

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL NO. 21 OF 2021**

**EDGAR MATEO MTUKA** (suing under the Power of  
Attorney from **MOSES WASENA**) ..... **APPELLANT**

**VERSUS**

**JUSTIN PULO** ..... **1<sup>st</sup> RESPONDENT**

**EDMUND SONGORO** ..... **2<sup>nd</sup> RESPONDENT**

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal Land

for Rukwa at Sumbawanga),

(J. Lwezaura, Chairperson)

Dated 17<sup>th</sup> Day of June, 2021

In

Land Application No. 21 of 2015

**RULING**

Date: 20/05 & 09/08/2022

**NKWABI, J.:**

The District Land and Housing Tribunal for Rukwa at Sumbawanga dismissed with cost the land application that was instituted therein. It also decreed that the 2<sup>nd</sup> respondent continue to utilize the land in dispute. Unhappy with the decision of the trial tribunal, the appellant lodged in this Court a Memorandum of appeal having four grounds of appeal.

The appeal met a road block, which is a preliminary point of objection raised by the counsel for the respondents in the following words:

*"That the appellant has no locus standi hence the appeal is incompetent."*

The respondents' counsel prayed this Court to strike out the appeal for the appellant is lacking the requisite locus standi.

I ordered this preliminary objection be argued by way of written submissions. The counsel of both parties duly complied. The respondents had the services of Mr. Deogratius Phailod Sanga, learned advocate. The Appellant enjoyed the representation of Mr. Peter Kamyallie, also learned advocate.

It was Mr. Sanga's strong contention that since the principal once appeared in the trial tribunal, and gave evidence as SM2 hence the appellant herein ceased to have the locus standi. He cited **National Microfinance Bank PLC v. Pamela Thomas Chillery**, Civil Appeal No. 14 of 2020 HC at Kigoma which quoted with approval the case of **Parin A.A. Jafer & Another v Abdulrasul Ahmed Jaffer & 2 Others** [1996] TLR 110.

Mr. Sanga added that on the date when the donor of the power of attorney appeared before the trial tribunal it was the date when the purported power of attorney completely and absolutely ceased to operate once and for all which essence rendered the appellant incapable of dealing with anything empowered to him by the said power of attorney which inter alia includes filing this instant appeal.

Mr. Kamyalile, was not persuaded that the appellant in this appeal has no locus standi because he strongly submitted that the appellant has locus standi and this appeal is competent before this Court. He gave his reasons for his stance as outlined herein below.

He stated that the record shows that Edger Mateo Mtuka commenced and represented during the hearing of proceedings Moses Wasena as his representative the practice which is allowed by the law under Rule 3(1) and Rule 13(1) of the, G.N. No. 174 of 2003 The Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. He further maintained that it is trite law that the parties who featured in the initial proceedings should be the same parties featuring before the High Court as

well as to the Court of Appeal. Also, parties are not allowed to change or alter a name unless they comply with proper procedure. He referred this Court to the case of **Joseph Magombi v. Tanzania National Parks (TANAPA)**, Civil Appeal No. 114 o 2016 CAT (unreported) at Page 13.

It was also the contention of Mr. Kamyalile that Edger Mateo Mtuka was the applicant in the initial proceedings under power of attorney, then he has the right or locus standi to appeal to this Court. He also contended that in this Court the appellant is not represented by virtual of power of Attorney but is represented by Advocate hence the preliminary objection is lacking merits. He stated, Order III Rule 2(a) of the Civil Procedure Code [Cap 33 R.E. 2019] and cases of **National Microfinance Bank PLC v. Pamela Thomas** and **Parina A. A, Jafer and Another v. Abdulrasul Ahmed Jaffer & 2 others** are distinguishable and not applicable to this matter. He prayed the preliminary objection be dismissed with costs.

Even if the Court will arrive to the decision that the appellant should be Moses Wasema, pointed Mr. Kamyalile, its remedy by virtual of section 3A (1) (2) of the Civil Procedure Code [Cap 33 R.E. 2019] is to order amendment.

of all the proceedings by stating the proper name per case of **Joseph Magombi v. Tanzania National Parks (TANAPA)** (supra).

In rejoinder, Mr. Sanga argued that the provisions of Rule 3(1) and rule 13 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN No. 174 of 2003 could be applicable if the power of attorney assigned to the appellant would have not ceased on the date when the principal appeared before the trial tribunal for his case.

Mr. Sanga was of the further view that the cited case of **Joseph Magombi** (supra) is distinguishable, thus, cannot support the argument that since Edgar's name appeared in the trial tribunal, then it ought to proceed till even to the Court of Appeal since the appeal is incompetent by being filed by a person who has no locus standi. He insisted that Moses Wasema ought to follow the procedures for and change of names in the pleadings then prefer this appeal.

Mr. Sanga further argued that the fact that the appellant is being represented by counsel does not cure the irregularity since parties to the pleadings are

those that their names appear at the position of parties and not the person who prepared the documents. He then pressed this Court to make a finding that the appeal is incompetent and thus this Court lacks the jurisdiction to do anything over the same but ought to strike it out. He resisted the prayer for amendment of the pleading as it has been brought by a person who has no power to pray for such orders. He insisted that this appeal be struck out with costs.

