

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

MISC. LAND APPEAL NO.97 OF 2021

(Arising from the District Land and Housing Tribunal for Kibaha in Land Application No.13 of 2020. Arising from Pangani Ward Tribunal in Land Application No.20 of 2019)

CANOPIES INTERNATIONAL (T) LIMITED APPELLANT

VERSUS

NASMA SELEMANI MACHEMA RESPONDENT

JUDGMENT

Date of last Order: 21.03.2022

Date of Judgment: 25.03.2022

A.Z.MGEYEKWA, J

The matter of controversy between the parties to this appeal is on the landed property. Brief facts related to the instant appeal is that, Nasma Selemani Machema filed a case at the Ward Tribunal of Pangani in Land Application No. 20 of 2019. Nasma Selemani Machema obtained the power of attorney to represent her father, Selemani Ally Machema. She lodged a case against Canopies International (T) Ltd claiming that Selemani Ally Machema Saidi is the lawful owner of the suit land that he

obtained in 1985. He added that her father bought the suit land from Leonard Six Lwenda and the same is situated at Pangani Street in Kibaha District. The appellant on his part claimed that he bought the suit land from Manfred Lyoto the area is measuring 10 acres and 8 acres are in dispute. The respondent claimed that the sale agreement was witnessed by street leaders. The Ward Tribunal decided the matter in favour of the appellant.

The respondent challenged the trial tribunal decision at the District Land and Housing Tribunal for Kibaha alleging among other things, that the trial tribunal had no jurisdiction to determine the matter. She also claimed that the trial tribunal did not analyse the evidence on record. The District Land and Housing Tribunal determined the matter and overruled the decision of the trial tribunal and decided in favour of the respondent.

The appellant was not happy with the decision of the appellate tribunal. He thus preferred this appeal in the Court. The appeal is predicated on six grounds of grievance; namely:-

- 1. That, the Honourable Appellate Tribunal erred in law and facts in disregarding the evidence on record of the Appellant and their witnesses resulting in failure to weighing the evidence of the Appellant.*

2. *That, the Honourable Appellate Tribunal erred in law and facts in determining the decision which was procured by the improper corum in the Ward Tribunal.*
3. *That, the Honourable Appellant Tribunal erred in law and facts for adjudicating Land Appeal No. 13 of 2020 while the Respondent had no locus standi to file and prosecute the matter.*
4. *That, the Honourable Appellate Tribunal erred in law and facts in holding that the Respondent herein was the legal owner without evidence to prove the same.*
5. *That, the Honourable Appellate Tribunal erred in law and facts by adjudicating the matter which was entertained by the tribunal which had no jurisdiction.*

When the appeal was called on for hearing on 01st March, 2022, the appellant enjoyed the legal service of Mr. Hamza Yusufu, learned counsel and the respondent the 1st respondent enlisted the fabulous services of Mr. Iddi Mrema, learned counsel. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant filed his submission in chief on 9th March, 2022, and the respondent filed his reply on 16th March, 2022. The appellant waived his right to file a rejoinder.

In his submission, the learned counsel opted to combine the 3rd and 5th grounds and argue them together because they are intertwined. He opted to argue the first, second, and fourth grounds separately, to the order they appear.

On the first ground, the appellant contended that the appellate tribunal erred in fact by failing to identify that the said Leonard Six Kuwendwa resided in the disputed piece of land since 1971. He added that it is 13 years before the alleged Nguvu Kazi Operation. Mr. Hamza contended that Leonard Six Kuwendwa owned the piece of land before 1984 when Nguvu Lazi Operation began, this was testified by the appellant witnesses during the hearing at the trial tribunal. To support his submission he referred this court to page 30 of the Ward Tribunal proceedings.

Mr. Hamza argued that the appellate tribunal erred in fact by disregarding the fact that the valid transfer was done by Fidelis Leonard Kuwendwa to Manfred Lyoto, the same was adduced by Fidelis Leonard Kuwendwa during the hearing in the Ward Tribunal. He argued that the trial Chairman disregarded the evidence that the transfer done by Fidelis Leonard Kumwenda to Manfred Lyoto took place at the local government office and was witnessed by the local government officers.

The learned counsel for the appellant went on to submit the fact that Manfred Lyoto being a lawful owner of the disputed piece of land voluntarily transferred it to the appellant and the transfer was legal, witnessed by the local government officers and the late Leonard Six Kumwenda's children.

As to the second ground, Mr. Hamza submitted that the composition of the trial tribunal is one of the key elements and status creatures in determining a dispute. He submitted that the composition of the trial tribunal is governed by section 11 of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and section 4 of the Ward Tribunal Act, Cap. 206 [R.E 2019]. It was his view that the provision of law clearly and mandatorily requires that a properly constituted Ward Tribunal shall consist of at least four members and not more than eight members, three of whom are women. It was his submission that the proceedings of the Ward Tribunal specifically on pages 25, 32, 36, and 39 show that only five members participated in the Ward Tribunal from the first day of hearing until the final determination of the matter whilst the number of women were not indicated in the proceedings.

