

TANZANIA / JUDGMENT

AHMAD ABUBAKAR SCANNED

COURT
TANZLII

DECIDED
17 December 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 27710 OF 2024 (Originating From Application No. 21 of 2024, Ilala District Land and Housing Tribunal) AH MAD ALLY ABUBAKAR.....
1stAPPELLAN VITUS JOHN SHIMIYU.....
2ndAPPELLAN CYPRIAN DIDAS PAULO.....
3rdAPPELLAN VERSUS FLORENCE BYABATO..... 1st
RESPONDENT PAULINA MKONONGO.....2nd RESPONDENT
EMMANUEL MWAMPULULE..... 3rd RESPONDENT MINHAJI
SINGANO ,4th RESPONDENT JOSEPH SOKONI.... 5th RESPONDENT HALFAN RASHID.... 6th
RESPONDENT JESCO MAPUNDA.... 7th RESPONDENT SALEHE MKONGA... 8th RESPONDENT
CHARLES KOKA..... 9th RESPONDENT

JUDGMENT

12th to 17th December, 2024 E.B. LUVANDA, J The First, Second, Third Appellant named above, are appealing against the ruling of the Tribunal striking out his suit on account of locus standi on the part of the Appellants on account of suing over the suit land which is a reserved land i for Mzinga River Valley Reserve, where the Tribunal ruled that they have no interest over it. In the petition of appeal, the Appellants raised two grounds: One, the learned Chairman of the District Land and Housing Tribunal of Hala erred in law and fact that the Appellants has no locus standi against the Respondents consequently their application was struck out; Two, the learned Chairman of the District Land and Housing Tribunal of Hala erred in law and fact by failure to consider that the Appellants has an interest to the disputed land which is Mzinga River Valley Reserved Land. Mr. Benjamin Kalume learned Counsel for Appellants argued the two grounds jointly. He submitted that he Appellants herein has locus standi to institute legal proceedings against the Respondents on the invaded to the reserved land which directly affect the life being of the Appellants. He submitted that the word locus standi has been explained in the case of Khanan Said Aljabry vs. Nevumba Salum Mhando, Land Appeal No.81 (sic), High Court of Tanzania, Land Division; Lujuna Shubi Ballonzi, Senior vs. Registered Trustees of the Chama Cha Mapinduzi [1996] TLR 203. Also cited S.P Gupta vs Union of India AIR SC 149; Godbless Jonathan Lerna vs Mussa Hamis Mkangaa and Others, Civil Appeal no. 47 of 2012, CAT 2 He submitted that according to the facts expound by the Appellants and the cases cited above, that is to say for a person to have locus standi, a person must typically demonstrate a sufficient connection to the

matter at hand, and this could involve showing a direct and personal interest, such as being directly affected by having a specific legal right that is being violated. He submitted that the Respondents notwithstanding their awareness of the said reserved nature of the land, they proceeded to construct residential houses and occupy the area, demonstrating a blatant disregard the laws which stipulating the land as reserved. He submitted that the Appellants has established interest to the reserved land and their rights has been breached or interfered by the Respondents in the case at hand, consequently the Appellants had direct complaints against the Respondents. He submitted that in relation to the locus standi, the Appellants derived their capacity to sue the Respondents against the trespass action in the reserved land as it elaborated under the Constitution of the United Republic of Tanzania of 1977 Article 26(2). He submitted that the Applicants has locus standi institute a lawsuit against the Respondents as per sections 5(1), 6 and 20(c) of the Environmental Management Act, 2004. 3 He submitted that the Appellants herein has established sufficient interest for them to institute legal proceedings against the Respondents, since the Respondents are trespass in the reserved land posing threat to the lives of the Appellants without any legal justification knowingly residing in the reserved land is the breach of the law of the land as it stipulate above. Your Lordship, the Respondents being the violators of the Environmental Law as a result injured the Applicants, henceforth the Applicants has nothing to do rather to institute lawsuit so as to protect their rights as the law provides. In the case of Josiah Balthazar Baisi and 138 Others [1998] TLR 331. He submitted therefore that the Appellants being in the community who have been injured by the Respondents residing in the reserved land illegally by virtue of the Constitution and the Environmental Law Appellants have locus standi to institute lawsuit against the Respondents He submitted that the Appellants residing adjacent to a green belt designated by the City Council for environmental preservation, known as the Mzinga River Valley Reserved. He submitted that during the rain seasons of 2022 and 2023, soil erosions occurred due to the unauthorized intrusion by the Respondents into the Mzinga River Valley Reserved, an act explicitly prohibited by government regulations. 4 In reply, Mr. Alike Harry Mwamanenge learned Counsel for Respondents, for the first ground submitted that the principle of locus standi is fundamental in civil proceedings, argued it refers to the right or capacity of a party to bring an action or appear in court. He submitted that the Appellants have failed to demonstrate their interest in the disputed land sufficient to establish their standing. He cited Peter Mpalanzi v. Christina Mbaruka (Civil Appeal No. 153 of 2019, CAT, for a definition of locus standi. He submitted that the Appellants in the trial Tribunal failed to adequately substantiate their claim of locus standi over the disputed area, arguing they relied solely on Article 26(2) of the Constitution of the United Republic of Tanzania (1997, as amended in 2005), arguing human rights violations. He submitted that the Appellants failed to establish any direct or tangible interest in the disputed land. He submitted that if their complaint pertained to fundamental constitutional rights, the appropriate forum was not the Tribunal, as it lacks jurisdiction to entertain constitutional matters, arguing that the Appellants should have pursued their claims through the proper legal channels. He submitted that the Appellants cited the Environmental Management Act of 2004 to support their claim, arguing that this legislation does not confer any proprietary rights over the land in question. Argued that the Tribunal correctly 5 determined that the Appellants lacked the necessary locus standi to institute the case considering

