

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND APPEAL NO. 3 OF 2020

(Arising from Nzega District Land and Housing Tribunal in Land Appeal Case No. 31 of 2018 at Nzega District and Original Ward Land Application Case No. 17 of 2018 at Kitangili Ward Land Tribunal of Igunga District in Tabora Region)

JULIANA KALASA..... APPELLANT

VERSUS

KIYABO KIMISHA.....RESPONDENT

JUDGEMENT

Date of Last Order: 6/12/2022

Date of Delivery: 14/12/2022

AMOUR S. KHAMIS, J:

This is the second appeal. The dawn of this matter was in the Kitangili Ward Tribunal, Igunga District, Tabora Region where Kiyabo Kimisha filed a dispute against Juliana Kalasa for trespass to land.

Kiyabo Kimisha alleged that the disputed land measuring about two (2) acres was sold to him by one Kazimoto Mgeleka.

On the other hand, Juliana Kalasa claimed that the same was ancestral land.

Upon trial, the ward tribunal decided in favour of Kiyabo Kimisha.

On appeal by Juliana Kalasa, the District Land and Housing Tribunal for Nzega upheld the trial tribunal's decision and declared Kiyabo Kimisha as the lawful owner thereof.

Aggrieved, Juliana Kalasa filed the present appeal challenging the whole judgement of the District Land and Housing Tribunal and decision of the trial Kitangili Ward Tribunal.

The appeal was preferred by way of Petition of Appeal containing nine (9) lengthy grounds of appeal which I see no need of reproducing for the reason that will shortly be apparent.

Both parties to this appeal were well represented. Whereas Mr. Timothy Sichilima, learned advocate, acted for Juliana Kalasa, Mr. Samuel Ndanga, also a learned advocate of this Court, was in control of the respondents brief.

By parties' consent, the appeal was disposed of by way of written submissions which were timely filed.

I have read and considered the learned advocates' rival submissions in respect of the appeal.

However, from the nature of the dispute and the evidence on record, it seems to me that the appeal may be disposed of on the aspect of locus standi.

Locus standi is the right or capacity of a party or person to bring an action or to appear in a Court.

In law, this is a condition for a party seeking a legal remedy must show by demonstrating to the Court, sufficient connection to and harm from the law or action challenged to support that party's participation in the case.

This issue was addressed by this Court in ***NURU SALUM V PILI SALUM, PC CIVIL CASE NO. 145 OF 1994*** (Unreported) wherein Kyando, J (as he then was) held that:

“ In order to be recognized by the Courts as the lawful heir of the late father's estate or that she administers it (the estate), the respondent had to adduce evidence that she had inherited the estate or she could represent it in Court. The usual evidence of course is letter of administration or probate of will. She produced no such evidence. She did not, in other words, establish her locus standi in the case”.

In the present case, records show that Juliana Kalasa's claim on ownership of the disputed land originates from her father, James Mihambo Ndambile who died on 13th day of February 1996.

There are also allegation that the land was originally owned by Juliana Kalasa's clan.

Be it as it may, Juliana Kalasa's ownership is centered on inheritance or succession.

Inheritance occurs when a person (s) especially a beneficiary or one related to the deceased receives all or part of the estate of a deceased person.

Throughout the lower tribunals' records, no evidence was produced to show that Juliana Kalasa had legally inherited the property in dispute or lawfully appointed to administer the estate.

If one responds to a question as to what ought to have been produced to show her locus standi, the correct answer would be a letter of administration or a grant of probate issued by a competent Court whose procedure of issuance is well known.

Upon certification or proof of death, heir (s) is required to petition a Court of law for letters of administration or for grant of probate where there is a valid will by the deceased.

The letter of administration or grant of probate issued by a competent Court entitles administrator of the estate to sue or be sued and own the deceased's property (ies).

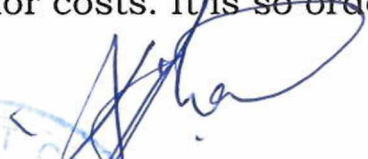

In the present case, as stated earlier, none of the outlined procedure has been adhered to as to entitle Juliana Kalasa to sue or be sued in respect of the estate of her late father.

It follows therefore that the tribunals below wrongly entertained the dispute against Juliana Kalasa who had no locus standi.

In the circumstances, the proceedings, judgment, ruling(s) decision, decree and or order of the District Land and Housing Tribunal for Nzega in Land Case Appeal No. 31 of 2018 and Land Dispute No. 17 of 2018 of the Kitangili Ward Tribunal involving parties herein are hereby quashed and set aside.

Parties are at liberty to institute fresh proceedings in a competent forum.

I make no order for costs. It is so ordered.

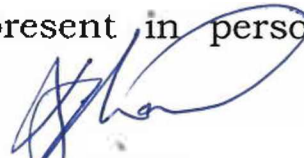




AMOUR S. KHAMIS
JUDGE
14/12/2022

ORDER

Judgment delivered in Chamber in presence of Mr. M.K. Mtaki, holding brief of Mr. Timothy Sichilima, advocate for the appellant who is also present.

The respondent is present in person. Right of Appeal is Explained.

AMOUR S. KHAMIS
JUDGE
14/12/2022