IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 201 OF 2021

(Arising from the District Land and Housing Tribunal for Kibaha in Land Application No.597 of 2020 Originating from Land Application No.02 of 2017)

SIMON SAFISA ZEMBWE ..... APPELLANT

VERSUS

SHABANI ALLY MAKASAMALA ..... RESPONDENT

JUDGMENT

Date of Last order: 20.05.2022

Date of Judgment: 26.05.2022

A.Z.MGEYEKWA, J

The appellant, Shabani Ally Makasamala lodged an application against Simon Safisa Zembwe at the District Land and Housing Tribunal for Kibaha in Land Application No. 2 of 2017. The matter of controversy between the parties to this appeal is on an unsurveyed piece of land. The

material background facts to the dispute are briefly as follows; the respondent claimed that he inherited the suit land from his father and the appellant trespassed on his land. The appellant filed a written statement of defence whereas he disputed all the claims made by the respondent. In 2012, the appellant was surprised to see the respondents cultivating the suit land which belonged to Wesu Saidi Kilegeza, his late father. In 2017, the respondents build a house on the suit land thus, in 2019, the appellant lodged a suit at the District Land and Housing Tribunal claiming that he is the lawful owner of the suit land, the tribunal to restrain the respondents to enter into the suit land and costs of the suit.

On their side, the respondent refuted the appellant's claims. They claimed that the appellant was the lawful owner of the suit land from 1968 to 2003 then he gave Wesu Said Kilegeza the said suit land to construct a business premise and their father paid him Tshs. 7,000/= for cashew nut trees. In the final analysis, the respondents emerged winners.

In this appeal, the appellant has accessed the Court seeking to impugn the District Land and Housing Tribunal decision through a memorandum of appeal premised on three grounds of grievance, namely:-

1. *That the appellate tribunal erred in law and fact in finding and holding and holding that there was nothing material placed before the trial tribunal to establish the ownership of the appellant as alleged by him.*
2. *That the appellate tribunal erred in law and in fact by holding that the respondent is the lawful owner of the suit land.*
3. *The appellate tribunal erred in law by its failure to evaluate and appreciate the evidence that was tendered before the Ward Tribunal by the petitioner and his witness and strong arguments that were tabled on the appellate tribunal.*

When the appeal was placed before me for hearing on 28th April, 2022, the appellant appeared in person. Following the prayer by the appellant to proceed *exparte* succeeding the absence of the respondent. I am alive to the fact that the respondent was aware of the hearing of this case since the summons was served to the respondent and later the respondent was served through process server on 26th March, 2022 but he denied to accept the summons. Therefore, this court granted the appellant's prayer to proceed *exparte* against the respondent.

Hearing of the appeal took the form of written submissions whereas, the appellant was required to his submission in chief on 16th May, 2022. The appellant was not able to file his written submission hence he applied for an extension of time. This Court acceded to the appellant's prayers to extend the time to file his written submission on 20th May, 2022. Pursuant thereto, a schedule for filing the submission was duly conformed to.

In prosecuting this appeal, began with a brief background of the facts which led to the instant appeal which I am not going to reproduce in this appeal. On the first ground, the appellant simply submitted that the trial tribunal erred in law and fact in deciding the matter in favour of the respondents without considering that the appellant is the lawful owner of the suit land. The appellant claimed that he is the lawful owner of the suit land and that is why he is in court premises all the time while the respondent has denied to appear in court to defend his case.

As to the second ground, the appellant contended that the Chairman erred in law and fact by entering Judgment in favour of the respondent without considering the strong evidence adduced by the appellant concerning the disputed land. The appellant complained that the tribunal failed to evaluate the evidence and the documentary evidence tendered

during trial thus, it could be in a position to declare the appellant a lawful owner of the suit land.

With respect to the third ground, the appellant argued that the learned Chairman erred in law and fact by delivering a Judgment in favour of the respondent based on weak evidence on record. It was his submission that during the trial the tribunal made a gross mistake when it determined the matter without considering the fact that the appellant was the lawful owner of the suit land. He added that the respondent's evidence was weak and the same did not support his allegations against the appellant. To buttress his submission, he cited the case of Mohamed Said v Mohamed Mbilu (1984) TLR 113.

On the strength of the above submission, the appellant beckoned upon this court to quash the decision of the tribunal and declare him a lawful owner of the suit land.

After a careful perusal of the record of the case and the final submissions submitted by both parties, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in the case of **Hemedi Said v Mohamedi Mbilu** *(1984) TLR 113*, which requires, "*the person whose evidence is heavier than that of the*

other is the one who must win". In determining the appeal, the central issue is whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Kibaha.

