

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 06 OF 2021

(Originating from Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 29 of 2019 Original Land Dispute No. 01 of 2019 from Msanzi Ward Tribunal)

ELIZABETH KAFUPA.....APPELLANT

VERSUS

SIXTUS KAFUPA.....RESPONDENT

JUDGEMENT

Date of last Order: 06/05/2022

Date of Judgment: 20/07/2022

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Msanzi Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the appellant sued the respondent claiming ownership of piece of land (disputed land). The trial tribunal declared the disputed land as family property, thus both parties as family members were entitled to own part of it. Dissatisfied with the outcome of the decision, the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa (henceforth the Appellate Tribunal) where the appellate tribunal upheld the decision of the trial tribunal.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following grounds of appeal;

- 1. That the Appellate Tribunal erred in law and fact by that the ward tribunal erred in law by giving decision in favour of respondent while has no locus standi because he was not appointed to be administrator of deceased estate (late Simon Kafupa).*
- 2. That the Appellate tribunal erred where the evidence of appellant was not considered which proves the ownership of the disputed land as required by law.*
- 3. That the Appellate tribunal erred in law to give decision which does not show how it was arrived in trial tribunal.*
- 4. That the appellant tribunal erred in law to give decision in favour of respondent while one member Lemigius Bruno of trial tribunal was not present when respondent adduced his evidence.*

As this appeal was called on for hearing, both parties appeared in person, unrepresented. The appellant prayed to the court to argue the appeal by way of written submissions, the respondent conceded. Each party filed respective written submissions as scheduled by this court.

In support of his appeal, the appellant arguing in respect of ground one submitted that at page 6 of the judgement, the last paragraph, it is undisputed that land in dispute originally was belong to late Simon Kafupa (deceased), and it is not in dispute that the first appellate tribunal upheld the decision made by the trial tribunal which was decided in favour of respondent, who was not appointed by the

court as administrator or legal representative of estate of late Simon Kafupa. The appellant further submitted that the records of both ward and appellate tribunals and respondent reply to petition provides clear position of the respondent that he is not appointed by court as legal representative or administrator of estate of late Simon Kafupa, thus he had no locus standi. The appellant fortified her position to the case of **Peter Mpalanzi vs Christina Mbaruka**, Civil Appeal No. 153 of 2019, CAT Iringa, **Method Bruma vs Emmanuel Stephano**, Misc Land Appeal No. 24 of 2016, HC Sumbawanga all unreported and section 99, 100 of Probate and Administration of Estate of Act, Cap 352. Further, the appellant disputed the fact that the respondent was customarily appointed by the family members to oversee the estate of the late Simon Kafupa.

As regards ground two, the appellant submitted that the law is very clear that the standard of proof in civil litigation is on balance of probability. Further, she submitted that the evidence adduced by her along with witnesses proved that the disputed land belongs to her after being given by her father the late Simon Kafupa.

As regards ground three, the appellant was of the strong position that the trial tribunal failed to observe the requirement of section 4 (4) of the Ward Tribunal, Cap 206 as to the composition of members of the

ward tribunal. It was her contention that the decision thereof was a nullity.

As to the ground four, the appellant submitted that on 26th day of February 2019 when respondent testified against the appellant one member one Legimius Brumo was not present, however during judgement was present, and participated in decision making.

Finally, the appellant prayed for the appeal be allowed with costs.

While in reply, the respondent opposed the appeal by the appellant. The appellant submitted that as regards ground one that, at Msanzi Ward Tribunal the appellant was the one who instituted the suit against the respondent, thus it was the appellant duty to know the status of the party he/she sues. Further, the respondent submitted that he was not legal representative but a customarily appointed representative who represented the whole family, including the appellant. It was his contention that the appellant was in the best position to understand the respondent had no locus stand before suing him. He referenced the case of the Board of Trustees of the **Free Pentecostal Church of Tanzania vs Asha Seleman Chambanda & Another**, Land Appeal No. 19 of 2019, unreported.

As to the ground two, the respondent submitted that the appellate tribunal rightly disregarded the evidence of the appellant as she failed to

prove that the disputed land was given to her by the late Simon Kafupa. Further, the appellant submitted that the appellant even failed to summon her husband as crucial witness to testify on the fact alleged. Failure of which the court could draw an adverse inference as per the case he cited of **Elibaliki Jacob vs Babu Libilibi & Another**, Land Appeal No. 17 of 2019, unreported.

As to the ground three, the respondent disputed the allegation that section 4 (4) of the Ward Tribunal was not adhered to. The respondent submitted that the judgement of the Ward Tribunal shows that the section was adhered to. The decision of the majority members as shown in the judgement of the trial tribunal show how the tribunal reached to its decision.

