

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPEAL NO.134 OF 2021

(Arising from the District Land and Housing Tribunal for Temeke in Land Appeal No.45 of 2020, originating from Ward Tribunal for Somangila in Land Case No.48 of 2020)

NASSIB MASINGA APPELLANT

VERSUS

JAFFARI MISOMNG'OMBE RESPONDENT

JUDGMENT

Date of Last order: 15.09.2022

Date of Judgment: 21.09.2022

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Buyuni in Land Dispute No.45 of 2020 and arising from the District Land and Housing Tribunal for Temeke in Land Appeal No. 45 of 2020. The material background facts to the dispute are briefly as follows; Nassib Masinga, the appellant instituted a case at Somangila Ward Tribunal

against Jaffari Misomng'ombe. The matter was decided in favour of the respondent.

Dissatisfied, the appellant lodged an appeal at the District Land and Housing Tribunal for Temeke claiming that the trial tribunal erred in law to determine the case since the respondent had no *locus standi* to sue the appellant, the trial tribunal failed to evaluate evidence on record and the trial tribunal had no jurisdiction to determine the matter. The respondent denied all the allegations. The first appellate tribunal decided the matter in favour of the respondent

The District Land and Housing Tribunal decision did not amuse the appellant. He decided to challenge it by way of appeal before this court on nine grounds of appeal as follows:-

- 1. That, the Appellate tribunal erred in law and fact for failure to evaluate and analysis evidence adduced and tendered by the parties in the trial Ward Tribunal.*
- 2. That, the Chairperson of the Appellate tribunal erred in law and fact for entering a judgment against a possessor who occupied the disputed land for more than twelve (12) years.*

3. *That, the Chairperson of the Appellate tribunal erred in law and fact for disturbing the decision of the trial Ward Tribunal which had in fact visited locus quo.*
4. *That, the Chairperson of the Appellate tribunal erred in law and fact for declaring Respondent lawful owner of the disputed property relied on the purported minutes of the village council despite the fact that there was no existence of the village council at the material time.*
5. *That, the Chairperson of the Appellate tribunal erred in law and fact for drawing a decree outside the context of the findings of the judgment.*
6. *The Chairperson of the Appellate tribunal erred in law and fact by giving its finding in contravention with section 18 (2) of the Land Disputes Court Act, Cap 216 R.E. 2019.*
7. *That, the Appellate tribunal erred in law and fact for failure to note that it has jurisdiction to admit exhibit at the appellate stage.*
8. *That, the Appellate tribunal erred in law and fact for failure to note that the beneficiary of the estate can file a suit/has locus to file suit without letters of administration for preservation and protection of the estate of the deceased.*
9. *The Chairperson of the appellate tribunal erred in law and fact as the opinion of the assessors were not properly given, recorded, and taken.*

When the appeal was called for mention on 4th August, 2022 before Hon. Arufani, J this court issued an order to the parties to argue the appeal by way of written submissions whereas the appellant submitted the submission in chief on 18TH August, 2022 and the respondent filed his reply on 1st September, 2022. The rejoinder was to be filed on 8th September, 2022, and Mention was set on 15th September, 2022. Pursuant thereto, a schedule for filing the submissions was duly confirmed by the appellant. However, nothing has been filed by the respondent, to-date, and no word has been heard from him on the reason for the inability to conform to the court schedule.

This being the position, the question that follows is: what is the next course of action? The settled position is that failure to file written submissions, when ordered to do so, constitutes a waiver of the party's right to be heard and prosecute his matter. Where the inability is on the part of the respondent, the consequence is to order that the matter be heard *ex parte*. This position is consistent with the Court of Appeal of Tanzania holding in the case of **National Insurance Corporation of (T) Ltd & Another v Shengena Ltd**, Civil Application No. 20 of 2007 at DSM (unreported), it was held that:

"The applicant did not file submission on the due date as ordered. Naturally, the Court could not be made impotent by the party's inaction. It had to act ... it is trite law that failure to file submission n(s) is tantamount to failure to prosecute one's case."

