

TANZANIA / JUDGMENT

biseko wanya vs sebstian makola

2023 tzhc 16941 28 april 2023

COURT
TZHCDECIDED
28 April 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MWANZA SUB- REGISTRY) AT
MWANZA MISC. LAND APPEAL No. 41 OF 2022 (Originating from Land Application No. 12 of 2017
before liangaia Ward Tribunal, and the decision of the District Land and Housing Tribunal for
Ukerewe at Nansio in Land Appeal No. 84 of 2018) BISEKO WANYA.....
-.....APPELLANT VERSUS SEBASTIAN MAKOLA..... -.....
RESPONDENT

JUDGMENT

Last Order date: 18.04.2023 Judgment Date: 28.04.2023 M. MNYUKWA, J. The Appellant BISEKO WANYA appealed against the decision of the District Land and Housing Tribunal (DLHT) of Ukerewe at Nansio in Misc. Land Application No. 84 of 2018, which was decided in favour of the respondent. In the record, it goes that; the parties had their dispute on trespass to land before the liangaia Ward Tribunal in Land Application No. 12 of 2017 which was decided in favour of the respondent on 05.03.2018. Dissatisfied, the Appellant in this appeal, approached the DLHT for Ukerewe at Nanzio and filed Appeal No. 84 of 2018 against the decision of Ilangara Ward Tribunal. After the determination of the appeal, DLHT for Nansio upheld and approved the decision of Ward Tribunal in favour of the respondent. The appellant is now before this court challenging the decision of the lower tribunals with three grounds of appeal as follows: -

1. That, the first appellate tribunal's Chairperson had grossly erred in law and fact and misdirected himself totally to held that the land in dispute belong to the respondent herein without proof of evidence since the respondent who initiated the claim against the appellant had the burden of prove by cogent evidence the existence of such facts on a balance of probabilities which burden the respondent has failed to discharge even the ward Tribunal never bothered to resolve such issue to make sure Justice is met. The trial Tribunal physically visited the locus in quo and made some finding from the neighbours surrounding the disputed suit and the appellants neighbours gave their evidence and proved the matter in his favour.

2. That the first appellate 'Tribunal Chairperson had erred in law and fact to hold the law does not permit legal representation before the Ward Tribunal under section 18(1) of the Land Disputes Court's Act, Cap. 216 R.E.2019. In terms of section 18(2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019, a relative or a member of the household is empowered to appear in the Ward Tribunal and to sue or defend the interest of the family of the house in the dispute.
3. That, the first appellate Tribunal Chairperson had erred in law and fact and misdirected itself totally to uphold the Ward Tribunal decision, the Ward Tribunal record shows that the composition of the Tribunal all was not correctly constituted because the members seated were three only and only one woman which is contrary to the legal required as specified under section 11 of the Land Disputes Courts Act Cap. 216 R.E 2019. In the prosecution of this appeal, both the appellant and the respondent appeared in person unrepresented. The appellant was the first to submit and in support of the appeal, the appellant prays his grounds of appeal to be adopted and form part of his submissions. On the first ground, he avers that the DLHT erred since the disputed land was the property of his father and he inherited it after the approval of a member of the clan. On the second ground of appeal, he submitted that since the land was the property of his father, the DLHT erred holding that he has no locus to the matter. On the third ground of appeal, he submitted that the ward tribunal was not properly constituted and therefore he prays this appeal to be allowed. The respondent replied by praying this court to adopts the reply filed in this Court to form part of his submissions. Replying on the first ground of appeal, he insisted that the Ward Tribunal properly recorded the evidence and evaluated the evidence tendered before it and properly reached the decision. On the second ground, he left the court to decide while on the third ground of appeal, he submitted that since he is a layman he does not know the composition of the Ward Tribunal. He, therefore, prays for the Appeal to be dismissed. After the submissions by parties I proceed to determine the appeal and the point for determination is whether the appeal has merit. On the first ground of appeal, the appellants claim that the 1st appellate court upheld the decision of the ward tribunal which was determined and delivered contrary to the law and the evidence gathered during the visit in quo. Going to the trial tribunal records, I could not find the procedure claimed to have been breached. Going to the records both parties were given an opportunity to prosecute their .case, including calling of witnesses and thereafter the tribunal composed a judgment which reflects the evidence adduced before the court. In regard to the visit a locus in quo, it is not reflected on the ward tribunal proceedings or the judgment. In that regard, this court is not placed to decide outside of the evidence in the court record for the records are what transpired before the court. In that regard, this ground lacks merit. On the second ground of appeal, that, the DLHT erred in law and fact to held that, the appellant had no locus stand. The appellant claims that, the law allows personal representative and it was wrong for the 1st appellate court to hold that the appellant had no locus, the respondent being a layman left the court to decide. In determining this issue, I have revisited the decision of the DLHT in Land Appeal No 84 of 2018. In his Judgment as reflected on page 4, the Hon. Chairman states the following, as I quote: "... Mrufaniwa anakuba/i wazi kuwa eneo bishaniwa H/ikuwa

