

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

MISC. LAND APPEAL NO. 74 OF 2022

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for Temeke at Temeke in Land Appeal Number 01 of 2022 dated 04-08-2022 Originated from Mianzini Ward Tribunal, Shauri No. MZN/77/2021)

HAMISI KIHAMNO APPELLANT

VERSUS

TUNU SHOMARY MNYIPANDA RESPONDENT

JUDGMENT

Date of last Order: 17.11.2022

Date of Judgment: 18.11.2022

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Mianzini in *Shauri No. MZN/77/2021* and arising from the District Land and Housing Tribunal for Temeke in Land Appeal No. 1 of 2022. The material background facts to the dispute are briefly as follows; Tunu Shomary Mnyipanda, the respondent instituted a case at the Ward

Tribunal against Hamisi Kihamno, the respondent. The trial determined the case in favour of the respondent.

Dissatisfied, the appellant lodged an appeal at the District Land and Housing Tribunal for Temeke claiming among other things that the trial tribunal had no pecuniary jurisdiction to determine the matter, the respondent had no *locus standi* to sue the appellant, improper composition and quorum trial tribunal members. The first appellate tribunal dismissed the appeal.

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 three grounds of appeal as follows:-

1. *That, the Honourable District Land and Housing Tribunal erred in law and facts, by holding that the Respondent had locus standi to institute the dispute against the Appellant, at the Ward Tribunal, vide letter of appointment issued by one Adam Shomary Mnyipanda dated 06.09.2021, while knowing that, the Respondent had sued, claiming that, the land in dispute belonged to the deceased Shomary Mnyipanda, without letters of administration of the said deceased Shomary Mnyipanda and without locus standi to that effect.*

2. *That, the Honourable District Land and Housing Tribunal erred in law and facts by holding that the Ward Tribunal was properly composed when deciding on the dispute, while the same had no proper composition and quorum, as the law requires.*
3. *That, the Honourable District Land and Housing Tribunal erred in law and facts by failing to properly analyse the facts and evidence adduced at the Ward Tribunal, and consequently arrived at an erroneous decision.*

When the appeal was called for hearing on 17th November, 2022 the appellant enlisted the legal service of Mr. Derick Kahigi whereas the respondent appeared in person, unrepresented.

In his submission in support of the appeal, the appellant's counsel opted to abandon the second and third grounds of appeal and argued the first ground. He began to narrate the genesis of the matter which I am not going to reproduce in this appeal. Mr. Derick submitted that they are questioning whether the respondent had *locus standi* to institute Case No. MZN/77/2021 at the trial tribunal. He asserted that the respondent institute a case at the Ward Tribunal against the appellant for trespass claiming that the appellant has trespassed Shomary Mnyipanda (the deceased) land. Mr. Derick went on to submit that the respondent raised the same

ground that the respondent had no *locus standi to lodge* a suit while the land belonged to the deceased and she was not appointed to administer the estate of the late Shomary Mnyipanda.

The learned counsel for the appellant continued to submit that the proceedings show that the respondent testified to that effect that the suit land belonged to Shomary Mnyipanda, however, they did not tender any document in relation to the administration of the estate. To buttress his contention he cited the case of **Bakwata Mgambo v Mafuru Chilaka** [2012] TLR 114. High Court decided that only the administrator of the estate appointed by the Court has *locus standi* to lodge a case on behalf of the deceased and claim the rights of the deceased. It was his view that the respondent had no *locus standi* to lodge a suit.

The learned counsel for the appellant further argued that the appellate tribunal on page 6 of its Judgment stated that there was a letter dated 06th September, 2021 from Adam Shomary Mnyipanda to appoint the respondent to appear in Court on his behalf. He valiantly argued that the purported owner said the deceased could not write the said letter. And the name of the purported Shomary Mnyipanda is quite different from the name of Adam Shomary Mnyipanda. He added that assuming he was the administrator of the estate of the late Shomary Mnyipanda, still the laws

do not allow an administrator to appoint another person to discharge his duties. To support his submission he referred this court to Latin maxim *delegates non protes delegate*, one cannot delegate his power to another person, and cited the case of **Winifrid Bigilwa v Verdian Lutabeganwa**, Misc. Land Application No. 48 of 2021.

Mr. Derrick stress that the power is issued to only one person and the respondent did not produce any administration of estate letter.

On the strength of the above submission, Mr. Derick beckoned upon this Court to find that the respondent had no *locus standi* to institute the suit thus, the Ward Tribunal's decision is a nullity. He urged this Court to set aside the tribunal's decision with costs.

In reply, the respondent began to narrate the genesis of the swag which I am not going to reproduce in this appeal. She submitted that Adam is the administrator of the estate of their late father hence he wrote a letter to appoint the respondent to administer the case.

In his rejoinder, Mr. Derick reiterated his submission in chief and added that the respondent has agreed that the suit land belonged to their late father. He stated that saying that Adam was appointed to administer the estate of their father must be done legally for him to obtain a letter of

administration. He insisted that even if, Adam could be a legal administrator of Shomary still he could not delegate his power to be exercised by a person who is not the administrator of the estate.

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 of *whether the appellant had good reasons to warrant this court to allow his appeal.*

The contention that is hotly contested by the appellant's counsel and the respondent is that the respondent had no *locus standi* at the trial tribunal. As I tackle this issue, it behooves me to state the general principle on locus standi, and I propose to do so by quoting several decisions on the subject. These decisions point to the general principle that matters relating to *locus standi* means *the applicant or plaintiff must have the right to bring the matter to the Court. In the case of Lujuna Shubi Ballonzi, Senior v Registered Trustees of Chama cha Mapinduzi [1996] TLR 203, it boils down to one fact 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].

This excerpt lays down an imperative requirement of ensuring 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.

Gleaning from the proceedings in the trial tribunal and the appeal before me, it is hardly disputable that the matter became contentious the moment the respondent lodged the suit while she was not the administratrix of the estate of the late Shomary Mnyipanda. In the matter at hand, there is no dispute that the respondent in his testimony testified to the effect that the suit land belonged to her father Shomary Mnyipanda and she lodged the suit land by her own name.

In his submission before this Court, the respondent claimed that his brother Adam was appointed to administer the estate of the late Shomary Mnyipanda. Reading the proceedings and documents on records reveals that Adam Shomary was appointed to administer the estate of the late Shomary Juma Mnyipanda. There is also a letter written by Adam Shomary Mnyipanda stating that because of his busy schedule he wrote a letter to appoint the respondent to run the case.

The proper person to lodge the case was Adam Shomary Mnyipanda, the administrator or the estate of the late Shomary Juma Mnyipanda. As rightly pointed by Mr. Derick, it was not proper for Adam Shomary Mnyipanda, the administrator of the estate of the late Shomary Juma Mnyipanda to delegate his duties to the respondent. Therefore, in my considered view, the trial tribunal faulted itself to declare the respondent the lawful owner while she lodged the case in her own name while she had no direct complaints against the appellant. In other words, Tunu Shomary had no *locus standi* to institute a case at the trial tribunal in her own capacity.

In the upshot, I allow the appeal, I proceed to dismiss the appeal without costs. The parties are at liberty to institute a fresh case and

Order accordingly.

Dated at Dar es Salaam this date 18th November, 2022.



A.Z.MGEYEKWA

JUDGE

18.11.2022

Judgment was delivered on 18th November, 2022 via audio teleconference whereas Mr. Derick, learned counsel for the appellant, and the respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

18.11.2022

Right of Appeal fully explained.