Similar, in the case of **Tanzania Harbours Authority v Mohamed R. Mohamed** [2002] TLR 76; **Patson Matonya v Registrar Industrial CourtofTanzania & Another**, Civil Application No. 90 of 2011 and **Geoffrey Kimbe v Peter Ngonyani**, Civil Appeal No. 41 of 2014 (both unreported). In consequence of the foregoing, it is ordered that the hearing of preliminary objection will be determined *ex-parte* against the respondent by considering written submissions filed by the appellant.

In his submission in support of the appeal, the appellant's counsel began to narrate the genesis of the matter which I am not going to re-produce in this appeal. Mr. Kinawari, counsel for the appellant opted to combine and argue the 1st and 4th grounds together because they are interrelated. Except for the 1st, 3rd, 5th, 6th, 7th, 8th, and 9th grounds, he argued them separately.

On the first and fourth grounds, the counsel for the appellant contended that the trial tribunal's records reveal that parties were called to testify and

both parties brought their witnesses and tendered evidence, however, the trial tribunal Chairman failed to analyse and evaluate the evidence in the record. Contrary to section 34 (1) of the Land Disputes Courts Act, Cap. 216. To support his submission he referred this court to pages 5, 6, 7, 8, and 9 of the trial tribunal decision. He also cited the cases of **Leonard Mwanashaka v R**, Criminal Appeal No. 226 of 2014 (unreported) and **Shaban Adam Mwajulu & Baraka Msafiri Mwakapala v R**, Criminal Appeal No. 131 of 2019.

Submitting on the second ground, Mr. Kinawari contended that the record shows that at the trial tribunal, the appellant called two witnesses who testified to the effect that the appellant's father was the owner of the suit premises since 1984 and lived therein for 12 years until his death in 2019. He added that the appellant's father in 2016, fall sick and vacated the suit land to stay with his relatives. He went on to submit that by adverse possession his father had a valid title over the suit land. To buttress his contention he cited the case of **Holy Sisters Tanzania v January Kamili Shayo & 136 others**, Civil Appeal No. 193 of 2016.

With respect to the third ground, the counsel for the appellant contended that the trial tribunal ordered to visit locus in quo, the local authorities leaders were involved and all witnesses testified in favour of the appellant

that the suit land belongs to the appellant's father. To fortify his submission he cited the case of **Avit Thadeus Massawe v Isdory Assenga**, Civil Appeal No. 6 Of 2017. He insisted that all procedure was followed as laid down in the cited case of **Avit** (supra).

On the fourth ground, the counsel for the appellant contended that the decree of the appellate tribunal was drawn out of the context of the Judgment and contrary to Order XX Rule 9 of the Civil Procedure Code, Cap. 33. He argued that the suit property is not indicated in the said Decree. To bolster his submission, Mr. Kinawari cited the case of **Mantrac Tanzania United v Raymond Cosha**, Civil Appeal No. 74 of 2014 CAT at Mwanza (unreported).

Arguing for the fifth ground, the counsel for the appellant claimed that the Chairman of the appellate tribunal erred in law and fact for giving its findings in contravention with section 18 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He complained that the appellate tribunal was wrong to decide that the appellant herein had *locus standi* to lodge a case at the trial tribunal while he was blessed by family members who also appeared at the trial tribunal to testify.

As to the sixth ground, the counsel for the appellant contended that the appellate tribunal erred in law and fact for failure to note that it has jurisdiction to admit exhibit at the appellate stage. He submitted that section 34 (1) (a) & (b) of the Land Disputes Courts Act, cap. 216 [R.E 2019], the appellate tribunal can receive additional evidence like a letter of administration of the estate of the appellant's late father but it failed to do so.

