

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

MISC. LAND APPEAL NO. 45 OF 2022

*(Arising from the District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Land Appeal No.53 of 2021 Originating from Wazo Ward
Tribunal Land Case No. 33 of 2021)*

JOAKIM AUGUSTINO MREMA APPELLANT

VERSUS

ELIZABETH TADEI URIO RESPONDENT

JUDGMENT

Date of last Order: 27.09.2022

Date of Judgment: 30.09.2022

A.Z.MGEYEKWA, J

This is the second appeal. At the centre of controversy between the parties to this appeal is a parcel of land. The decision from which this appeal stems is the judgment of Wazo Ward Tribunal in No.33 of 2021. The material background facts of the dispute are not difficult to comprehend. They go thus: Elizabeth Thadei Urio, the respondent instituted a case at the Ward Tribunal of Wazo against Joakim Augustino Mrema, the

respondent. The respondent claimed that the appellant has refused to vacate from the suit land. The respondent urged the tribunal to evict the appellant and vacate the suit land. The respondent denied the allegations. Joakim testified to the effect that he bought the suit land from Mgumila Rashid.

The Ward Tribunal determined the matter and decided the matter in favour of the respondent. Dissatisfied, the respondent lodged an appeal before the District Land and Housing Tribunal for Kinondoni at Mwananyamala whereas the appellate tribunal determined the matter and sustained the decision of the trial tribunal.

Believing the decision of the District Land and Housing Tribunal for Kinondoni was not correct, the appellant lodged this second appeal on five grounds of complaint seeking to assail the decision of this appellate tribunal. The grounds are as follows:-

- 1. That Appeal Tribunal erred in law and fact for holding that the Ward Tribunal had pecuniary jurisdiction to entertain the dispute;*
- 2. That the Appeal Tribunal erred in law and fact for holding that the Appellant was an invitee of the Respondent in the suit property;*

3. *That the Appeal Tribunal erred in law and fact for holding that the dispute was not time-barred;*
4. *That the Appeal Tribunal erred in law and fact in holding that the Respondent brought the suit property and is the rightful owner of the suit property;*
5. *That the Appeal Tribunal erred in law and fact for failing to analyse the evidence tendered at the Ward Tribunal and arrived to an unreasonable decision.*

When the appeal was placed before me for hearing on 16th September, 2022, the appellant enlisted the legal service of Mr. Nassoro, and Mr. Philip, learned counsels, and the respondent enjoyed the legal service of Mr. Lugiko John, learned counsel. Mr. Nassor urged this court to allow the parties to argue the appeal by way of written submission. By the court's consent, the appeal was scheduled to be disposed of by the way of written submission whereby the appellant's counsel filed his submission in chief on 21st September, 2022. The respondent's Advocate filed her reply on 27th September, 2022. The appellant's counsel waived his right to file his rejoinder.

Mr. Nassoro started his onslaught by combining the fourth and fifth grounds. Except for the first, second, and third grounds were argued separately.

On the fourth and fifth grounds, the learned counsel for the appellant contended that in proving their case the respondent tendered a sale agreement between Mgumila Rashid and Jonathan Daffa to prove that she is the lawful owner of the suit property, Mr. Nassoro went on to submit the sale agreement did not bear the name of the respondent, however, astonishing the Chairman in his Judgment on pages 10 and 11 held that since the respondent is the wife of the Mgumila Rashid then she had right to sue under section 59 of the Law of Marriage Act.

The counsel valiantly contended that the Chairman's reasoning is flawed since the record at the trial tribunal and the proceedings shows that the respondent did not tender any documentary evidence such as a marriage certificate to prove that she is the wife of Mgumila Rashid and did not tender a registered caveat to show that she has a registered interest in the suit property. Thus, in his view, the respondent cannot benefit from the provisions of section 59 of the Law of Marriage since she did not have a registerable interest in the suit property. To buttress his

contention he cited the cases of **Hadija Issa AArerary v Tanzania Postal Banks**, Civil Appeal No. 135 of 2017, the Court cited with approval the case of **Hadija Issa Mwakalindile v NBC Holding Corporation and Another**, Civil Appeal No. 59 of 2000 (both unreported).

The learned counsel for the appellant stressed that the respondent did not prove that the property was a matrimonial asset. To support his submission he cited the case of **Hadija Issa Arreray** (supra). Therefore in his view, the respondent had no locus to sue against the appellant. To fortify his position he referred this Court to the cases of **Lajuna Shuh Ballonzi Senior v The Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 and **Peter Lugawa & Others v Immanuel Mlanda and 4 Others**, Land Case No. 366 of 2016 HC Land Division (unreported).

On the second ground, the counsel for the appellant asserted that at the Ward Tribunal the appellant and his witnesses proved that the appellant occupied the suit land since 2002 and he tendered documentary evidence such as a Sale Agreement to show that he was the lawful owner of the suit land. He went on to submit that the sale agreement was between the appellant and Mgumia Rashid. He added that the appellant also tendered a letter from Tanzania Electric Supply Company Limited dated 24th July,

2009 addressed to the appellant to prove that the appellant incurred expenses in building the suit property.

