

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**(CORAM: MUGASHA, J.A., KEREFU, J.A., And KIHWELO, J.A.)**

**CIVIL APPLICATION NO. 426/08 OF 2018**

**THE REGISTERED TRUSTEE OF  
SOS CHILDREN'S VILLAGES TANZANIA .....APPLICANT**

**VERSUS**

**IGENGE CHARLES ..... 1<sup>ST</sup> RESPONDENT**  
**MASUMBUKO ALON .....2<sup>ND</sup> RESPONDENT**  
**CHACHA MARWA .....3<sup>RD</sup> RESPONDENT**  
**MAMA KUNDI .....4<sup>TH</sup> RESPONDENT**  
**JOYCE MSHABAHA.....5<sup>TH</sup> RESPONDENT**  
**PAULINA.....6<sup>TH</sup> RESPONDENT**  
**JOHN NDAKI.....7<sup>TH</sup> RESPONDENT**  
**ANTHON HINDIA .....8<sup>TH</sup> RESPONDENT**  
**JUMANNE ZEPHANIA (legal Representative of  
the late ZEPHANIA MSHABAHA.....9<sup>TH</sup> RESPONDENT**  
**EDWARD KAZARABANHU.....10<sup>TH</sup> RESPONDENT**

**[Revision of the Judgment and Proceedings of the High Court of  
Tanzania at Mwanza**

**(De Mello, J.)**

**Dated the 14<sup>th</sup> day of January, 2014**

**in**

**Land Appeal Case No. 55 of 2009**

.....

**RULING OF THE COURT**

12<sup>th</sup> & 14<sup>th</sup> July, 2022

**MUGASHA, J.A.:**

This is an application for revision in which the applicant is seeking the indulgence of the Court to examine the legality, regularity

and propriety of the proceedings and Judgment of the High Court in Land Appeal Case No. 55 of 2009 dated 14/1/2014 which reversed the decision of the District Land and Housing Tribunal (the Tribunal) in Land Application No. 160 of 2007.

Before the Tribunal, the 1<sup>st</sup> respondent unsuccessfully sued the 2<sup>nd</sup> to 10<sup>th</sup> respondents claiming ownership of land belonging to his late father and which was unlawfully occupied by the respective respondents. He prayed among others, to be declared as the lawful owner and that the respective respondents be ordered to return the respective land to him. This was opposed by the respective respondents, who among others, raised objections that the matter was not tenable before the Tribunal for being time barred.

After a full trial, the matter was dismissed for being time barred. Undaunted, the 1<sup>st</sup> respondent appealed to the High Court which reversed the decision of the Tribunal having nullified the sale of land to the said respondents and ordered that, the administration of the estate be affected by solely the 1<sup>st</sup> respondent. As the 1<sup>st</sup> respondent commenced the process of execution, that is when it came to the applicant's knowledge that, the subject of execution was her land held under certificate of titles Nos. 31873, 31874, 31876 and 31877 within

the city of Mwanza. It is against the said backdrop, the applicant brought the present application which is predicated on the following grounds:

1. The High Court failed to make proper findings that the subject matter that is landed property measuring 28 acres claimed by the 1<sup>st</sup> respondent was over and the above the jurisdiction of the District Land and Housing Tribunal.
2. The High Court failed to note the confusion of proceedings and failure to confirm the Tribunal Decision which clearly held that the 1<sup>st</sup> respondent did not prove his case to the required standard in that the ruling in Probate Cause No. 147/2006 does not rhyme with the 1<sup>st</sup> respondent's claim in Land Application No. 160 of 2007.
3. The High Court created its own proceedings and proceeded to grant reliefs which were neither pleaded nor litigated by the parties.
4. There is an abuse of the court process by the High Court failure to follow and abide to the procedural law, rules and procedures

by proceeding to determine the appeal in the absence of the 1<sup>st</sup> respondent, the appellant in the lower Court.

5. The Judgment of the High Court is illegal for they deprive the Applicant of the landed suit property located at Bugarika 2 and described in the certificate of Titles Nos. 31873 for Plot Nos. 311-330, Certificate of Title Nos. 31874 for Plot Nos. 219-235, Certificate of Title Nos. 31876 for Plot Nos. 236-246, and Certificate of Title Nos. 31877 for Plot Nos. 30, 31, 33, 35, 37 & 39, within Mwanza City.
6. The cited proceedings of the High Court of Tanzania are tainted with irregularities and impropriety which have prejudiced the Applicant who was not a party to the suit contrary to the rule of natural justice.