As to the ground four, the respondent submitted that within the records of the trial tribunal the number of members were six, and all the members decision were in favour of the respondent, even if one Legmigius Brumo was excluded, still the numbers of members would still five which suffices the requirement of law.

Finally, the respondent prayed for the appeal be dismissed.

In rejoinder, the appellant submitted that there was nothing showing that the respondent was customarily appointed.

Again, the respondent submitted that the decision must be made by members who appeared during the hearing. To her position the whole decision must be invalid as one member was not present during the hearing of the respondent.

I have keenly followed the arguments of the appellant and that of the respondent and I have read between the lines the appellant's grounds of appeal and the entire proceedings of the tribunals below.

Starting with the first ground concerning *locus standi* by the respondent, what I have gathered from the records, is that the appellant was the one who instituted land dispute case No. 01 of 2019 at the Msanzi Ward Tribunal against the respondent claiming invasion of her land by the respondent.

What I understand the word *locus standi* means the right or capacity which a person has, to bring an action or to appear in court. In law not every person can institute a case in court. It only the one whose right has been interfered has mandate to bring the matter to court.

Where the dispute is on land matter like the instant appeal, it is the owner of that land who is eligible to file suit before the competent court or tribunal. The stance of *locus standi* was considered in the famous case of **Lujuna Shubi Ballonzi, Senior vs The Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 HC;

"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with."

In the instant appeal, the one who brought the suit at the trial tribunal to show that her/his right or interest has been breached or interfered with is the appellant, thus the issue of *locus standi* to my strong view does not arise on the side of the respondent. In view of that, this ground falls of merit.

As to the second complaint, that the appellate tribunal failed to consider the evidence of the appellant which proved the ownership. Looking the judgment of the appellate court tribunal, the Hon Chairperson of the tribunal properly evaluated the evidence of both sides including that of the appellant and came to the conclusion reached. To say the appellate court tribunal did not consider the evidence of the appellant is a misconception. The same stance was taken by the trial tribunal which after hearing of the testimonies of both sides, evaluated them and determined the matter in favour of both parties, this also answered complaint 4 of this appeal.

As regards ground four, my scrutiny of the records it shows clearly that one member Lemiguais Bruno did not attend the hearing when the respondent was testifying. However, he appeared at the copy of

judgment of the trial tribunal. It was contention by the appellant that that irregularity shown in the judgment resulted to the erroneous decision.

However, the composition of members as is provided under **section 11** of the Land Disputes Act, which states;

"11. each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a ward committee as provided for under section 4 of the Ward Tribunals Act."

The law requires members of the trial tribunal when composed in determination of the dispute to be not less than four members nor more than eight members. Thus, even, if I disregard Mr. Legimius Brumo from the composition of the trial tribunal, still there remains four members who then qualify to make decision as per the law above as rightly submitted by the respondent.

However, I may insist with strong conviction that with the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [Act No. 8 of 2018] which now requires the Courts to deal with cases justly, and to have regard to substantive justice; **section 45** of the Land Disputes Act should be given more prominence to cut back on over reliance on procedural technicalities. Section provides that;

"No decision or order of the ward tribunal or district Land and Housing Tribunal, shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."

See also the Court of Appeal case of **Jacob Magoiga Gichere vs Peninah Yusuph**, Civil Appeal No. 55 of 2017.

Therefore, the absence of Lemigius Brumo at the hearing of the testimony of the respondent at the trial tribunal and his appearance at the judgement to my view did not occasion any failure of justice on the part of the appellant. Even if he was to be disregarded still four members sufficed to make decision as hinted above. Therefore, this ground also is devoid of merit.

Am also aware that it is on very rare and exceptional circumstance s the Court will interfere with the findings of fact of a lower court. See the cases of **Materu Laison and Another vs R. Sospeter** [1988] TLR 102 and **Amratlal Damodar and Another vs H. Jariwalla** [1980] TLR 31. In the case of **Amratlal Damodar and Another vs H. Jariwalla** {supra}, the Court of Appeal held that: -

"Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been misapprehension of evidence, a miscarriage of justice or violation of some principles of law or procedure."

Having carefully perused the records of this appeal, I have not seen any circumstances that necessitated this court to interfere with the concurrent findings of fact that of the two tribunals below. This Court find also that the appellant and respondent are both beneficiaries of the estate of their late father one Simon Kafupa as rightly determined by the tribunals, thus all are entitled portion to disputed land as family members.

In view of the foregoing, I find this appeal has no merit. Thus, it is hereby dismissed.

I make no orders as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

20. 07. 2022