

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC LAND APPEAL NO 69 OF 2019

(Arising from Land Case Appeal No. 324 of 2017 in the District Land and
Housing Tribunal for Dodoma Original Chikola Ward Tribunal
of 5th day of October, 2016)

CLARENCE USAKAZI APPELLANT

VERSUS

MWAKA RAYMBOMA.....RESPONDENT

20/10/2020 & 24/11/2020

JUDGMENT

MASAJU, J.

The Appellant, Clarence Usakazi, unsuccessfully sued the Respondent, Mwanga Raymboma, in the Chikola Ward Tribunal at Bahi District. Aggrieved with the decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal for Dodoma at Dodoma. Hence the appeal in the Court. The Appellant's Petition of Appeal is made up of two (2) grounds of appeal.

When the appeal was heard in the Court on the 20th day of October, 2020 both parties were represented, the Appellant was represented by Mr. Stephen Kuwayawaya, Advocate while the Respondent was in service of Mr. Joseph Matimbwi, the learned counsel.

Submitting in support of the appeal, the Appellant submitted on the 1st ground of appeal that, the Respondent was disposing the land which he was just occupying, not owning. That, the Respondent's father had been invited to live there. That, in the trial Tribunal the Appellant did not ask the Respondent to leave the land because he was just an invitee.

On the 2nd ground of appeal, the Appellant submitted that, the District Land and Housing Tribunal did not consider the legal position that, in order for one to qualify to have been using the land for quite a long time undisturbed, the land so occupied must be unoccupied. That, the person must have been there uninvited by anybody. That, in this case the respondent's family were invited.

The Appellant cited the case of **Registered Trustees of Holy Spirit Sisters Tanzania V. January Kamili Shayo and 136 others (CAT) Civil Appeal No. 193 of 2011 Arusha Registry (Unreported)**

at page 25, to support his submissions. The Appellant prayed the Court to allow the appeal with costs accordingly.

On his part, the Respondent through the service of his learned counsel contested the appeal by submitting that, the suitland belonged to the Appellant's father, thus the Appellant lacks "*locus standi*" because he had not been appointed administrator of the estate of his late father.

The Respondent went in submitting that, the issue of disposal of the suitland is an afterthought since the same had never been considered before the trial Tribunal and the first appellate Tribunal. That, the same is also not one of the grounds of appeal. That, the Respondent has been in possession of the suitland for a long time.

The Respondent further submitted that, the case of **Registered Trustees of Holy Spirit sisters of Tanzania V. January Kamili Shayo and 136 others (Supra)** is distinguishable from the instant case, since in the former case the suitland was a registered land but in the instant case the suitland is unregistered land. That the parties had written agreement with condition on how to use the suitland.

That, the Appellant was duty bound to give the reasons as to why the Respondent remained in the suitland for such a longtime to the extent of developing the land. The Respondent prayed the Court to dismiss the appeal with costs.

In Rejoinder, the Appellant submitted that, it is true the Respondent has been on the suitland for more than 15 years but as an invitee who was mandated to only use the land and not owning it hence the Respondent had no legal capacity to dispose it. The Respondent submitted regarding the issue of "*locus standi*" that the Appellant is the head of the family hence he had "*locus standi*" to institute the proceedings against the respondent even in absence of having been appointed administrator of the estate of the late father. That is what was shared by the parties in the Court.

The Appellant's complaint in the trial Tribunal was that, the Appellant's father leased the suitland to the Respondents' father. That, the Appellant wanted the trial Tribunal to stop the Respondent from building on the suitland and disposing it by sale. The Respondent claimed the suitland to belong to his late father who had developed the land and was allegedly buried on the suitland. The trial Tribunal decided in favour of the

Respondent. The first appellate Tribunal also upheld the decision and orders of the trial Tribunal.

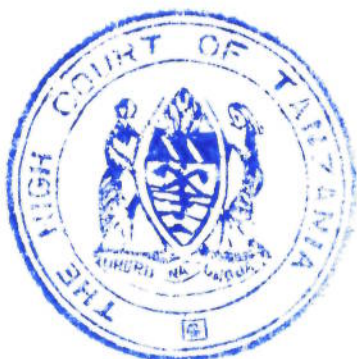
The records of the Ward Tribunal together with the District Land and Housing Tribunal show clearly that the Appellant alleged that the suitland belonged to his late father Mr. Usakazi. There was no proof as to whether after the death of the Appellant's father his estate was legally administered under probate and administration laws and whether the Appellant was appointed the administrator of the estate of his late father or him having being inherited the suitland as one of the heirs for him to have acquired the capacity to sue on behalf of his late father.

Rule 6 of the Fifth Schedule to the Magistrates Courts Act, [Cap 11] requires only the Administrator duly appointed to sue and/or defend proceedings on behalf of the estate. Therefore, since there is no proof that the Appellant was duly appointed as the administrator of the estate of his late father, Mr. Usakazi then he lacks "*locus standi*" to sue on his behalf.

The Court also noted some irregularity in the proceedings of the District Land and Housing Tribunal for Dodoma. Regulation 19 (2) of the

Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 read together with section 23 of the Land Disputes Courts Act, [Cap 216] requires the opinion of the assessors to be given before the pronouncement of the judgment date. The opinion must be given in presence of the parties after completion of defence case. The same has to be reflected in the proceedings. In the instant case, the written opinion of the assessors can be traced in the record of the first appellate Tribunal's file but the record of proceedings are silent as to whether the opinion of the assessors were read or not in presence of the parties prior to setting the judgment date.

That said, by virtue of the revisionary powers of this Court under section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216] the trial of this matter in the trial Tribunal as well as the appeal in the first Appellate Tribunal is hereby declared a nullity along with the proceedings, judgment, decree and orders which are hereby quashed and set aside accordingly. The parties shall bear their own costs accordingly.



GEORGE M. MASAJU

JUDGE

24/11/2020