

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND APPEAL NO.8 of 2022

(Arising from the District Land and Housing Tribunal for Temeke at
Temeke in Land Application No. 35 of 2021, originated from the Toa Ngoma
ward Tribunal in Land Dispute No. 55 of 2021)

OMARY BAKARI APPELLANT

VERSUS

ZALIKA MWALIMU RESPONDENT

JUDGMENT

Date of Last order: 07.03.2022

Date of Judgment: 07.03.2022

A.Z.MGEYEKWA, J

This is the second appeal. At the centre of controversy between the parties to this appeal is ownership of land. The decision from which this

appeal stems is the judgment of the Ward Tribunal of Toa Ngoma in Land Dispute No.55 of 2021.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them as follows: Zalika Mwalimu, is the epicenter of the dispute in this matter. She lodged a suit against Omary Bakari, the appellant. Zalika Mwalimu claimed that the suit land belongs to her late husband. Zalika Mwalimu testified to the effect that his husband bought a suit land in 2015 from Amina Saidi and they constructed a house. Then the appellant invaded the suit land and constructed a house. After the funeral of her husband, the appellant decided to lodge a suit at the Ward Tribunal claiming for land ownership. On his side, the respondent denied the allegations. He testified to the effect that he bought the suit land in 2015 from Amina Kibahasha in a tune of Tshs. 500,000/=. He said that he connected the late Ally who is his brother in law with the vendor. It was his testimony that the late Ally did not dispute that the suit land belonged to Omary Bakari. In the final analysis, the respondent emerged as a winner.

Dissatisfied, the appellant lodged an appeal before the District Land and Housing tribunal complaining that the trial tribunal erred in law to declare the case while the respondent had no *locus standi*. Failure to consider the vendor's testimony and he faulted the trial tribunal to decide the matter in favour of the appellant while she did not prove her ownership of the suit land. The appellate tribunal uphold the decision of the trial tribunal and dismissed the appeal.

Believing the decision of the District Land and Housing Tribunal for Temeke was not correct, the appellant lodged the Memorandum of Appeal containing three grounds of appeal as follows:-

- 1. That the appellate tribunal erred in law and fact by declaring the Respondent to have locus standi to sue in respect of the suit land.*
- 2. That the appellate tribunal erred in law and fact by affirming the trial tribunal decision which disregarded evidence adduced by vendor of the suit property.*
- 3. That the appellate tribunal erred in law and fact by declaring the Respondent to proving ownership of the same.*

When the matter was called for hearing before this court on 7th March, 2022, the appellant and the respondent appeared in person, unrepresented.

The appellant urged this court to adopt his grounds of appeal and form part of his submission. He contended that the appellate tribunal erred in law to declare the respondent a lawful owner of the suit land. He argued that the respondent's name is not stated in the Certificate of Title. He insisted that the lawful owner of the suit land was the late Ally Waziri. He contended that the respondent claims that she is the legal wife of the late Ally Waziri and the administrator of the estate of the late Ally Waziri while she is not since the late Ally Waziiri had a legal wife and they have grown up children. He added that the appellant was not appointed to administer the estate of the late Ally Waziri. The respondent added that the respondent had no any witness. The respondent asserted that the vendor testified to the effect that he sold the plots to Ally Waziri and Omary Bakari only but trial and appellate tribunals did not consider the vendor evidence.

On the strength of the above submission, the appellant beckoned upon this court to allow the appeal, quash and set aside the decision of the District Land and Housing Tribunal for Temeke with costs.

Opposing the appeal, the respondent was brief. She contended that she instituted a case at the trial tribunal against the appellant claiming for land ownership. She argued that her husband bought the suit land and the appellant was a middle man and the appellant also witnessed the sale agreement. She argued that his husband's and the appellant's names are reflected in the Sale Agreement. Therefore. She added that the appellant appended his signature in the Sale Agreement, it was her view that the appellant was in position to testify in favour of her. She stated that she is the second wife and thus she is the lawful wife of the late Ally Waziri.

Reiterating what he submitted in submission in chief, he insisted that the respondent had no locus to institute the suit at the trial tribunal.

Having summarized the submissions and arguments by both learned counsels, I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the first and second,

grounds because they are intertwined. Except for the third ground which will be argued separately in the order they appear.

On the first and second grounds, the District Land and Housing Tribunal determined the suit erred in law and fact in giving its decision in favour of the respondent herein who lacked *locus* to institute the impugned suit. The appellant also claimed that the tribunals did not consider the vendor's evidence.

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 on her own capacity that 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, no any letter of administration of the late Ally Waziri 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.

For that reason, I am in accord with the respondent that the respondent has no *locus in quo* to institute a case at the trial tribunal. The term *locus standi* is defined in the Blacks Law Dictionary, 9th Ed 2009 at page 1028, to mean:-

"The right to bring an action or to be heard in a given forum."

The bolder definition 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 appellant had no *locus standi* to sue the respondent. 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: see Halsbury's Laws of England. 4th ed, para 49 at p.52. Courts do not have the power to determine issues of general interest: see **Re IG Farbenindustrie AG Agreement** [1943] 2 ALL ER 525. They can only accord protection to interests that are regarded as being entitled to legal protection. They will thus not make any determination of any issue that is academic, hypothetical, premature, or dead. Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice to sue or make an application. Of course, provided the interest is recognized by law, the smallness of it is immaterial". [Emphasis added].*

Based on the above findings, I am in accord with the appellant that the respondent had no *locus standi* to institute a case at the trial tribunal on her own capacity.

Having so found, I refrain from deciding the remaining two grounds of appeal as, I think, any result out of it will have no useful effect on this appeal. It will be but an academic endeavour.

In the upshot, I proceed to quash and set aside the trial and appellate tribunals' proceedings, judgment, and decree. Appeal is allowed without costs.

Order accordingly.

Dated at Dar es Salaam this date 7th March, 2022.




A.Z.MGEYEKWA

JUDGE

07.03.2022

Judgment was delivered on 7th March, 2022 in the presence of both parties.




A.Z.MGEYEKWA

JUDGE

07.03.2022

Right of Appeal fully explained.