

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 68 OF 2023**

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Application No.273 of 2022 dated 31 March 2023)

**THEOBALD BELIGNUS CHINGUILE**

**(kny MSIKAMANO GROUP .....APPLICANTS**

**Versus**

**DANIEL AXWESO SARWATT .....1<sup>ST</sup> RESPONDENT**

**ANGELINA CHUMA .....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of last Order: 07 August 2023*

*Date of Ruling: 20 September 2023*

**K. D. MHINA, J.**

By a chamber summons taken under Rule 38 of the Land Disputes' Courts Act No.2, Cap 216 R: E 2019, the applicant, Theobald Belignus Chinguile (Kny Mshikamano Group), instituted this application against the respondents, Daniel Axweso Sarwatt and Angelina Chuma.

The applicant, *inter-alia*, is seeking the following orders: -

- (i) *That the Honourable Court be pleased to grant an extension of time within which to file a Petition for Appeal against the Judgment delivered by P. I. CHINYELE - (CHAIRMAN) in Application No. 2004 Of 2018 at TEMEKE District Land and Housing Tribunal on 29th November 2022 which has illegally condemned and declared the 1st Respondent that as trespassers.*
- (ii) *Any other orders that may be deemed just and necessary to grant.*

The chamber summons is supported by an affidavit of Ms. Cypriana Emmanuel William, counsel for the applicant.

The application was disposed of by way of written submissions. The applicant was represented by Ms. Cypriana Emmanuel William, learned counsel, while the respondent was represented by Mr. Alexander Kyaruzi, also a learned counsel.

Before going to the merits and demerits of the application, I have to deal with an issue raised by Mr. Kyaruzi advocate regarding the locus of the applicant.

It is pertinent to dispose of this issue first because it touches the jurisdiction of the Court.

On this, the Court of Appeal has already expressed what locus stand means in **Peter Mpalanzi vs Christina Mbaruka**, Civil Appeal No. 153 of 2019 [Tanzlii], where it was held that an expression locus standi means;

*"the right or legal capacity to bring an action or to appear in court".*

Further, it held that;

*"locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised".*

Therefore, since locus standi is a point of law rooted into jurisdiction, it can be raised at any stage as it was held by the Court of Appeal of Tanzania in **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70.**

Though jurisdiction can be raised at any stage, but there are some conditions. The Court of Appeal enunciates these conditions in **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), where it was held that:-

*"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time, even at the Appellate stage by the Court, but in order for*

*it to be noted and raised, it would require material evidence to be placed before the Court.”*

Therefore, the conditions for raising the issue of jurisdiction are as follows;

- i) It can be raised at any stage of proceedings.
- ii) Parties must be afforded the right to be heard.
- iii) There must be material evidence to be placed before the Court to enable the Court to determine the matter.

In the present matter, the issue was raised in the pleadings in paragraph 8 of the counter-affidavit, where it was deposed that;

*8. That it was further averred that, the applicant was not a party to the original suit and or decree”.*

Therefore, the counsel for the respondent rightly raises the issue of locus standi.

Further, in the respondent’s submission, the counsel argued on that issue by submitting that the applicant, Theobald Belignus Chinguile, has no locus standi because he was not a party to the proceedings at the Trial Tribunal.

He submitted that the party to the suit was Mshikamano Group. Therefore, even though the applicant was written as Theobald Balignus Chinguile Kyn Mshikamano Group, that could not give him the mandate and capacity to lodge this application as he was not a party to the original suit and decree sought to be appealed against.

In response, Ms. William briefly submitted that it was a surprise and misleading because the respondents, when filing the matter at the Tribunal, instituted against Theobald Balignus Chinguile Kyn Mshikamano Group. Therefore, they could not raise it in this application.

Therefore, the right to be heard was availed to both parties who submitted material evidence for and against the jurisdiction of the Court on the ground of locus standi.

On the issue of parties, the records reveal that the parties at the Tribunal were Daniel Sarwatt and Angelina Chuma as the 1<sup>st</sup> and 2<sup>nd</sup> applicants, while Mshikamano Group, Harubu Nassor Mselemu and Mpendakazi were the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, respectively. This is according to;

1. The Judgment of the Tribunal in Application No. 204 of 2018.

2. The decree of the Tribunal in Application No. 204 of 2018.
3. The reminder letters for the request for a copy of the judgment dated 29 November 2022 and 9 January 2023 by Ms. William, the counsel for the applicant.

Therefore, it is clear that Theobald Belignus Chinguile was not a party to the proceedings at the Tribunal. The records indicate that he was a witness who testified as one of the members of Mshikamano Group.

Flowing from above, filing this application for an extension of time at his capacity on behalf of Mshikamano group is improper as he lacks the locus standi to do so.

Therefore, without going to the merits or demerits in extension time, this application is not proper before the Court. This Court has no jurisdiction to entertain an applicant who has no locus.

Consequently, the application is struck with costs.

I order accordingly.



  
**K. D. MHINA**  
**JUDGE**  
**20/09/2023**