

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT ARUSHA

MISC. LAND CASE APPEAL NO. 42 OF 2017

(From the decision of District Land and Housing Tribunal of Manyara District at Babati in Land Case Appeal No. 113 of 2014 and original Ward Tribunal of Dirma Ward in Application No. 18 of 2014)

ZEPHANIA SHANYANDA.....APPELLANT

VERSUS

TOTI ANDREA.....RESPONDENT

JUDGMENT

DR. OPIYO, J.

This appeal originates from the decision of Dirma Ward Tribunal which declared the respondent as the lawful owner of the land in dispute. The appellant unsuccessfully appealed before the District Land and Housing Tribunal, hence this appeal.

1. That, the trial Chairman erred in law and fact by deciding that the respondent is a lawfully owner of the disputed land while he had no *locus standi* to prosecute the case.
2. That, the learned Chairperson erred in law and in fact by giving decision in favour of the respondent without considering that the appellant herein is only a beneficiary of the disputed land not an administrator and hence wrongly sued.
3. That the trial tribunal erred in law and fact in deciding in favour of the respondent while the respondent did not prove his ownership over the disputed land before the tribunal.

Before this court, both the appellant and the respondent appeared in person and unrepresented. The appellant prayed the hearing of the application to be conducted by way of written submission and both parties filed their submission accordingly.

Arguing the first ground of appeal, the appellant's counsel submitted that the records show that there was an illegal selling of the disputed land which belongs to their family. The sale agreement presented before the Ward Tribunal by Respondent dated 21/02/2003, show clearly that the selling was between Imbisha Shanyanda as a seller on one part and Andrea Massay as a buyer on the other part. He contended that, the said Andrea Massay who is now deceased

happened to be the respondent's father. He further stated that, the said sale agreement does not show Toti Andrea (The Respondent herein) as a buyer. He thus contended that, to this point there is no reliable evidence on how the Respondent came into possession of the land in dispute. He submitted that, if the trial Chairman and his assessors had keenly considered this fact which was vividly illustrated in the evidence adduced before Ward Tribunal, or if at all they could have carefully gone through the records, they could have found that the Respondent lacked not only the legal ownership of the land in dispute but also the legal ability to institute the case. He added that, since it was not the Respondent who purchased the disputed land from one Imbisha and hence not a legal owner, and since he had never being appointed as an administrator of the estate of his deceased father's estate; then he had no capacity to claim the disputed land.

Submitting on the second ground of appeal, he stated that, in the proceedings the Appellant herein admitted clearly that the land in dispute belongs to the Shanyanda family. There is no evidence on record whatsoever where he had claimed to be the owner of the disputed land personally. He further stated that, it is not a deniable fact that the Respondent's father herein purchased the said land from one Imbisha, but unfortunately the Respondent's father did not bother to conduct a search as to who is a really owner of the land. He contended that, they said Imbisha who sold the land in dispute

never consulted his family about the selling and the Appellant herein was also not aware of the same until when the Respondent sued him for cultivating it as a family land. He therefore contended that, the sale was unlawful and void as the said Imbisha had no any authority or blessings from his family to sell the land in dispute alone and when Imbisha fled away it was left under the custodian of their mother and the family who had been using the same without any interference for long.

In regard to the third ground of appeal, he submitted that the Respondent failed miserably to establish on balance of probability that he bought the land in dispute from one Imbisha Shayanda and consequently prove his ownership. In its Judgment the Trial Tribunal states that, the Land in dispute belongs to the Respondent because he adduced a written sale agreement. However, from the records, it is clear that the said written sale agreement does not bear the name of the Respondent as a buyer, but rather shows the name of Andrea Massay as a buyer. Again the said Sale Agreement bears the date 21/02/2003 as a date of selling while in the proceedings the Respondent avers that he had bought the said piece of land personally from Imbisha Shayand in 2002. He thus contended that, the Respondent's evidence creates doubt, and the same prove that the Respondent is not telling the truth about his ownership over the dispute land and hence not entitled of the same.

In reply submissions, the respondent responded the first and the third ground of appeal jointly, where he submitted that, the respondent was given the suit land by his father prior to his death; that is in 2008. He stated that, the records from the trial tribunal, reveal that the suit land was purchased by the respondent's father one Andrea Massay from one Imbisha Shanyanda; a legal owner of the suit land and the appellant does not deny the fact that the suit land was legally purchased by the respondent's father from the said vendor. He argued that, the appellant is trying to bring new evidence in respect of this appeal without obtaining leave of this court. This is because, the appellant did not raise the issue of *locus standi* before the trial tribunal; impliedly the appellant had knowledge that the respondent had full authority in filling a case against the appellant herein as the suit land belongs to him. He therefore contended that, there is no any justification showing that the suit land belongs to the appellant, and that it is wrong for the appellant to blame the appellate tribunal without any justification to that effect. Hence, he stated that the appellate tribunal, rightly decided the case in favour of the respondent and these grounds of appeal are devoid of merits.

