misc. Application No.8 of 2020)

KHANAN SAID ALJABRY APPELLANT

VERSUS

NEVUMBA SALUM MHANDO RESPONDENT

JUDGMENT

Date of last Order: 20.10.2021

Date of Judgment: 25.10.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Kongowe in Misc. Application No.08 of 2020 and arising from the District Land and Housing Tribunal for Kibaha in Land Appeal No. 89 of 2020. The material background facts to the dispute are briefly as follows; the appellant filed a case at the Ward Tribunal of Kongowe in Land Case

No.08 of 2020. The appellant claimed that the respondent has sold her one-acre plot located at Mwambisi, Korogwe Ward which she inherited from his father. The respondent was recognized as a wife of the late Said Aljabry the appellant's father. It was revealed that the late Said Aljabry informed his relatives that he bought the suit plot for the respondent. The respondent testified to the effect that his late husband left a WILL and he named her the owner of the disputed plot. She admitted that she sold part of her plot. After the determination of the matter the trial tribunal decided in favour of the respondent and she was declared a lawful owner of the suit plot.

Aggrieved, Khanan, the appellant lodged an appeal at the District Land and Housing Tribunal for Kibaha vide Land Appeal No.89 of 2020. The appellant claimed that the trial tribunal faulted itself to determine the case while she had no *locus standi* and that the trial tribunal did not evaluate the evidence on record. The appellate determined the appeal and found that the appellant is the one who instituted the case at the trial tribunal and she did not claim that the plot belonged to her father and the evidence on records reveals that the respondent was a lawful owner of the suit plot.

The first appeal irritated the appellant. Therefore she lodged an appeal before this court through Land Appeal No. 81 of 2021 on five grounds of grievance, namely:-

- 1. The trial ward and the 1st appellate tribunal had erred in the law and fact by deciding in favour of the respondent while he does not give any exhibits to prove his case.*
- 2. The trial Ward and the 1st appellate tribunal had erred in law and fact by basing in the hearsay evidence.*
- 3. The trial Ward and the 1st appellate tribunal erred in fact a law by deciding that the respondent is the wife of the deceased without proof and the tribunal has no such jurisdiction.*
- 4. That the District Land Tribunal erred in law and fact to entertain the matter without regard procedural property of the Ward Tribunal.*
- 5. The trial Ward erred in law and fact to uphold the decision and entertain the matter which the trial Wards has no pecuniary jurisdiction.*

When the appeal was called for hearing on 07th October, 2021, the appellant and the respondent appeared in person, unrepresented. The appellant urged this court to argue her appeal by way of written submission

whereas she filed her written submission on 15th October, 2021 and the respondent urged this court to adopt his reply to the petition of appeal and form part of her submission.

In support of the appeal, the appellant had not much to say, she started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application. She opted to address the third ground separately, combined the first and second grounds. Likewise, she combined the fourth and fifth grounds and argue them together.

On the first and second ground, the appellant contended that hearsay evidence is not admissible in the court of law unless such evidence falls under the recognized exceptions. He went on to argue that parties are supposed to produce documentary evidence failure to that amounts to hearsay evidence. The appellant claimed that the respondent sold the suit plot which claimed that she inherited from her husband based on the WILL which is claimed that the same was left by the late said Aljabry but she did not produce the said WILL before the trial tribunal for scrutiny its legality. She also blamed the appellate tribunal for not considering the appellant's ground instead it relied on hearsay evidence.

The appellant claimed that there was no legal procedure taken in administering the deceased estate since his demise in 2015, it was her view that for that reason the respondent has no capacity or lack legal enforceability since she had was not appointed as an administratrix. She claimed that the appellate tribunal failed to exercise its appellate jurisdiction by quashing and setting aside the decision of the trial tribunal. She urged this court to find this ground meritorious.

Arguing for the third ground, the appellant contended that in determining the issue of ownership of the suit plot. She claimed that the trial tribunal determined the legality of the marriage of the respondent instead of determining the matter before it. The appellant complained that the appellate tribunal ought to have considered the anomalies instead it entered into errors and maintained the trial tribunal decision.