The application is accompanied by the affidavit sworn by **SYLIVATUS SYLIVANUS MAYENGA**, the applicant's advocate. What has been deponed includes: **One**, the manner in which the land in question was acquired by the applicant, with an objective of constructing facilities to include family houses for orphaned and abandoned children and other related social amenities facilities; **two**,

how the applicant became aware about the 1<sup>st</sup> respondent being declared as a lawful owner of the premises after she was required to vacate the premises pursuant to the purported execution of the judgment handed down on 14/1/2014 by the High Court in Land Appeal No. 55 of 2009; **three**, the applicant was not a party in both suits instituted before the District Land and Housing Tribunal from which the High Court land appeal originated and was not availed notice concerning execution proceedings; **four**, the judgment and decree of the High Court in Land Appeal No. 55 of 2009 deprived the applicant of landed property at Bugarika; and **five**, the applicant was prejudiced having been denied the right to be heard because she was not made a party to the proceedings before both the Tribunal and the High Court.

At the hearing the applicant was represented by Messrs. Stephen Mosha and Dennis Ignas, learned counsel. The 1<sup>st</sup> respondent appeared in person. Pursuant to Rule 57(3) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Mr. Jumanne Zephania was granted leave to be joined in this application as legal representative of the late Zephania Mshabaha, the 9<sup>th</sup> respondent. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> respondents did not enter appearance though they were

dully served with notice of hearing by publication vide Mwananchi and Nipashe Newspapers dated 29/6/2022. On account of non- appearance of the said respondents, the hearing of the application had to proceed in their absence in accordance with the dictates of Rule 63(2) of the Rules.

At the hearing we invited parties to address us on the propriety or otherwise of the proceedings and judgment of both Tribunal and the High Court on account of the *locus standi* of the 1<sup>st</sup> respondent. Upon taking the floor, in his brief submission, Mr. Mosha pointed out that the 1<sup>st</sup> respondent lacked *locus standi* to sue in his own capacity the 2<sup>nd</sup> to 10<sup>th</sup> respondents on a claim of the land in dispute which belonged to his late father. On that account, Mr. Mosha submitted that, the proceedings of both the Tribunal and the High Court which sat on appeal were vitiated and the resulting judgments are a nullity. To back up his argument he cited to us the case of **JOHN MWOMBEKI BYOMBALIRWA VS REGIONAL POLICE COMMANDER BUKOBA** [1986] TLR 73. On the way forward, Mr. Mosha urged us to nullify the proceedings and judgments of the courts below with an order that, if the 1<sup>st</sup> respondent so wishes, he may institute action as a legal representative of his late father in accordance with the law.

On the other hand, this being a point of law, the 1<sup>st</sup> respondent had nothing useful to add. However, after the Court clarified to him on what was at stake, he conceded to have institute the claim in his own capacity which was an oversight because he did not possess any knowledge of the law. He then urged us to determine the fate of the matter considering that the respective litigation is long overdue in the courts. As for the 9<sup>th</sup> respondent he supported the course taken by the applicant, without more.

Having heard the submissions of the parties, the issue for our determination is whether the 1<sup>st</sup> respondent had *locus standi* to commence litigation before the Tribunal against the 2<sup>nd</sup> to 10<sup>th</sup> respondents in his own name and capacity.

At the outset, we must categorically state that the applicant herein who was not a party in the courts below, has interest in the disputed land which and thus entitled to bring the present application for revision.

*Locus standi* is a principle which 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.

See: **LUJUNA SHUBI BALLONZI SENIOR VS REGISTERED TRUSTEES OF CCM** [1996] TLR 203, **GODBLESS JONATHAN LEMA VS MUSSA HAMIS MKANGA AND TWO OTHERS**, Civil Appeal No. 47 of 2012 and **CHAMA CHA WAFANYAKAZI MAHOTELI NA MIKAHAWA ZANZIBAR (HORAU) VS KAIMU MRAJIS WA VYAMA VYA WAFANYAKAZI NA WAAJIRI ZANZIBAR**, Civil Appeal No. 300 of 2019 (unreported).

Moreover, borrowing a leaf from our neighbour in Malawi, the Supreme Court in the case of **THE ATTORNEY GENERAL VERSUS 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 close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."*

We fully subscribe to the cited decision.

In the premises, a person whose rights or right has been infringed by another person can seek before the court a remedy or



relief either personally or through an authorised agent. Obviously, this is not the case on matters touching public interest litigation. In addition, if a person who brings action has no *locus standi* this puts to question the issue of the jurisdiction which must be considered at the earliest, be it by the parties or the court itself.