Responding to the second ground of appeal, he submitted that the records from both tribunals show that the appellant has never raised this issue of legality of the respondent's father in purchasing the suit land. The evidence as can be revealed from the trial tribunal shows

that, the appellant and his supporting witnesses did adduce contradictory evidence to the effect that, instead of supporting the appellant, they also claimed to be the owners of the suit land. As such, both tribunals rightly declared the respondent as the lawful and rightful owner of the suit land. Hence this ground of appeal lacks merits and need be disregarded. He prayed this court to dismiss this appeal in its entirety with costs and uphold the decision of the appellate tribunal.

Having gone through the grounds of appeal together with the evidence in record, the appellant complaint is based on the fact that trial Chairman erred in deciding that the respondent is the lawful owner of the disputed land while he had no *locus standi* to prosecute the case. The concept "*locus stand*" was defined in the case of **Lujuna ShubiBallonzi, Senior vs. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 where it was stated that;

"...In this country, locus standi is governed by the common law. According to that law, in order to maintain proceeding successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court." (Emphasis is mine)

Now the pertinent question before this court is whether the applicant (herein the respondent) had right or capacity to institute legal action before the trial tribunal. Before the trial tribunal, the respondent claimed that the appellant trespassed to his land; but going through the evidence of his witnesses that is Rajabu Arajiga, Faustine Baha and Augustino Majawa all testified that the land in dispute belonged to Duru who bought the same from Mbisha, the fact which was not denied by the respondent. The respondent also tendered the sale agreement to prove that he is the owner of the disputed land, but that sale agreement show that the seller was Mbisha and the purchaser was Andrea Massay, his father. The respondent in his submission claimed that the land was bought by his deceased father and the same was given to him even before the death of his farther; however there is no any evidence supporting that the disputed land passed to the respondent before the death of his father in the entire trial records. Based on the above findings, the respondent had no right or capacity to institute the proceedings on his personal capacity before the trial tribunal and claim the disputed land. This is because he is not the buyer of the disputed land or the administrator of the estate of his deceased father (Andrea Massay), the buyer, in absence of the evidence of the land being allocated to him before the death of his late father.

It a trite law as well stated by my learned sister Mansoor J. in the case of **David David Mbunda v. Stanley Joachim Mmanyi Misc. Land Appeal No. 80 of 2013, Dsm (Land Division)**that;

*"I agree that Mohamed Rashid had no power to sell this disputed land to the Appellant but equally Omari Mbaraka also did not have good title to pass it over to the Respondent as there was no proof of letters of administration granted to Omari Mbaraka to enable him to sell the property that belonged to his grandfather or to his mother. I agree with the decision by Longway J. (as she then was) in the case of **Danford Mwakidunda and Rebeka Sanga (unreported) Misc. Land Appeal No. 11 of 2007** that "in other words there is no indication of any probate administration having taken place from which assumption of authority or mandate of the same could be read to court from in my considered view although I agree that children inherit their parents a process has to be done to indicate what and how. Since no such evidence was adduced in the lower Tribunal it was improper for the Trial to have taken place as done for lack of probate administration."*

Likewise, in the case at hand, since the process of administration of the estate of the late Andrea Massay was not conducted at the time of filing the suit at the ward tribunal, the suit was incompetently

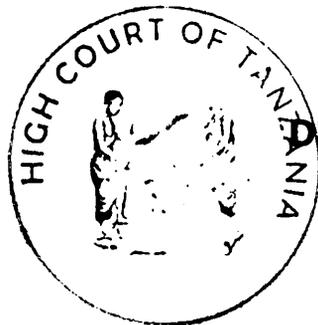
before the trial tribunal. Thus, equally there was no subsequent appeal to the District Land And Housing Tribunal.

Based on the above, I therefore allow the first ground of appeal and hereby nullify the proceedings of trial tribunal and first appellate tribunal and the judgment and decree entered thereon for lack of *locus standi* of the applicant, the current respondent. Since the first grounds suffice to dispose of the appeal I need not dwell on the other grounds of appeal.

Order accordingly.

(SGD)
DR. M. OPIYO
JUDGE
2/7/2018.

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, consisting of stylized initials.

DEPUTY REGISTRAR
ARUSHA

03/07/2018