Stressing on the point, he argued that the Ward Tribunal is required to observe the issue of gender, the records reveal that the same was not

complied. To fortify his submission, he cited the cases of **Kassimu S/O Ngoroka v Bernard Masemvula**, Land Appeal No.3 of 2016, HC at Mbeya (unreported), and **Edward Kubingwa v Matrida A. Pima**, Civil Appeal No. 107 of 2018, the Court of Appeal of Tanzania at Tabora (unreported), the Court of Appeal of Tanzania held that:-

“If we may add, the other ailment o=in the composition of the trial tribunal was the fact that the issue of gender was completely not observed. Of the three members who participated in the trial, none of them was a woman contrary to the mandatory requirement of the law.”

He insisted that the ward proceeding records did not meet the legal requirement and taste. He strenuously argued that the Ward Tribunal failed to comply with the mandatory requirement of the law, the same amount to irregularity hence the procured decision should be quashed and set aside.

On the 3rd and 5th grounds, the learned counsel for the appellant contended that these grounds relate to the jurisdiction of the tribunal, it is settled principle of the law that *locus standi* is a common law principle that provides that only a right person or interest has been interfered with by another person has a right to bring his claims to court against that other

person. He added that the issue of jurisdiction can be raised at any stage of the proceedings. To bolster his contention, he cited the cases of **Richard Julius Rukambura v Issack Ntwa Mwakajila & another**, Civil Application No. 3 of 2004 at Mwanza (unreported) and **Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda and 20 others**, Civil Appeal No.8 of 1995. It was his argument that the Ward Tribunal proceedings and the District Land and Housing Tribunal, Nasma Selemani Machema, the respondent was never the owner of the suit land or involved in the transfer transaction on the alleged or disputed land. He added that the respondent did not tender any legal document before the trial tribunal to authorize the respondent to prosecute the matter.

Thus, it was his view that the respondent had no *locus standi* to prosecute any matter concerning the disputed piece of land. To buttress his contention, he cited the cases of **Chama cha Wafanyakazi Mahoteli na Mikahawa Zanzibar (HORAU) v Kaimu Mrajisi was Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No.300 of 2019 and **Peter Mpalanzi v Christin Mharuka**, Civil Appeal No. 153 of 2019, the Court of Appeal of Tanzania at Iringa (unreported). Mr. Hamza insisted that both tribunals erred in law by entertaining the said matter whilst the respondent in both proceedings had no *locus standi* to entertain the matter which contravenes the law of the country. Mr. Hamza referred this court

to the landmark cases of **Lujuna Shubi Ballonzi, Senior v Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 and **God Bless Konathan Lema v Mussa Hamis Mkanga & Two Others**, Civil Appeal No.47 of 2012 (unreported). He argued this court to quash the proceedings and judgments and set aside the decree of the tribunals.

Submitting on the fourth ground, Mr. Hamza argued that the respondent failed to substantiate its allegation by failing to demonstrate how the land transfer from Leonard Six Kuwendwa to Selemani Ally Machema in 1985 whilst Leonard Six Kuwendwa died in 1985 and no transfer took place before his death or after his death to Selemani Ally Machema. To support his position he cited section 110 of the Evidence Act, Cap.6 [R.E 2019]. He lamented that the appellate tribunal disregarded the clear and well-elaborated analysis of the documentary evidence which was done by the trial tribunal.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to quash the judgment and decree of the District land and Housing Tribunal for Kibaha at Kibaha and allow the appeal with costs.

In reply, the respondent began by a preamble which I am not going to reproduce in this appeal. The respondent submitted generally without

referring to the specific ground of appeal. The appellant submitted that in order for a person to win a case concerning ownership he must prove beyond probable cause and elaborate thoroughly the historical background as how she acquired the suit land. Mr. Iddy submitted that the respondent testified before the trial tribunal that his father bought the suit land from Leonard Six Lwenda and the vendor was allocated the same by Pangani village during Nguvu Kazi Operation. Mr. Iddy went on to submit that the respondent failed to narrate the background of ownership and rather claimed that he bought it from Manfred Lyoto without mentioning the previous owner in order to show if there was a good title to pass to Manfred Lyoto for the appellant to enjoy the right of bonafide purchaser.

The respondent's Advocate continued to submit that the evidence on record at the appellate tribunal was procured properly and as a result, the appellate tribunal overruled the trial tribunal's decision. He added that the proceedings and the decision of the appellate tribunal is clear and the appellate tribunal faulted the trial tribunal for failure to scrutinize the respondent's evidence on how he owned the suit land. To support his submission he cited the cases of **Kassim Lema and another v Kelvin Atulwa Munisi**, Land Appeal No. 111 of 2017 TZ HC 406 and **Farah Mohamed Said v Fatuma Abdallah** [1992] TLR 205

Concerning the issue of quorum and composition of the Ward Tribunal, the learned counsel for the respondent contended that this ground lacks merit since the composition and quorum of the tribunal differ in its statutory requirement. He submitted that the composition is applied when the tribunal is established while a quorum is applied when the case is in proceeding whether for mentioning of hearing and the requirement of both is different as stated under section 11 of the Land Disputes Courts Act, Cap. 216. To support his submission he referred this court to pages 8 and 9 of the appellate tribunal decision.