Submitting on the fourth and fifth grounds, the appellant had not much to say, she complained that the trial tribunal was not clothed with jurisdiction to determine the case. To fortify her position she referred this court to section 15 of the Land Dispute Courts Act which provides that the jurisdiction of the Ward Tribunal shall in all proceedings in civil nature

relating to land be limited to the disputed land or property valued Tshs. 3,000,000/=.

On the strength of the above, the appellant urged this court to analyse the grounds of appeal and find that the appeal has merit and quash and set aside the decisions of both tribunals with costs.

Opposing the appeal, the respondent in her reply to the petition of appeal was brief and straight to the point. She contended that the respondent proved her case at the trial tribunal by tendering all exhibits which were required to support her claims. She referred this court to the trial tribunal proceedings. The respondent also contended that the tendered documentary evidence was genuine and was related to the disputed. She strongly contended that the trial tribunal and the appellate tribunal were clothed with jurisdiction to entertain and determine the dispute.

In conclusion, the respondent beckoned upon this court to dismiss the appeal with costs.

Having summarized the submissions and arguments of both learned counsels for and against the appeal, I should now be in a position to

determine the appeal on which the parties bandied words. The issue for determination is ***whether the appeal has merit.***

I now turn to the issues of contention as reproduced above and as clustered. The first, second, and third grounds seek to challenge the decision of the trial Tribunal that the tribunal did not analyse the documentary evidence and faulted itself in deciding that the respondent was the wife of the late Said Aljabry. On the fourth and fifth grounds, the appellant claimed that the appellate tribunal erred in law for failure to entertain the matter while the trial tribunal did not follow the proper procedure. I am in accord with the appellant that the first appellate tribunal faulted itself for failure to find that the matter before the trial tribunal was improper since the appellant in her testimony testified that the disputed land belonged to his belated father and she was claimed that the administrator of estate was not appointed. Additionally, she had no power of attorney to institute the matter. It is vivid that the appellant had no *locus standi* to institute the case at the trial tribunal.

Both tribunals misdirected themselves to proceed to determine the matter, the trial tribunal was required to strike out the case and the appellate tribunal was not required to determine the appeal. The records

reveal that the Chairman in his judgment justified that the land suit belonged to the appellant while the evidence on record clearly stated that the appellant claimed that the disputed land belonged to her late father. The issue of *locus standi* is a matter of law, therefore even if the same could have not to be raised by the party the tribunal or court could have raised it. Had it been that the tribunals properly analysed well the documentary and oral evidence, they could have arrived at a correct conclusion that the appellant had no *locus standi* to institute the case at hand thus she could not bring the matter to an end. The court in the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi [1996] TLR 208** held that:-

"In this country locus standi is governed by Common law. According to that law in order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court."

In a decision of an Indian Landmark case of **S.P Gupta v Union Of India AIR SC 149, in which Bhagwati, J** held that:-

" The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury of violation

of his legal right or legally protected interest by the impugned action of the state or public authority or any other person or who is likely to suffer.”

Similarly, the Court of Appeal of Tanzania in the case of **God Bless Jonathan Lema v Mussa Hamis Mkangaa and Others**, Civil Appeal no. 47 of 2012 quoted with authority the decision of Malawian Supreme Court of Appeal in the case of **The Attorney General v Malawi Congress Party and Another**, Civil Appeal no 32 of 1996 whereby it had this to say:-

“Locus standi is a jurisdictional issue. It is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action.”

Applying the above-quoted decisions is that, for a person to have *locus standi* to sue, she or he has to show that her/ his right has been directly affected by the act she/he is complaining about. Therefore, in the case at hand the appellant had no direct complaints against the respondent. Having reached this finding of the appeal, I deem it superfluous to deal

with the remaining ground as by so doing amounts to deal with a sterile exercise.

In the upshot, I have to say that the 4th ground of appeal raised by the appellant has merit. Therefore, I quash the decisions of the trial tribunal and appellate tribunal without costs.

Order accordingly.

Dated at Dar es Salaam this date 25th October, 2021.




A.Z.MGEYEKWA

JUDGE

25.10.2021

Judgment delivered on 25th October, 2021 in the presence of the appellant and respondent.




A.Z.MGEYEKWA

JUDGE

25.10.2021

Right to appeal fully explained.