He spiritedly argued that the appellant was not an invitee because he managed to get the property tax assessment in his name, he had an original sale agreement attached with a 'hati ya bustani' signed by Jonathan Daffa and Mgumia Rashid. The counsel for the appellant stressed that the appellant has documentary evidence and was staying in the suit property for more than 20 years, thus, in his view, the appellant is the lawful owner of the suit land.

Submitting on the first ground, the counsel for the appellant argued that the Ward Tribunal had no jurisdiction as stated under section 15 of the Land Disputes Courts Act, Cap. 216. Mr. Nassor asserted that the Ward Tribunal is mandated to entertain the landed matter which does not exceed Tshs. 3,000,000/=. He went on to argue that looking at the proceedings of the trial tribunal the appellant informed the tribunal with supporting evidence that the suit land is worth Tshs. 75,000,000/= to Tshs. 80,000,000/= but the trial tribunal without stating any reason decided to ignore the evidence tendered. It was his view that the value of the suit land was beyond the jurisdiction of the Ward Tribunal. To support his

argumentation he cited the case of **Yanga Mhogeja v Buzurizuri Gassomi and Three Others**, Misc. Land Case No. 70 of 2018 (unreported).

As to the third ground, Mr. Nassoro argued that the disputed between the parties was ownership of landed property located at Kilimahewa Juu, and appellant testified that he was living in the landed property since 2002. He added that the respondent acknowledged the appellant staying at the landed property since 2002 while the respondent lodged the suit in 2021, being 19 years from 2002. He went on to submit that as per Part I Item 17 of the Schedule to the Law of Limitation Act, Cap. 89, the period of limitation for institution of a suit to recover land is 12 years. Thus, in his view the suit was filed out of time. He added that section 3 (1) of the Law of Limitation Act, Cap. 89 states that if a suit is instituted after the period of limitation set out in the Act, such a suit should be dismissed.

On the strengths of the above submission. Mr. Nassoro beckoned upon this court to allow the appeal with costs, the decision of the Ward Tribunal be quashed and set aside, and pronounce the appellant the lawful owner of the suit landed property.

The respondent's counsel opposed the appeal with some force. Submitting on the fourth and fifth grounds, the learned counsel contended that the issue of *locus standi* is baseless because the respondent and one Mgumila Rashid are husband and wife. He went on to submit that both of them testified at the trial tribunal that the property is a matrimonial property and they bought it from Jonathan Daffa and the sale agreement bearing the name of her husband, He valiantly submitted that the counsel for the appellant has misconceived himself to refer the reasoning of the first appellate tribunal in referring section 56 of the Law of Marriage Act, Cap. 29. He added that the issue whether the respondent was a wife of Mgumial Rashid was not in contention at the trial tribunal. He contended that the counsel's claims are an afterthought, he referred this court to page 4 of the typed decision of the trial tribunal.

The learned counsel for the respondent distinguished the cited case of **NBC Holding Cooperation** (supra) and **Hadija Issa** (supra), he stated that in the instant case the respondent has no registerable interest in the suit premises. The counsel for the respondent also distinguished the cited case of **Peter Lugawa** (supra) in the cited case it was a registrable entity that hold property on behalf of the church capable of powers to sue or

being sued. He went on to submit that the respondent had *locus standi* and proved that the suit premises is a matrimonial property and she had *locus standi* to lodge the case at the trial tribunal. To support his submission he referred this court to page 4 of the trial tribunal decision.

On the second ground, the learned counsel for the respondent asserted that the appellant is an invitee to the suit premises and nothing qualifies him to become the owner of the suit land. He argued that at the trial tribunal, the appellant had requested the respondent and her husband a temporary stay, and the respondent and her husband permitted him to stay in the suit land. He went on to submit that the respondent and his husband had never abandoned the suit premises and PW2 did not sell the suit premises to the appellant. The counsel for the respondent continued to submit that the appellant's witnesses did not witness the alleged sale of agreement between the appellant and the respondent's husband. He stressed that both tribunal's decisions were correct to rule out that the appellant was an invitee.

The counsel for the respondent went on to submit that the appellant claimed adverse possession and claimed to have purchased the suit land from the respondent's husband. He valiantly argued that the appellant is

trying to waylay the Court to get into his trap. He argued that the appellant is not qualified in either of the two because he did not purchase the suit premises and he is an invitee, he added that in order for adverse possession cannot stand, some of the conditions are the entrance to the particular land must be illegal. To support his submission he cited the case of **Evalist Kanoni v Audifasi Chenga**, Misc. Land Appeal No. 13 of 2020 HC Land Division at Sumbawanga (unreported).

Regarding the issue of pecuniary jurisdiction, the counsel for the respondent contended that it is undisputable fact that jurisdiction is a creature of the statute. He went on to submit that the burden of proving that the Court has jurisdiction lies with the party initiating proceedings by stating an estimated value of the suit land. He submitted that it was proper for the appellate tribunal to hold that the trial tribunal had jurisdiction to determine the matter since the appellant did not provide any credible valuation report stating the actual value of the dispute premises.