In regard to the issue of jurisdiction, the respondent's Advocate contended that the proceedings and records of both tribunals show that the respondent obtained the power of attorney to represent his father. He added that when the matter was before the trial tribunal and appellate tribunal the appellant's Advocate did not raise his concern on jurisdiction.

On the strength of the above submission, the learned counsel for the respondent urged this court to allow the appeal.

In his rejoinder, the learned counsel for the appellant reiterated his submission in chief. He stressed that the composition and quorum of assessors are two things different. He submitted that the composition is the one that determines the quorum. The learned counsel for the appellant

insisted that the appellant was required to have legal documents to act on behalf of another person. He added that the valid power attorney must contain the names of the donor and donee, a signature of the donor and donee and the same must be registered. Mr. Hamza argued that the respondent failed to adduce whether the above-mentioned requirement was met for her to act on behalf of someone else.

Having summarized the facts of the case and submissions of the appellant, I now turn to confront the grounds of appeal in the determination of the appeal before me.

I am alive to the fact that this is a second appeal, I should be very careful to meddle with the concurrent findings of fact of the lower court. See the case of **Maulid Makame Ali v Kesi Khamis Vuai**, Civil Appeal No, 100 of 2004 (unreported). I am also aware that it is in rare and exceptional circumstances the Court will interfere with findings of fact of a lower courts or tribunal. In **Amratlal Damodar and Another v H. Jariwalla** [1980] TLR. 31, for instance, the Court of Appeal held that:-

“Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a misapprehension of

evidence, a miscarriage of justice or violation of some principle of law or procedure."

Flowing from the above, it is my considered view that this Court will only interfere with findings of fact of lower courts in situations where a trial court had omitted to consider or had misconstrued some material evidence, or had acted on a wrong principle, or had erred in its approach in the evaluation of the evidence.

I shall tackle the third ground since the same disposes of the appeal. The appellant is complaining that the trial tribunal erred in law and facts for adjudicating Land Appeal No.13 of 2020 while the respondent had no *locus standi* to file and prosecute the matter. Reading the records, it is clear that the appellant tendered a copy of power of attorney at the trial tribunal. The same was admitted by the trial tribunal and the tribunal found that the appellant had *locus standi* to lodge the complaint. For ease of reference I reproduce the Power of Legal Representative as follows: -

HATI YA KUKABIDHI MADARAKA MAALUM

KWA HATI HII MIMI SELEMAN ALLY MACHEMBA wa Dar es Salaam
(*ambaye humu ataitwa "Mtoajji Madaraka*) kwa hiari yangu mwenyewe
na bila kushawishiwa na mtu yeyote namkabidhi mwanangu Nasma
Seleman Mchemba wa Dar es Salaam (*ambaye humu ataitea*

“Mpokeaji Madaraka”) Madaraka kamili ya kusimamia upimaji wa shamba langu lenye ukubwa wa Ekari nane (8) lilioko Kibaha Pangani Mkoa wa Pwani.

Madaraka haya yatakoma pale shughuli nzima ya upimaji itakapokamilika.

Ijulikane wazi kwamba sijapata kukabidhi Madaraka haya kwa mtu mwingine yoyote kabla ya sasa, na endapo atatokea mtu mwengine anayedai kuwa na Madaraka hayo na ninaomba wenye Madaraka Serikalini wachukue hatua sthiki za Kisheria.

From the above context, it is clear that the purported power of legal representative tendered by the respondent at the Ward Tribunal was for a specific purpose. The donor, Selemani Ally Mchemba instructed her daughter Nasma Seleman Mchemba to supervise the survey of his plot measuring 8 acres located at Kibaha Pangani, Pwani Region. In that regard, I fully subscribe to Mr. Hamza submission that Selemani Mchemba was very specific that the power of attorney will end after the supervision of the survey process and not to represent him in instituting a case in the court of the law. In the case of **Monica Donto Mwansasu (suing under the Power of Attorney) v Esrael Hosea and Issa Mwakijebele**, Land Revision No.2 of 2021 HC at Mbeya (unreported) my learned Brother Hon. Utmwa, J held that:-

“The done is not allowed to go beyond the scope of the powers given.”

Applying the above authority, it is without a speck of doubt that the appellant was not instructed to represent his father in the land case.

In the upshot, I quash the decisions of both tribunals and allow the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this 25th March, 2022.



A.Z.MGEYEKWA

JUDGE

25.03.2022

Judgment delivered on 25th March, 2022 via audio teleconference whereas Mr. Hamza Yusuf, counsel for the appellant and Mr. Iddi Mrema. counsel for the respondent were remotely present.



A.Z.MGEYEKWA

JUDGE

25.03.2022

Right to appeal fully explained.