


**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA  
AT MBEYA**

**LAND APPEAL NO. 69 OF 2021**

(Originating from the District Land and Housing Tribunal for Kyela,  
at Kyela, in Application No. 19 of 2019)

<p><b>1. YONA MWAKYOMA.....</b> <b>2. PYUTI MWAKIBINGA.....</b> <b>3. LWITIKO MWAMASINGA....</b> <b>4. JOSEPH WILLIAM.....</b> <b>5. NGUMBU SOPELAKO.....</b> <b>6. AIDANI MWANTUKE.....</b> <b>7. ELIAS MWANGALAWA.....</b> <b>8. ATUJALILE MWALWIMBA....</b> <b>9. SUKA MWAKYOMA.....</b></p>		<b>APPELLANTS</b>
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**VERSUS**

**ALFRED MWANDALI..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 30.03.2022*

*Date of Judgment: 13.05.2022*

**Ebrahim, J.**

The appellants herein have filed the instant appeal raising six grounds of appeal as follows:

1. That the trial Tribunal erred in law and fact to enter judgment in favour of the respondent while he had no *locus standi* to sue.
2. That the trial Tribunal erred in law and fact to make judgment in favour of the respondent which based on contradictory evidence of the respondent.
3. That the trial Tribunal erred in law and fact to make judgment in favour of the respondent basing on unadmitted documents.
4. That the trial Tribunal erred in law and fact for failure to evaluate evidence adduced by the appellants hence arrived into wrong conclusion.
5. That the trial Tribunal erred in law and facts to disregard the appellants' documentary evidence for the sole ground they do not have stamp duty.
6. That the trial Tribunal erred in law and fact to disregard the crucial evidence of DW10 Hussein Mapunda for the sole ground that he was a party in case No. 9/2018.

Briefly, facts raising to the instant appeal are as follows; before the Land and Housing Tribunal for Kyela (Trial Tribunal) the appellants

herein were respondents while the respondent, Alfred Mwandali was the applicant. The respondent sued the appellants for trespassing into his piece of land. The measurements of which were not specified, it was only described that the land is located at Ijumba area in Itenya village near Lake Nyasa shores within Kyela District.

The evidence reveals that the respondent instituted the application under the capacity of the administrator of the estate of the late Washington Mwakipesile (the deceased). Upon hearing the evidence of the parties, the trial Tribunal pronounced a judgment in favour of the respondent. It declared the appellants as trespassers, the respondent thus, was declared the rightful owner of the suit land.

The appellants were aggrieved by the decision, hence the present appeal.

When the appeal was called for hearing, the appellants were represented by Mr. Emily Mwamboneke learned advocate, while the respondent appeared himself, unrepresented. The appeal was heard by way of written submissions and they were duly filed.

Having gone through the grounds of appeal and parties' written submissions, I find it prudent to firstly determine the 1<sup>st</sup> ground of the appeal. The same is premised on the issue of whether the respondent (the applicant in the trial Tribunal) had a *locus standi*.

Advocate Mwamboneke for the appellants supporting the appeal, argued regarding the 1<sup>st</sup> ground of appeal that the respondent did not have a *locus standi* to sue. According to him the respondent claimed to sue under the capacity of the administrator of the estate of the late Washington Mwakipesile. However, he did not tender letters of administration to prove the same. Mr. Mwamboneke contended that the letters tendered by the respondent was not admitted since it bared the names different from the respondent. He further argued that the suit was instituted by a person who has no capacity to sue hence the irregularity vitiated the proceedings. To justify his argument, he cited the case of **Registered Trustees of Catholic Arch Diocese of Nyari & another vs Standard Limited [2003] EA 257**. He argued thus, the proceedings were a nullity and should be quashed.

In response, the respondent forcefully objected the complaint. He contended that he tendered letters of administration and the

same was admitted as **exhibit P1**. The respondent contended also that, though the letters contained a different name of the respondent the same was rectified by producing a deed poll which exhibited that the respondent changed the name from Alfred Mwakipesile to Alfred Mwandali.

Regarding the 1<sup>st</sup> ground of appeal, it is undisputed that the respondent instituted the application before the trial Tribunal under the capacity of the administrator of the estate of the late Washington Mwakipesile. This is according to the evidence on the record. The title to the application did not specify that capacity. It is also undisputed that for a person to be referred as the administrator of the deceased's estates he/she should prove that he was so appointed by a court of competent jurisdiction and he must prove by adducing letters of administration.

