

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND APPEAL CASE NO. 11 OF 2020

(Arising from the decision of Tabora Land and Housing Tribunal Land Appeal Case No. 26 of 2015 and Original Land Application No. 1 of 2014 at Ijanija Ward Tribunal)

LUCIA LUZIGA.....APPELANT

VERSUS

EDWARD KAYANDA.....RESPONDENT

JUDGEMENT

Date of Last Order: 11/11/2022

Date of Delivery: 14/12/2022

AMOUR S. KHAMIS, J.

Lucia Luziga was the complainant in the Isanija Ward Tribunal (Land Dispute NO. 1 of 2013) against Edward Kayanda.

The Ward Tribunal made a decision declaring her as the lawful owner of the disputed land.

On appeal by Edward Kayanda, the District Land and Housing Tribunal for Tabora reversed the trial tribunal's findings and declared Kayanda as owner of the disputed parcel of land.

Aggrieved, Lucia Luziga preferred the present appeal through a Memorandum of Appeal premised on three (3) grounds namely:

1. That the Tabora District Land and Housing Tribunal erred both in law and fact by declaring the respondent as rightful owner of the land in dispute while it had earlier declared the appellant to have no locus stand to sue as she was not appointed administratrix of the deceaseds estate subject of this dispute.
2. That the learned chairman of the District Land and Housing Tribunal for Tabora grossly erred in law and fact by holding that the disputed land belongs to the respondent without hearing the parties in dispute while the appellant inherited the disputed land from her parents.
3. That the District Land and Housing Tribunal Chairman erred in law for reversing decision of a fellow chairman without having jurisdiction to determine the same.

The Memorandum of Appeal was drawn by Jackson Mayeka, learned advocate. However, throughout these proceedings, the appellant, Lucia Luziga, was represented by Mr. Mugaya Kaitila Mtaki, learned advocate.

Edward Kayanda enjoyed services of Mr. Amos Gahise, learned advocate who held brief of Mr. Anania Ndayanse.

By consent, the appeal was canvassed by way of written submissions and both sides complied to the timeline set by the Court.

I have read and considered the rival submission presented for filing by Mr. Mugaya K. Mtaki and Mr. M.A. Ndayanse, learned advocates for the appellant and respondent respectively.

In the Course of submissions parties drew my attention on the fact that immediately after judgement of the District Land and Housing Tribunal for Tabora in Land Case Appeal No. 26 of 2015 was delivered (on 18/8/2015), Lucia Luziga filed a fresh dispute in the Ward Tribunal.

Following decision of the Ward Tribunal, Edward Kayanda appealed to the District Land and Housing Tribunal for Nzega Vide Land Case Appeal No. 06 of 2017.

In the said appeal, the appellate chairman held that “.... *For the above defects, I quash the lower court’s proceedings and decisions. The matter may be filed again*”.

Subsequently, Edward Kayande filed Misc. Land Application No. 18 of 2018 in the District Land and Housing Tribunal for Nzega for review of the tribunal’s decision in Land Appeal No. 06 of 2017.

In its ruling of 26/6/2019, the District Land and Housing Tribunal for Nzega ruled that:

“On my side, I concur with the submissions of the learned advocate Ndayanse that the Tribunal was misdirected as at first the Land Appeal No. 26 of 2015 was filed at Tabora that is the District Land and Housing Tribunal for Tabora whereby on 18/8/2015 the applicant, Edward Kayanda, was declared to be the lawful owner of the suit plot. But then the respondent after the establishment of this Tribunal that is Nzega District Land and Housing Tribunal as he went to the Ward Tribunal and instituted the case afresh which then the appellant filed an appeal before this tribunal which is now in issue that is Land Appeal No. 06 of 2017.

In short this was res judicata but this was done in absence of the a knowledge of the District Land and Housing Tribunal for Nzega since the matter was conclusively heard by the District Land and Housing Tribunal for Tabora in 2015”.

With this background on record and in view of the available records as a whole, I am of the view that the first ground of appeal suffices to dispose of the entire appeal.

Records show that throughout proceedings in the lower tribunal the issue of locus stand has been consistently raised.