the fact that Jurisdiction is a creature of the statute and the Tribunal has no power to deal with issues emanating from the Environmental Management Act of 2004 the Tribunal's jurisdiction is limited to Section 33 of the Land Dispute Courts Act Cap 216. He submitted that it is a well-established principle that locus standi is a rule of equity, arguing a party cannot institute a suit or action unless they demonstrate a direct interest in the subject matter. He submitted that unless an individual has a sufficiently close relationship to the subject matter, giving rise to a right that requires protection or has been infringed upon, they lack the capacity to sue. He submitted that in the present case, the Appellants failed to demonstrate their interest in the disputed land, he submitted that this is evident from the reliefs they sought before the trial Tribunal, specifically their prayer for: 'M/7 order of the tribunal to declare that the Respondents are trespassers on the land, thereby denying the Applicants the enjoyment of their land.' He submitted that it is abundantly clear from this prayer that the disputed area does not belong to the Appellants. He submitted therefore that the Appellants cannot be granted an order against the Respondents for trespass on land that does not belong to them. He submitted that to maintain such a claim, the 6 Appellants must first establish their interest in the disputed land, which they have failed to do, citing Attorney General v. Malawi Congress Party and Another, Civil Appeal No. 32 of 1996 (unreported), CAT as cited in Kabati Mganga v. Leonard Ngoroma [pN\\ Appeal No. 6 of 2022] [2022] TZHC 13817 (11 October 2022). He submitted that the Appellants have failed to establish any lawful ownership or interest in the disputed land, arguing they are neither the legal owners nor possessors of the Mzinga River Valley Reserved Land. For ground number two, the learned Counsel submitted that the Respondent herein state that they are not trespass to the Appellants Land or to any reserved Land that is Mzinga River. He submitted that the Respondents are the lawful owners of the said area. He cited Frank Safari Mchuma vs Shaibu A. Shemdolwa [1998] TLR 280, for a proposition that it define the term trespass has been defined to mean "unjustifiable intrusion by one person upon the land in the possession of another He submitted that failure by Appellants to prove ownership of the disputed land is equal to failure to prove interest in the disputed land. That marked the end of submissions for both parties. 7 Going by the records of the Tribunal, specifically in the application, the Appellants attached annexure BAI which is a letter Ref. DCC/FO.5/5/77 dated 13/09/2023 where the Director Dar es Salaam City, addressed it to the Mwenyekiti wa Baraza la Ardhi Kata ya Mzinga, to take action as per the procedure and laws to prevent to assist to protect public areas along Ukanda wa Kijani na Hifadhi ya Bonde la Mto Mzinga. Nowhere the Appellants were specifically assigned to take action at their own accord. In the submission, the learned Counsel for Appellants was attempting to persuade me to believe that the locus standi for the Appellants to sue the Respondent is derived from the provision of sections 5(1), 6 and 20(c) of the Environmental Management Act, 2004 and Article 26(2) of Constitution of the United Republic of Tanzania of 1977. However, the learned Counsel could not say if the provisions of the Environmental Management Act, 2004, nor said if the rights and duties under provision of Article 26(2) of the Constitutional, are justiciable before the Tribunal. Above all, as alluded by the learned Counsel for the Respondents that the nature of reliefs sought in the application for an order to declare the Respondents are trespassers of the reserved land along an order for demolition and eviction, are reliefs which the Tribunal grant upon one establishing by a preponderance of probability that he/she is the lawful owner of the suit land. Herein, the 8

Appellants did not claim ownership nor pleaded to be declared the owner of the suit land, rather is a reserved land. Therefore, even if the Tribunal will proceed to determine the suit will be doomed to fail as to what reliefs could be grantable. In that way, the Tribunal was justified to hold that the Appellants have no locus standi to prosecute the suit against the Respondents. The appeal is dismissed on its entirety. However, the Appellants are spared to foot costs of this app^a/ ~ B. LUVANDA JUDGE/" L 7/12/2024 Judgment delivered in the presence of Mr. Benjamin Kalume learned Counsel for Appellants and Mr. Humphrey/ Malenga learned Counsel for Respondents. LUVANDA JUDGE 712/2024 9

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