In order to verify if the respondent tendered letters of administration, I cross-checked the proceedings only to find that; at page 6 of the typed proceedings the same was rejected as it referred to a person by the name of Alfred Mwakipesile different from the respondent's name i.e Alfred Mwandali.

Considering the contention by the respondent that he tendered a deed poll exhibiting that he changed the name. I went through the entire proceedings and did not find any exhibit as a deed poll. Even the respondent did not tell this court the number that was given to the said exhibit. In perusal of the proceedings, I found that exhibit P1 is the copy of judgment in land case No. 9/2008. Under that circumstance I agree with the appellants that the respondent did not tender letters of administration. It is thus true that the respondent had no *locus standi*.

Having so found, the question to follow is whether or not the lack of *locus standi* of the respondent vitiated the proceedings. Noticeably, the law instructs that, a party to court proceedings cannot prosecute or defend a matter into which he lacks *locus standi* whereby even a court of law also lacks powers to entertain such proceedings. Otherwise, the proceedings become a nullity; see the holding of this court in the case of **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203.

The rule on *locus standi* was described under the **Lujuna case** (supra) as being governed by common law, but applicable in our

jurisdiction. It guides that, a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with and he is entitled to bring the matter before the court. See also the observation in the case of **Lazaro Kimbindu v. Athanas Mpondangi**, (PC) Civil Appeal No. 137 of 2003, High Court at Dar es Salaam (unreported).

In the parity of reasoning, my brother judge, honourable Utamwa, J. in the case **Barton Mwambola vs Steve Mwaikasu**, Misc. Land Appeal No. 16 of 2020 HC at Mbeya (unreported) observed the rationale for the rule of *locus standi* which I fully subscribe to, in the following words:

*"The rationale for the rule of locus standi underlined above is, in my settled opinion, that it avoids a situation where a party who is not entitled to a given right sues in court successfully or unsuccessfully, but afterwards the rightful party sues before the court in his own capacity or under the same title for the same claim. The danger of this situation, if not well checked by courts of law is that, it will cause inter alia, a serious injustice to persons*

*who are entitled to some rights and chaos in courts  
for opening flood gates of needless litigations."*

In that course, I hold that the lack of *locus standi* vitiates the proceeding. That being the position of the law, and in linking with the matter at hand, the proceedings and judgment of the trial Tribunal in Application No. 19 of 2019 were a nullity.

The findings I have just made above regarding the first ground of appeal are enough to dispose of the entire appeal. I will not thus, address the rest of the grounds of appeal.

It follows therefore that; the appeal is allowed with cost. I hereby nullify the proceedings, quash the judgment dated 12<sup>th</sup> June 2020 and set aside the resulted order. If the respondent is still interested to pursue his rights, he may refile a fresh land application and abide with the law.

Ordered according.



*R.A. Ebrahim*  
**R.A. Ebrahim**

**JUDGE.**

**Mbeya**

**13.05.2022**



**Date:** 13.05.2022.

**Coram:** Hon. A.P. Scout, Ag -DR.

**1<sup>st</sup> Appellant:** Present.

**2<sup>nd</sup> Appellant:**

**3<sup>rd</sup> Appellant:**

**4<sup>th</sup> Appellant:**

**5<sup>th</sup> Appellant:** Absent.

**6<sup>th</sup> Appellant:**

**7<sup>th</sup> Appellant:**

**8<sup>th</sup> Appellant:**

**9<sup>th</sup> Appellant:**

**For the Appellants:** Mr. Mwamboneke – Advocate.

**Respondent:** Present.

**B/C:** P. Nundwe.

**Mr. Mwamboneke Advocate for the Appellants:** Your honour, the matter is coming on for Judgement we are ready to proceed.

**Respondent:** I am ready too.

**Court:** Judgement is delivered in the Presence of Mr. Mwamboneke Advocate for the appellant, 1<sup>st</sup> appellant and the Respondent and C/C in Chamber Court on 13/05/2022.

Sgd: A.P. Scout  
Ag-Deputy Registrar

13/05/2022

**Court:** Right of appeal is explained to the Parties.



**A.P. Scout**

**Ag-Deputy Registrar**

**13/05/2022**

DEPUTY REGISTRAR  
HIGH COURT OF TANZANIA  
MBEYA