In Land Case Appeal No. 26 of 2015, the District Land and Housing Tribunal for Tabora (Hon. M. Nyaruka, Chairman) observed that:

“.....Again as the respondent claim the land which belonged to her late father, then she could have first obtained letters of administration before suing on the estate of the deceased. In other words, she has no locus stand to sue over the deceased’s property without having appointed as administratrix of the estate of the deceased.”

In Land Case Appeal No. 06 of 2017 of the District Land and Housing Tribunal for Nzega (Hon. M. Nyaruka, Chairman), the appellate chairman held that:

“..... The dispute is over a piece of Land which the respondent claims to have inherited from her deceased father that the respondent claimed to be the administra for of her deceased father (since?) upon perused of the lower court’s records, there is no letter of administration tendered in court.....”.

This issue also featured in the proceedings of the trial Ijanija Ward Tribunal wherein it was recorded at page 11 of the handwritten proceedings, thus:

“Hivyo Wajumbe wa Baraza wametoa uamuzi kuwa mwenye haki ni Lucia Luziga kutokana ushahidi uliotolewa mbele ya Baraza pamoja na vielelezo vya barua kuwa yeye ni msimamizi wa mirathi ya marehemu baba yake.

Hivyo Lucia Luziga ameshinda shauri hili.....”.

A similar issue cropped up in ***NURU SALIM V PILI SALUM, HIGH COURT OF TANZANIA AT DAR ES SALAAM, 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 administer it (the estate), the respondent had to adduce evidence that she had inherited the estate or she could represent it in courts. The usual evidence is of court letter of administration or probate of a will. She produced no such evidence she did not in other words, establish her locus stand in the case”.

I have carefully examined records in respect of the Isanija Ward Tribunal in Land Dispute No. 1/2013, Land Appeal No. 26/2015 of the District Land and Housing Tribunal for Tabora, Land Case Appeal No. 06 of 2017 and Misc. Land Application No. 18 of 2018 of the District Land and Housing Tribunal for Nzega.

In all those matters, no evidence was produced by Lucia Luziga to show that she was lawfully appointed as administratrix of the estate of her late father, Luziga Nyaga.

In the circumstances, she failed to demonstrate to the tribunal sufficient connection to and harm from the respondent or action challenged to support her claim on the disputed land.

It follows therefore that all proceedings in the lower tribunals were void ab initio and thus, the appellate chairman misdirected

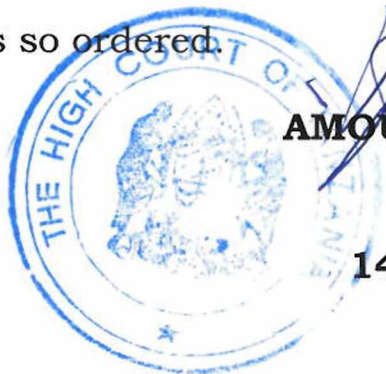
himself in declaring Edward Kayanda as the lawful owner of the disputed parcel of land.

Consequently, and for the aforesaid reasons, the entire proceedings, decision(s), judgements, ruling(s), decrees and or orders of the District Land and Housing Tribunals for Tabora and Nzega and of the Ijanija Ward Tribunal in respect of the parties herein, are hereby quashed and set aside.

Parties are at liberty to institute fresh proceedings in a competent forum upon satisfaction of the requirements of locus standi.

In view of the nature the dispute, I make no order for costs.

It is so ordered.



AMOUR S. KHAMIS

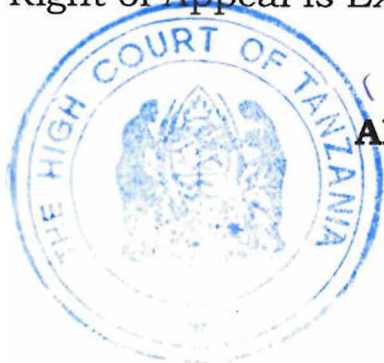
JUDGE

14/12/2022

ORDER

Judgement delivered in Chamber in presence of the respondent in person and Mr. M.K. Mtaki, learned advocate for the appellant.

Right of Appeal is Explained.



AMOUR S. KHAMIS

JUDGE

14/12/2022