

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. LAND CASE APPEAL NO. 9 OF 2020

*(Arising from the decision of the Nzega District Land and Housing
Tribunal in Land Appeal Case No. 24 of 2019)*

NHIGA DOCTOR.....APPELLANT

VERSUS

MWANDU KAHINGIHINGI.....RESPONDENT

JUDGEMENT

Date of Last Order: 07/12/2022

Date of Delivery: 14/12/2022

AMOUR S. KHAMIS, J:.

The parties in this case disputes on ownership of a parcel of land measuring 25 acres located in Kagongwa Village, Itunduru Ward, Igunga District, Tabora Region.

Nhiga Doctor filed a land dispute in Itunduru Ward Tribunal alleging that Mwandu Kahingihingi trespassed onto the land which belonged to his late grandfather, Mashela Lushinge, a former resident of Kagongwa Village.

Mwandu Kahingihingi claimed that the disputed land was lawfully owned by him having bought it in the year 1992 from one Mwanamaduka of Usulwa hamlet, Kagongwa Village.

Upon trial, the Itunduru Ward Tribunal was satisfied with the evidence of Nhiga Doctor and declared him a lawful owner thereof.

On appeal by Mwandu Kahingihingi, the District Land and Housing Tribunal for Nzega (M.H. Waziri, Chairman) found that Nhiga Doctor had no locus standi to sue.

That notwithstanding, the appellate chairman declared Mwandu Kahingihingi as owner of the disputed land on the ground of adverse possession.

Aggrieved, Nhiga Doctor initiated the present appeal by way of Petition of Appeal containing five grounds, namely:

1. That the learned chairman erred in law and in fact in holding that the appellant lacks locus standi.
2. That the learned chairperson erred in law and in fact in holding that the respondent herein had acquired the suit land by virtue of adverse possession while the respondent did not prove on trial in the ward tribunal as to when and how he started using the suit land, and the duration of his continuous undisrupted use of the suit land.
3. That the District Land and Housing Tribunal erred in law and in fact in holding that the respondent had used the suit land for the period of more than 12 years while in fact he did not trespass the land in the year 2014.
4. That the learned chairman of the District Land and Housing Tribunal erred in reversing the decision of the trial tribunal while the appellant had proved the case in

the balance of probabilities through his witnesses and a visit of the trial tribunal.

5. That the tribunal erred in law in raising the matter of adverse possession which was not a ground of appeal and deciding on it without inviting the parties to address the tribunal on the same.

Whereas the Petition of Appeal was drawn by Mr. Edward Malando, learned advocate, throughout these proceedings the appellant appeared in person.

Mr. Samwel Ndanga, learned advocate of this Court, represented the respondent, Mwandu Kahingihingi.

This appeal was canvassed by way of written submissions and both sides adhered to the timeline set by the Court.

I have read and considered the parties' rival submissions on the grounds of appeal.

Having examined the lower tribunals records, it seems to me that the appeal may be disposed of on the sole ground of locus standi.

Locus Standi is the right or capacity to bring an action or to appear in a Court or any body on a given question.

The rule is that unless an individual has been directly injured or is aggrieved by the act he is challenging, his action will not be upheld in Court.

Locus Standi also refers to a party's ability to show the Court that the law or action challenged has a sufficient relation to and damage from it to justify the party's involvement in the case.

In **GODBLESS JONATHAN MKANGA V MUSSA HAMIS MKANGA, CIVIL APPEAL NO. 47 OF 2012** (unreported), the Court of Appeal addressed locus standi in the following way:

“ First, we wish to state categorically that the rule of Locus Standi is governed by common law. The rule is applicable in our courts by virtue of Section 2(3) of the current Judicature and Application of Laws Act, Cap 358 R.E 2002 subject to modifications to suit the local conditions (See Lujuna Shubi Ballonzi Senior V Registered Trustees of Chama cha Mapinduzi (1996) TLR 203).....”

In **NURU SALUM V PILI SALUM, PC CIVIL CASE NO. 145 OF 1994** (unreported) this Court, 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 course, letter of administration or probate of a will. She produced no such evidence. She did not, in other words, establish her locus standi in the case”

The situation in the present case is not different from the one in the case of **NURU SALUM V PILI SALUM** (Supra).

Nhiga Doctor claimed that the disputed land belonged to his late grand father, Mashela Lushinge.

Inspite of the claim, he did not produce any letters of administration or grant of probate to prove that he was an

administrator of the deceased's estate or an heir to the property in dispute.

In effect, such omission means that the appellant, Nhiga Doctor, failed to put in place his right or capacity to sue the respondent, Mwandu Kahingihingi.


In law, that translates to incompetency of the suit or dispute instituted by a party or against a party who lacks locus standi.

In the circumstances, the learned appellate chairman misdirected himself in holding that Mwandu Kahingihingi was the lawful owner of the disputed land because the parties' suit was incompetent.

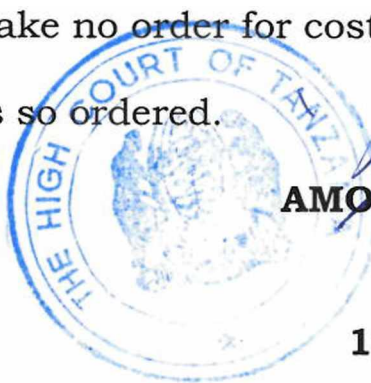
For the aforesaid reasons, the present appeal succeeds. As a result, I hereby quash the judgement, decree, proceedings and decisions of the District Land and Housing Tribunal for Nzega in Land Case Appeal No. 24 of 2019 and Land Dispute No. 24 of 2018 of the Itunduru Ward Tribunal, Igunga District, Tabora Region involving the parties herein.

I make no order for costs.

It is so ordered.



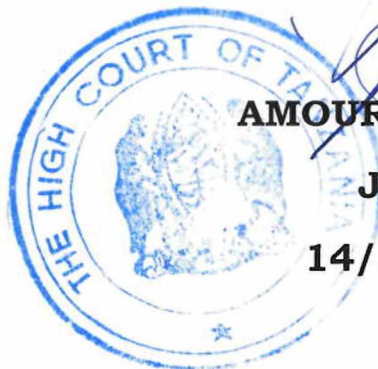
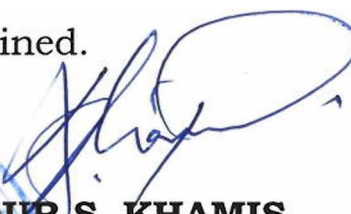
AMOUR S. KHAMIS
JUDGE
14/12/2022



ORDER

Judgement delivered in open Court in presence of Mr. Kelvin Kayaga holding brief Mr. Samwel Ndanga, advocate for the respondent and in absence of the appellant.

Right of Appeal is explained.



AMOUR S. KHAMIS
JUDGE
14/12/2022