In my determination, I will consolidate all the grounds of appeal because they are intertwined. The same is related to the evaluation of evidence and proof of land ownership. The appellant is complaining that the first appellate court did not consider the evidence on the record as a result he decided in favour of the respondents. In accordance to the circumstance of the case, facts, and evidence, I think the matter will not detain me.

At the trial tribunal Rashid Shaban Ally (PW1) testified to the effect that he is the lawful owner of the suit land since he inherited the same from his late father who passed away in 2004. He claimed that he inherited the same under customary rites. While on his party, the appellant testified to the effect that he bought the suit land from Abdallah Juma Ally Makasamala in 2011. In my view,

The main issue for the appellant was to prove his case whether he gave the respondent's father the piece of the suit land. I am saying so because

the appellant did not tender any documentary evidence to prove his case. On their side, the respondent testified to the effect that their late father used the suit land and he constructed a wooden house after his father's death, he continued to use the suit land, and in 2017, they constructed a house. The 2nd respondent also testified to the effect that he inherited the suit land from his late father. He claimed that in 2012, the two of them used the suit land without any interruption of disturbance until 2018.

One Mussa Salehe, the Village Chairman for Mkange - Mloka (DW3) testified to the effect that the late Kilegeza paid Tshs. 7,000/= for clearance of the suit land and a certificate of sale was prepared whereas both parties signed before two witnesses. Also, one Sudi Yusufu Mkumba, who was the village Chairman from 2002 to 2010, witnessed the sale agreement between the appellant and the late Wesu Kilegeza and he is the one who prepared the said agreement. The appellant at the trial tribunal had one witness; Mashaka Omari, who testified to the effect that the suit land belongs to the appellant. He did not state how the appellant acquired the said plot nor did he witness the Sale Agreement. The records reveal the Chairman in his determination noted that the appellant did not prove his case since he had already transferred the suit land to the respondents' father one Wesu Saidi Kilegeza.

Exploring the evidence on record, I noted the respondent was required to prove his case on the standard of probabilities. PW2 testified to the effect that suit land belonged to his late grandfather, Ali Makasamalaa. Therefore, PW1 evidence was not supported by PW2 evidence since the suit land was in the hands of the respondent's father then the transfer of the same was required to be proved.

One of the canon principles of civil justice is for the person who alleges to prove his allegation. Section 110 of Evidence Act, Cap.6 [R.E 2019] requires the one who alleges must prove. In my considered view, both tribunals misdirected themselves to proceed to determine the matter on merit. After noting that there was no any cogent evidence of transfer of customary land from the respondent's late father to the respondent, the trial tribunal was required to strike out the case since the respondent had no *locus standi* to institute the case in his own capacity.

The issue of *locus standi* is a matter of law, therefore even if the same could have not been raised by the party the tribunal or court could have raised it. Had it been that the appellate tribunal properly analysed well the documentary and oral evidence. It could have arrived at a correct conclusion that the respondent had no *locus standi* to institute the case at

hand thus he could not bring the matter to an end. The court in the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi [1996] TLR** 208 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."*

In a decision of an Indian Landmark case of **S.P Gupta v Union Of India AIR SC 149, in which Bhagwati, J** held that:-

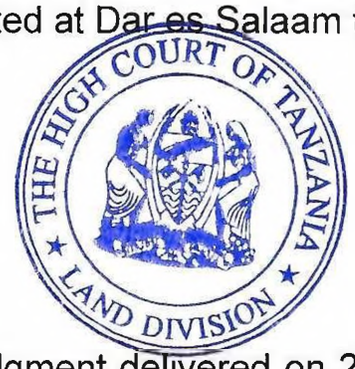
> *" The traditional rule in regard locus standi is that judicial redress is available only to a person who has suffered a legal injury of violation of his legal right or legally protected interest by the impugned action of the state or public authority or any other person or who is likely to suffer."*

Applying the above-quoted decisions 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, in the case at hand, the respondent had no direct complaints against the respondent

and his allegations he inherited the same under customary rites were not proved by any evidence and documentary evidence. 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 quash the Judgment and Decree of the District Land and Housing Tribunal for Kibaha and the trial tribunal. The appeal is allowed without costs.

Dated at Dar es Salaam this date 26th May, 2022.



A.Z.MGEYEKWA

JUDGE

26.05.2022

Judgment delivered on 26th May, 2022 in the presence of the appellant, and the 2nd respondent was remotely present.

A.Z.MGEYEKWA

JUDGE

26.05.2022

Right of Appeal fully explained.