He continued to submit that the value of the suit premises is Tshs. 320,000,000/= which is the purchasing price of the suit premises. To buttress his submission he cited the case of **Alphonse Kakweche & Another v Bodi ya Eadhamini Bakwata Tanzania**, Land Appeal No, 97

of 2019, HC Land Division at Dar es Salaam (unreported). He added that the property tax assessment or any other chits are not proof of the actual value of the subject matter.

Submitting on the ground of time-barred, the counsel briefly stated that Part I, Item 17 of the Schedule to the Law of Limitation Act, Cap. 89 [R.E 2019] is inapplicable because it refers to a suit to redeem land in possession of marriage while in the case at hand the suit premises is not a subject of mortgage. It was his submission that the cause of action started when the appellant expelled the respondent during the visit *locus in quo* with the aim of disposition of part of the land.

The learned counsel for the respondent continued to argue that it was the time when the appellant become aware that the appellant claimed ownership of the suit premises hence the respondent after consulting his husband filed the suit at the trial tribunal. To support his submission he cited cases related to invitees; **Mukyemalila & Thadeo v Luilanga** [1972] HCD 4 and **Ramadhani Makwega v Theresia M. Mshuza**, Misc. Land Case Appeal No. 3 of 2018 HCT Land Division at Dar es Salaam.

On the strength of the above submission, the respondent's counsel beckoned upon this court to dismiss the appeal with costs for lack of merit.

In his rejoinder, the learned counsel for the appellant had nothing new to add. He only stressed that the respondent proved that the suit premises was a matrimonial property.

I have revisited the records and submissions of both sides now, I am in a position to determine the appeal. In my determination, I will consolidate the fourth and fifth grounds together because they are interrelated. Equally related are the first and third grounds which I shall also determine together. Except for the first ground which will be argued separately.

On the fourth and fifth grounds, the appellant is claiming that the District Land and Housing Tribunal misdirected himself that the respondent had *locus standi* to lodge the suit at the trial tribunal. I have perused the trial tribunal records and noted that in the present matter, parties are disputing on ownership of landed premises whereas the trial tribunal had jurisdiction to determine it, however, in the course of testifying the respondent tendered a sale agreement bearing a different name and she testified to the effect that they bought the suit land with her husband.

The trial tribunal determined the matter and declared the respondent herein a lawful owner of the suit property while the evidence proves that the respondent did not tender any cogent documentary evidence to prove her ownership. As rightly stated by the counsel for the appellant there was no any proof that the respondent was a legal wife of PW2. Let us assume that the respondent was a legal wife of PW2 still, the trial tribunal was not in a position to determine matrimonial matters. In my considered view since the matter was a land matter then the proper person to lodge the case was the person who could prove his ownership and that is apparently not the respondent.

It is noteworthy that the issue of *locus standi* is a matter of law. Had it been 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. I am saying so because it is obvious that the party who had no *locus standi* could not bring the matter to an end. In the case of **Godbless Jonathan Lema v Mussa Hamis Mkangaa and Others**, Civil Appeal no. 47 of 2012 the Court quoted with authority the decision of the Malawian Supreme Court of Appeal in the case of **Lujuna Shubi Balonzi** (*supra*) the Court 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."

Applying the above-quoted decisions is clear 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. In my considered view, I find that in the case at hand, the appellant had no direct complaints against the respondent. Therefore it was wrong for the trial Tribunal to award the respondent. Consequently, the District Land and Housing Tribunal analyses were not correct. The Chairman misconceived himself to rely on section 59 of the Law of Marriage Act Cap. 29, instead, the appellate tribunal was required to differentiate land matters and matrimonial matters. See the case of **Aba Patrick Mwakitwange v Regina Muhoja & another**, Land Appeal No. 126 of 2017, HC Land Division (unreported). Therefore, the appellate Tribunal ought to have dismissed the matter.

For the sake of clarity, I have read the case of **Evalist Kanoni** (supra), **Mlukyemalila** (supra), and **Ramadhani Makwega** (supra) the issue for

discussion was based on an issue related to an invitee and the doctrine of adverse possession. In my view, this cited case is distinguishable from the instant case. In the instant case, unlike the cited of **Evalist** (supra), the issue is not related to the invitee or adverse possession but the party who lodged the case at the trial tribunal had no *locus standi*.

Having reached this finding on the fourth and fifth grounds of appeal, I find the appeal has merit. Therefore, I deem it superfluous to deal with the remaining ground as by so doing amounts to deal with a sterile exercise.

In sum, I quash and set aside the decisions of both tribunals and allow the appeal without costs. Order accordingly.

DATED at Dar es Salaam this date 30th September, 2022.



A.Z.MGEYEKWA

JUDGE

30.09.2022

Judgment delivered on 30th September, 2022, via audio teleconference whereas Mr. Lugiko John, learned counsel for the respondent.



A.Z.MGEYEKWA

JUDGE

30.09.2022