On the seventh ground, Mr. Kinawari argued that the appellate tribunal erred in law and fact for failure to note that the beneficiary of the estate has locus standi to file a suit without a letter of administration of the deceased for purpose of preserving and protecting the deceased property. To support his submission he referred this Court to the appellate tribunal Judgment where the Chairman stated that the appellant instituted a suit before the Ward Tribunal before being admitted as an administrator of the estate of the late Masunga Lekilemu, the deceased father. The counsel did not agree with the findings of the appellate tribunal. To support his position he cited the case of **Kusaga v Emmanuel Mweta** [1986] TLR 26. The Court held that:-

“... there may be cases where the property of the deceased may in dispute. In such cases all those interested in the

determination of the dispute or establishing ownership may institute proceedings against the administrator of the administrator may sue to establish claim of the decease's property."

Supporting his argumentation he also cited the case of **Malietha Gabo v Adam Mtengu**. Misc. Land Appeal No. 21 of 2020.

Arguing for the last ground, the learned counsel for the appellant contended that the law requires that the Judgment of the District Land and Housing Tribunal must comply with the provision of section 23 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 Gn. No. 174 of 2003. He submitted that the assessors are part and parcel of the proceedings, thus, their opinion was required to be reflected in the record. He added the omission is fatal and rendered the whole judgment null and void. To fortify his position he cited the case of **Clemence Kalugenda v Peter Andrew**, Civil Appeal No. 92 of 2019.

On the strength of the above submissions, the appellant's counsel beckoned upon this court to sustain the decision of the Ward Tribunal and allow the appeal with costs.

I have subjected the rival arguments by the learned counsel for the appellant to the serious scrutiny they deserve. Having so done, I think, the bone of contention between them hinges on the question *whether the appellant had good reasons to warrant this court to allow his appeal*. In my determination, I will combine the fifth and seventh grounds because they are intertwined. Except for the first, second, and third, fourth, fifth, sixth and, eight grounds will be argued separately as they appear.

I have opted to start with the fifth and seventh grounds, the appellant is complaining that the tribunal erred in law and fact for deciding that the appellant had no *locus standi* to lodge a suit at the Ward Tribunal. I have gone through the court record, the respondent from the beginning of her testimony testified that her late husband bought the suit land and she did not witness the sale agreement. The respondent also testified that the Sale Agreement bears her husband's name.

The records also reveal that the respondent instituted the suit in her own capacity and not as an administrator of the estate of the late Ally Waziri. The appellant in his Memorandum of Appeal before the appellate tribunal included a ground that the appellant had no *locus standi*. However, the appellate tribunal ruled out that the trial tribunal allowed the respondent to lodge the suit in her own capacity which is not correct.

The proper procedure was for the respondent to obtain a letter of administration before instituting a case at the trial tribunal. In the case at hand, there is no any letter of administration of the late Masinga Lekilemu that has been attached to the application to establish the existence of a legal relationship of the suit. The respondent should have shown her authorization to act on behalf of the deceased person and not otherwise.

Therefore, I fully subscribe to the submission of Mr. Richard that the respondent had no *locus standi* to institute a case at the Ward Tribunal for Somangila. The bolder definition of *locus standi* was derived in the case of **Lujuna Shubi Ballonzi, Senior v Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203, it boils down to one fact that the respondent had no *locus standi* to sue the appellant. In the **Lujuna Shubi Ballonzi's** case, the Court had the following to say:-

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an 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..".[Emphasis added].

Applying the above-quoted decision 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, I am in accord with the appellate Tribunal that the appellant had no direct complaints against the respondent, therefore, he had no *locus standi* to institute a case at the trial tribunal in his own capacity.

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 proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 21st September, 2022.




A.Z.MGEYEKWA
JUDGE
21.09.2022

Judgment was delivered on 21st September, 2022 in the presence of Mr. Shaffi, learned counsel holding brief for Mr. Richard Kinawari, learned counsel for the appellant.




A.Z.MGEYEKWA
JUDGE
21.09.2022

Right of Appeal fully explained.