la babu yake na aiipofariki akamrithisha baba yake na baadae Hkawa la kwake hakuwa na nyaraka zozote za usimamizi wa mirathi waia wosia au Muhtasari wa kikao cha familia kumuidhinisha kusimamia mall ya familia. Hivyo ni wazi Baraza la Kata ilikuwa sahihi katika maamuzi yake. " It is the above part of the Judgment which make the appellant furious and to advance the issue of locus as one of the grounds of appeal lodged in this Court. In his ground of appeal, the appellant question as to why the DLHT states that he had no locus stand in this case. To his view, the DLHT erred to states that, the appellant had no locus stand. Essentially, the issue of locus stand touched the jurisdictional issue as the person who has no locus had no power to prosecute the case. In his decision, very unfortunate, the above excerpts of the DLHT suggests that, the appellant had no locus stand but still, the DLHT he proceeded to declare the respondent as the lawful owner of the disputed land and upheld the decision of the ward tribunal despite of the fact that wrong person was sued before the ward tribunal. It is undisputed that, it is only the lawful appointed administrator of the deceased estate who has the power to sue or be sued in respect of the property allegedly to be owned by the deceased. That power derived from section 71 of the Probate and Administration Act, Cap 352 R.E 2019. That is to say, the one who is capable to sue or be sued on behalf of the deceased is only the appointed administrator of the deceased's estate. The Court of Appeal in *The Registered Trustee of SoS Children's Villages Tanzania Vs Igege Charles*, Civil Application No. 426/08 of 2018 borrowing a leaf from our neighbour in Malawi, the Supreme Court in the case of *The Attorney General vs Malawi Congress Party And Another*, Civil Appeal No. 32 of 1996 observed as follows: "Locus standi is a jurisdictional issue, it is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently dose relation to it so as to give a right which requires prosecution or infringement of which he brings the action. " In the premises, section 18(2) of the Land Disputes Courts Act provides that in the ward tribunal a person who has interest to the subject matter may represent the other party. The section provides: -

- (2) Subject to the provisions of subsections (1) and (3) of this section, a Ward Tribunal may permit any relative or any member of the household of any part to any proceeding, upon request of such party to appear and act for such party. The above section deals with the representation of a party in a ward tribunal through a power of attorney which is given to the person to make full representation on behalf of the other. That is to say. The above section does not authorize a person to represent a deceased while he was not the administrator of the deceased estate. Therefore, if a person who brings action has no locus standi it touches the issue of the jurisdiction which must be considered at the earliest stage, be it by the parties or the court itself. Going to the records, both parties' testimonies before the ward tribunal did show that, the land was inherited from their forefathers and it was not a personal property but rather a family property. As it appears the law required that, the applicant who is the respondent in this appeal to sue the administrator of the estate and not Biseko Wanya in his personal capacity. If Biseko Wanya is the administrator of his father's estate, it has to be clearly shown so and exhibited before the ward tribunal as he is the

person who has an interest in the subject matter. Failure to that, it affects the decision and proceedings of the trial tribunal for it acted improperly on parties to the subject matter. In that regard, this ground has merit. Since the appellant had no locus stand, the decision of the lower tribunal cannot stand and for that reason, I will not entertain the remaining ground of appeal because the second ground dispose the entire appeal. As to the way forward, since the appellant was wrongly sued, I proceed to quash and nullify the decision of the DLHT which upheld the decision of the ward tribunal. In the same way, as the ward tribunal did not comply with the requirement of the law, I invoke revisional power vested to this Court to declare the proceedings and the judgment of ward tribunal nullity and direct that any action in respect of the estate of the deceased be instituted by or against the administrator of his estate who is also supposed to sue the administrator of the estate if the owner is dead. JUDGE 28/04/2023 Court: The right of appeal is explained jto the parties. M. MNYUKWA JUDGE 28/04/2023 Court: Judgment delivered on 28/04/2023 in the presence of parties' representatives. M. MNYUKWA JUDGE 28/04/2023

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