

IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT IRINGA

LAND CASE APPEAL NO. 7 OF 2012

(From the decision of the District Land and Housing Tribunal
of Iringa District at Iringa in Land Case No. 2 of 2012)

NATHAN EDWARD MNYAWAMI APPELLANT

VERSUS

1. PENDAMACHEKO MAKONGWA	}	... RESPONDENTS
2. FADHILI KINYAMAGOHÄ		
3. THOBIAS NJARO		
4. NAITED MTEGO		
5. SAMWEL LUKIGINILE		
6. MERINA MKEMWA		
7. BATHELOMEO KAIWANGA		

10.4.2014 & 30.5.2014

R U L I N G

MADAM SHANGALI, J.

The appellant/applicant Nathan Edward Mnyawami filed a suit before the Iringa District Land and Housing Tribunal (*Land Application No. 2/2012*) seeking for eviction of the respondents from the piece of land measure 200 acres. Before the commencement of hearing of the suit before the District

Land and Housing Tribunal the counsel for the respondent Mr. Mwamgiga raised preliminary objection to the effect that the appellant/applicant has no locus standi to sue the respondent because he has no right or interests on the suit premises. The preliminary objection was sustained and the suit was struck out with costs.

Dissatisfied with that decision the appellant has filed an appeal to this court. Before the hearing of the appeal Mr. Mwamgiga has filed another preliminary objection claiming that the appellant's appeal is incompetent as it contravenes the mandatory provisions of the Land Dispute Court (*The Dispute Land and Housing Tribunal*) Regulations, 2002.

In the hearing of the preliminary objection Mr. Mwamgiga submitted that the decision on the preliminary objection on the Land Application No. 2/2012 dated on 26/6/2012 in favour of the respondents is an interlocutory decision which is not appealable. He stated that the decision did not finally and conclusively determined the suit because the applicant has a chance to correct his struck out application by bringing the person with locus standi on the matter. In support of his position he cited Section 74 (2) of the Civil Procedure Code which states clearly that no appeal shall lie on any preliminary or interlocutory order unless such decision or order has the effect of finally determining the suit. Mr. Mwamgiga also cited Section 43 (2) of the Magistrate Court Act and Section 22 of

the Land Dispute Court (*The District Land and Housing Tribunal*) Regulations which states that a ruling on a preliminary point of law or on any interlocutory application which have no effect of finally deciding the case shall not be appealable.

In response, Mr. Kingwe, learned advocate who represented the appellant submitted that the point of preliminary objection raised by the respondents has no merits at all because the order of the Iringa District Land and Housing Tribunal dated 26/2/2012 has finally and conclusively decided the interest of his client, the appellant. He stated that the only person with the interest on the alleged piece of land in dispute and the one who was denied that interest on allegation of lack of locus standi is the appellant. Mr. Kingwe stated that the laws cited by the respondents counsel are not applicable in this matter because the decision against the appellant is not a preliminary or interlocutory order. He stressed that the only remedy for the appellant was to appeal to this court in defence of his interest on the suit land.

Having closely and anxiously given consideration to the submission made by both counsels, I am convinced beyond doubt that the raised point of preliminary objection is untenable.

Mr. Mwamgiga is absolutely wrong when he claim that the decision of the trial District Land and Housing Tribunal dated 26/2/2012 is an interlocutory order which did not finally and conclusively determine the interests of the appellant on the suit land, hence not appealable. With due respect to the learned counsel, that decision of the District Tribunal totally and completely extinguished the rights of the appellant over the suit land by declaring him a person with no locus stand to claim any right over it. That decision finally and conclusively negatively determined the rights and interest of the appellant on the suit land and the only remedy for him was to lodge an appeal as he has done.

Therefore the point of preliminary objection is hereby rejected and overruled with costs.

M. S. SHANGALI

JUDGE

30.5.2014