

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT BUKOBA**

LAND CASE REVISION NO. 20/2013

(Appeal from the judgment of District Land Housing Tribunal of Chato dated 16/10/2012 in Land appeal case No. 6/2012. Original Buseresere Ward tribunal Land case No. 11/2011)

ENUS NGALUAPPELLANT

VERSUS

SCHOLASTICA MAGAYANE.....RESPONDENT

JUDGMENT

2nd & 10 May, 2018

Rumanyika, J

The 2nd appeal is against, the 20/06/2012 judgment and decree of the District Land and Housing Tribunal for Chato Kagera region (the DLHT) substantially. Having reversed the 27/02/2012 decision and orders of the Butengo, Rumasa Ward tribunal (the trial tribunal). Whereby Enosi Ngali (the appellant) was declared having trespassed onto a parcel of land at Buseresere (the disputed land). But for acquiescence of Scholastica Magayane (respondent).

Not happy, the latter appealed successfully to the DLHT. The appellant is not satisfied. Hence the 2nd appeal.

The three (3) grounds may boil down and revolve around two (2) points only:-

1. The lower tribunals not holding that the respondent's claims were incompetent for she lacked Locus Standi.
2. The lower tribunals not holding that the suit was by way of acquiescence hopelessly time barred.

Mr. Mathias Rweyemamu learned counsel appeared for the appellant. The respondent appeared in person.

Mr. Mathias Rweyemamu submitted that now that it way by way of evidence established in the trial ward tribunal that w.e.f 1981 the appellant occupied and utilized the disputed land undisturbed until 2011 ie. 20 years later, and built house in 1989 now 16 years ago, according to the 12 years period rule, the suit was time barred.

Secondly, but without prejudice to the foregoing, the learned counsel submitted that he step daughter of the late Magayane (whose estate was at issue), by no means a legal representative neither had been under S. 18 of the Land Dispute Courts Act Cap. 216 RE. 2002 sanctioned by the father. She had no locus standi that her claims should have been dismissed by the trial tribunal (counsel cited the case of **Tatu Adui V. Mlawi Salum & others**, Mis. Civil Appeal No. 8 of 1990 (HC) Dar es Salaam unreported).

The lay old woman Respondent simply replied that she wasn't administratrix but only the caretaker of the estate. The deceased father and mother died long ago separated but each one of them having taken

their portions. That her 3 young sisters permitted her and sued their behalf.

From the evidence on record (at the trial tribunal, but in a nuts shell the respondent stated that at time before the village council the appellant admitted the liability and promised to compensate her. But then arrogantly disowned the facts. That she wasn't administratrix of the estate but the disputed premises belonged to her deceased mother).

The appellants evidence ran thus. That he arrived thereat in 1974 and the late Magayane hosted him as Land Lord. That the latter sold him the whole house and plot in 1981 for Tshs. 5,300/= (five thousand three hundred). That Saimon readirisha of Katoro, Ngelela Kalamu of Buseresere and Lazaor Petro also of Buseresere witnessed it. That paid Tshs. 300/= as 2nd and final installment. Then happily and not exceeding the boundaries proceeded to, and erected a house in 1985. That she resurfaced but again varnished until 2011 March. But the deceased father never ever interrupted him.

There followed a number of witnesses who supported the parties. But for reasons that shortly will follow, I would not get into details of or even reproduce their evidence.

As said, in arriving at his conclusion, very strangely the DLHT's chair found that indeed the appellant had exceeded boundaries and encroached some portions of the disputed land. But also with the fact that the latter had not been disturbed since 1981 he compensate her for Tshs. 1,000,000/= (in four equal monthly installment w.e.f 30/03/2012. That is it.

The central is whether the respondent had locus stand. The answer is no! She may have been a surviour step daughter or even daughter proper of the deceased Magayane and or mother. Whose estate as spouses was at stake. Fine! But from the beginning she lacked *locus standi* (not administratrix or something). Much as admitted no probate cause had been instituted. Leave alone attempts. Even if there was evidence (which is not the case) that she was the sole heir would be immaterial.

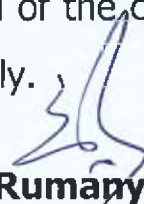
The respondent also admitted that if anything, the appellant trespassed even when the father was still alive. But the appellant developed and enjoyed the premises undisturbed till March, 2011. It is very unfortunate the two tribunals below even entertained the by any stretch of the imagination a hopelessly time barred case but by the stranger. Case should have been dismissed. More so on the ground that on that basis the purported claimant (respondent), as argued precisely so in opinion by Mr. Mathias Rweyemamu had no *locus standi*. Appeal is allowed with costs. Ordered accordingly.

Right of explained




S.M. Rumanyika
Judge
03/05/2018

Delivered under my hand and seal of the court in court this 10/05/2018 in the presence of the respondent only.


S.M. Rumanyika
Judge
03/05/2018