

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

LAND APPEAL No. 76 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at
Musoma in Land Application No. 15 of 2022)*

MUJO BWIRE **APPELLANT**

Versus

JULIUS MUSSO **RESPONDENT**

JUDGMENT

23.03.2023 & 23.03.2023

Mtulya, J.:

Mrs. Mujo Bwire (the appellant) and **Mr. Julius Musso** (the respondent) are contesting on a piece of land located at Butimba Village within Butimba Ward in Bunda District, Mara Region. Following their dispute, the respondent on 4th February 2022 had approached the **District Land and Housing tribunal for Mara at Musoma** (the tribunal) and lodged **Land Application No. 15 of 2022** (the application) praying for an order for declaration of the rightful owner of the disputed land. The tribunal had summoned the parties to appear on 25th August 2022 to register relevant materials related to the dispute and the respondent testified that:

Eneo hili hapo awali lilikuwa la baba yangu.

Sikumbuki mwaka ambao Baba alifariki.

In replying the testimony of the respondent, the appellant appeared in the tribunal on 3rd October 2022 and had testified that:

Kiwanja chenye mgogoro ni mali ya Mama yangu mzazi aitwae Mkwaya Bwire. Kwa sasa hivi ameshafariki.

After full hearing of the application and before delivery of the judgment assessors who sat in the application had opined that:

Wadaiwa kwenye shauri hili hawana miguu ya kusimama Mahakamani kwa sababu si wasimamizi wa mirathi ya marehemu wazazi wao.

However, the learned chairman of the tribunal had different views and reasoning as depicted at page 2 of the judgment that:

Nashindwa kukubaliana na maoni ya wajumbe wa Baraza hili. Hii ni kwa sababu Mleta Maombi Julius Musso amedai kuwa eneo lenye mgogoro ni mali yake akiwa amelipata mwaka 2003 baada ya baba yake kufariki, ambaye ndiye alikuwa mmiliki wa awali.

This thinking aggrieved the appellant hence approached this court complaining that the respondent had no *locus standi* to sue the appellant as he is not an administrator of his deceased

father's estates. Today morning when the appeal was schedule for hearing. The parties appeared without any legal representation. According to the appellant the respondent had no legs to stand and sue in the tribunal hence he must leave the disputed land. Whereas the respondent conceded the point and prayed to consult his clan members to convene clan meetings for necessary steps that will facilitate his appointment as administrator of his deceased father's estates.

I have displayed the record of the tribunal in this appeal which shows that both parties had no necessary standing in the tribunal. According to the Court of Appeal in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021, at page 4 of the judgment, any party who commences proceedings in a representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of necessary standing.

The Court of Appeal finally had left the parties at liberty to refile fresh and proper suit, if they so wish, provided they are in possession of valid letters of administration of the estates of deceased persons. The position was followed in the precedent of

this court without any reservations (see: **Budigo Fideli v. John Malima**, Misc. Land Appeal No. 35 of 2022). In the present appeal, I will follow the course and hereby moved to quash all proceedings, nullify judgment and all orders emanated in the proceedings of the application in the tribunal for want of necessary standing of the parties. Any party who is still interested in the contest, he may wish to initiate fresh and proper proceedings attached with the letters of administration. He must do so in appropriate forum and in accordance to the current laws regulating land disputes. I have decided so without any costs to any party. Each party shall bear its own costs.

Ordered accordingly.





F. H. Mtulya

Judge

23.03.2023

This judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mrs. Mujo Bwire** and in the presence of the respondent, **Mr. Julius Musso**.


F. H. Mtulya

Judge

23.03.2023