In the case at hand, what was pleaded by the 1<sup>st</sup> respondent before the Tribunal, is reflected at page 80 of the record of appeal whereby paragraph 5 of the application shows thus:

*"5 (a) Cause of action belief statement of facts constituting the claim:*

*(i) That the applicant is the administrator of the disputed land as per para 5 (b) of the application.*

*(ii) Without any colour of right the respondents jointly conspired to tamper the said piece of land and they unlawful (sic) occupying the shamba for about (12) years now and having done so proceeded to live in the suit premise. While knowing that the said shamba related to the late Michael Msuma who is the father of the applicant one Charles Igenge, who was confirmed on 31<sup>st</sup> May 2007*

*to be the administrator of the said shamba in question by Mwanza Urban Primary Court.....”*

In the light of what was specifically pleaded by the 1<sup>st</sup> respondent, the shamba and the subject matter in dispute belonged to his father the late Michael Msuma who died in 1994. According to the certificate of death No. 00144710 issued by the Registrar of Births and Deaths, Nyamagana District and the 1<sup>st</sup> respondent was appointed as the administrator of estate of his late father by the Primary Court of Nyamagana. A follow up question is whether the 1<sup>st</sup> respondent had *locus standi* to commence a suit against the 2<sup>nd</sup> to 10<sup>th</sup> respondents. In other words, did he have the capacity to commence litigation in his own name and capacity against the 2<sup>nd</sup> to 10<sup>th</sup> respondents over the land which belonged to his late father. Our answer is in the negative. We are fortified in that regard due to what was pleaded by the 1<sup>st</sup> respondent that, the land in dispute belongs to the late Michael Msuma considering that, the record is silent if that land was eventually distributed to the heirs including the 1<sup>st</sup> respondent given his appointment as the administrator. In this regard, before the Tribunal, the 1<sup>st</sup> respondent had not showed that his right or interest has been breached for him to sue the 2<sup>nd</sup> to 10<sup>th</sup> respondents in his own name.

Instead, the 1<sup>st</sup> respondent being an administrator ought to have sued as a personal and legal representative of his late father which was not the case. It was thus, incumbent on the Tribunal to draw the attention of the parties on the issue of *locus standi* of the 1<sup>st</sup> respondent before proceeding to try the case.

In the circumstances, as correctly submitted by the applicant's counsel and which was conceded to by the 1<sup>st</sup> respondent and the 9<sup>th</sup> respondent, the 1<sup>st</sup> respondent had no *locus standi* to institute a case against the 2<sup>nd</sup> to 10<sup>th</sup> respondents and as such, the Tribunal embarked on a nullity to entertain and determine Land Application No. 160 of 2007. Equally so, the 1<sup>st</sup> respondent's *locus standi* was a crucial matter on first appeal and it ought to have been considered by the High Court. However, it missed the eye of the High Court which also fell prey having embarked on a nullity to entertain Land Appeal No. 55 of 2009 whose proceedings and judgment cannot be spared as they stem on a null proceeding of the Tribunal and thus, the two courts below lacked jurisdiction to deal with the 1<sup>st</sup> respondent's case and appeal.

Consequently, we hereby nullify the proceedings and judgments in Tribunal Land Application No. 160 of 2007 and High Court Land Appeal No. 55 of 2009 and if the 1<sup>st</sup> respondent so desires, he may

commence action on behalf of his deceased father in accordance with the dictates of the law. Thus, for a different reason, we grant the application. Considering the circumstances of this matter, we make no order as to costs.

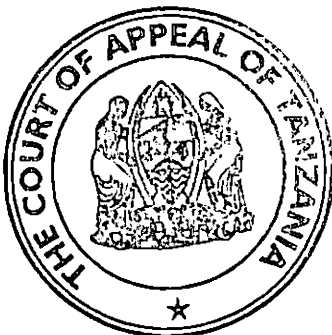
**DATED at MWANZA this 13<sup>th</sup> day of July, 2022.**


S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. F. KIHWELO  
**JUSTICE OF APPEAL**

The ruling delivered this 14<sup>th</sup> day of July, 2022 in the presence of Mr. Bruno Mvungi, learned counsel for the applicant; the 1<sup>st</sup>, 9<sup>th</sup> and 10<sup>th</sup> respondents appeared in person and in the absence of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> respondents is hereby certified as true copy of the original.



  
H. P. Ndesamburo  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**