



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



**MAGAMBO J. MASATO & 3 OTHERS v. ESTER AMOS
BULAYA & 2 OTHERS**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

Coram: (Rutakangwa, JA; Mussa, JA; Juma, JA; Mwarija, JA; Mugasha, JA)

CIVIL APPEAL NO. 49 OF 2016

(Appeal from the decision of the High Court of Tanzania at Mwanza, dated 25th day of January, 2016, Gwae. J in Miscellaneous Civil Cause No 1 of 2015)

Election law – Locus standi – Registered voter’s right to petition – Whether Section 111(1)(a) of the National Elections Act gives a statutory right to “a person who lawfully voted or had a right to vote” to present an election petition; Whether there is no need to plead a separate violation of personal rights or rely on Art. 26(2) (public interest litigation) or common law standing. Election petitions are sui generis and governed by statute; courts must not import common law or equity where the Act speaks.

Appeals – Leave – By Article. 83(4) Constitution of URT. and Section 115(4) of the National Elections Act [Cap 343 R.E. 2010], appeals from High Court election-petition decisions lie to the Court of Appeal without prior leave.

Four registered voters in Bunda Urban Constituency (one also a candidate) petitioned in the High Court to avoid the MP’s election. The respondents raised preliminary objections that the petitioners lacked locus standi because they hadn’t pleaded how their individual voting rights were violated. The High Court (Gwae, J.) struck out the petition, relying on Lema v Mkanga to hold that voters must show personal infringement.

Held:

- (i) Registered voters have statutory locus standi under section 111(1)(a) of the National Elections Act, Cap. 343, to institute election petitions without pleading



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- (ii) individual rights violations. The provision is self-sufficient and does not depend on common-law standing or Article 26(2) public-interest litigation.
- (iii) Election petitions are purely statutory proceedings. Courts must apply the Act as written and must not import common-law or equitable requirements where Parliament has legislated comprehensively.
- (iv) Under Article 83(4) of the Constitution and section 115(4) of the National Elections Act, appeals from High Court election-petition decisions lie to the Court of Appeal as of right. No prior leave of the High Court is required once the petition has been conclusively disposed of.

Appeal allowed; High Court decision quashed; petition to proceed on merits before another Judge.

Statutory provisions referred to

- (i) Constitution of the United Republic of Tanzania, 1977 – Art. - 8(1)(a), 8(1)(d), 21 – Art. 83(3) – Art. 83(4)
- (ii) National Elections Act [Cap 343 R.E. 2010] – s. 108(2). – s. 111(1)(a) – s. 115(4)
- (iii) Appellate Jurisdiction Act [Cap 141 R.E. 2002] – s. 5(1)
- (iv) Judicature and Application of Laws Act [Cap 358 R.E. 2002] – s. 2(3)
- (v) National Assembly (Elections) Act, 1964 - (s. 102) and Elections Act, 1970 (s. 126).

Case referred

- (vi) William Bakari & Othiniel Ahia v. Chediel Yohane Mgonja & AG (CA 5/1982)
- (vii) Godbless Lema v. Mussa Mkanga & Others (CA 47/2012) – partly overruled
- (viii) Chiriko Haruna David v. Kangi Lugola & Others (CA 36/2012)
- (ix) Jyoti Basu v. Debi Ghosal (1982 AIR 983, India SC)
- (x) Adewale Segun Sunday v. INEC (Nigeria CA 2008)

Mr. Constantine Mutalemwa and Mr. Yasin Membar, Advocates for the Appellants

Mr. Tundu A. M. Lissu, Advocate for the 1st Respondent (Ester Amos Bulaya)
Mr. Obadiah Kameya, Principal State Attorney, assisted by Mr. Baraka Nyambita, State Attorney, for the 2nd and 3rd Respondents (Returning Officer, Bunda Urban Constituency, and the Attorney General).