This preliminary objection cannot detain me much since the High Court of Tanzania has pronounced itself clearly on this point in numerous cases. I need not add anything to its pronouncement, that once the principal enters appearance or makes an application so that he enters appearance, then the person who was given power of attorney to represent the principal on the matter, ceases to have locus standi as per cited case of **National Microfinance Bank PLC v. Pamela Thomas Chillery**, Civil Appeal No. 14 of 2020 HC at Kigoma. In **Parin A.A. Jafer & Another v Abdulrasul Ahmed Jaffer & 2 Others** [1996] TLR 110 Mapigano, J. clearly held that:

*"On the other hand it is imperative under Order 3 Rule 2(a) that all applications, acts and appearances be made or done*

*by the attorney on behalf of and in the name of the principal. By the same token where the principal himself makes or does an application, appearance or act, his attorney has no locus standi. In the premises I have to sustain the submission that Parin is improperly joined as a claimant for rectification."*

See also **Yahaya Daudi Mbura v. Mansoor Dudi Mbura**, [2011] T.L.R.

445 Kipenka Mussa, J. as he then was:

*"There it was held that where the principal himself/herself enters appearance, makes an application or does to Court any given act, his/her attorney would then have no locus standi. To me, what was decided in Parin pertains exclusively to the appearance or the taking of certain courses of action by a recognized agent on behalf for the principal. The decision did not relate to the situation, as here, where the principal enters appearance for the purpose of giving testimony. In his own right, the Appellants' appearance for testimony was, in my view, not derogative of the power of attorney. To insist upon more would be to*

*overstretch the scope of the provisions of rules 11 and 2 of Order III as has previously stated:*

*A person may act and represent another person, but we know of no law or legal enactment which can permit a person to testify in place of another (NAFCO v. Mulbadow [1985] T.L.R. 88).*

*All said, I am declined to endorse the District Tribunal's finding to the effect that the trial proceedings were vitiated by the Appellants' appearance as a witness."*

Also, in **Hamidu N. M. Mandagani v. Raynold Msangi & Another**, [2007] T.L.R. 405, Massati, J. as he then was, had the occasion to state when a power of attorney can be used in the following words:

*"I agree, on the other hand, that in principle, a power of attorney is to be used to represent persons who are absent from the local jurisdiction of the Court, or with physical disability. However, once again, I am of the firm view that whether or not a person is in or outside the local jurisdiction of the Court or whether or not he is physically or mentally unfit are questions of fact ... unless the same are not disputed they cannot properly be determined at this stage."*



In this case, the appellant, through his counsel admits that since the principal entered appearance in the trial tribunal then he had no locus standi. He invites this Court to allow him to amend the proceedings in the trial tribunal and this Court so that it reads Moses Wasena the principal instead of Edgar Mateo Mtua. The basis for the prayer is because in this Court, the appellant is represented by counsel and it is the appellant's counsel who is making the prayer and not the appellant. The counsel for the Appellant referred me to the decision of the Court of Appeal which allowed amendment of such proceedings. It is the case of **Joseph Magombi v. Tanzania National Parks (TANAPA)**, Civil Appeal No. 114 o 2016 CAT (unreported) at Page 13 where it was held:

*"We think and agree with the Judges in the case of William Godfrey Urassa (supra) that the parties who featured in the initial proceedings should be the same parties featuring before the High Court as well as this Court. We further say, that unless a proper procedure has been followed to change or alter a name, no change of party's name should occur."*

In rejoinder submission, however, the counsel for the respondent implored me not to purchase the exhortation to allow amendment of the proceedings.

It is my considered view, that since by the appearance of the principal (Moses Wasena) in the trial tribunal, which appearance has not been disputed by Mr. Kamyalile, then Edgar Mateo Mtuka ceased to have locus standi to appear and represent his principal. It would appear that Moses Wasena was unaware of the legal position because I believe, had he knowledgeable of the law, he would have applied to change the name of the applicant (appellant in this Court) to have the proceedings inserted his name as a party instead of his legal representative by power of attorney. It is trite law that ignorance of law is no defence just as it was said in a deferent scenario in **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported) where it was said:

*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time ... (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it*

*for otherwise he/she will have nothing to offer as an excuse for sloppiness.”*

The fact that the appellant is represented by counsel does not assist the appellant to have the name appearing therein changed to Moses Wasena. I say so because of where the learned counsel of the appellant received instruction to appeal from. If he received instruction from Moses Wasena, then Moses Wasena had no locus standi to give instruction as he is not, so far, a party to this appeal. If it is Edgar Mateo Mtuka who gave instruction to Mr. Kamyalile to lodge this appeal, Edgar Mateo Mtuka had already lost locus standi after his principal entered appearance in the trial tribunal. Therefore, though Mr. Kamyalile's prayer for the proceedings to be amended just as what was ordered by the Court of Appeal in **Magombi's** case (supra), the prayer cannot be purchased by this Court. While, in **Magombi's** case, TANAPA had the locus standi only that its name was wrongly cited, in this case, at this moment, neither Edigar nor Moses Wasema has locus standi. To that end, I sustain the preliminary objection and strike out the appeal with costs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 9<sup>th</sup> day of August, 2022.



*J. F. Nkwabi*

J. F. NKWABI

**JUDGE**