

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL NO. 28 OF 2020

*(Arising from decision of the District Land and Housing Tribunal for Mara  
at Musoma (Kitungulu, E.- Chairman) dated 7<sup>th</sup> day of February, 2020  
in Appeal No. 28 of 2019)*

LUSATO TULANDA ..... APPELLANT  
VERSUS  
MUSA ZAKARIA ..... RESPONDENT

JUDGEMENT

*2<sup>nd</sup> June and 28<sup>th</sup> August, 2020*

**KISANYA, J.:**

This appeal arises from the decision of the District Land and Housing Tribunal for Mara at Musoma (hereinafter referred to as “the appellate Tribunal”) in Appeal No. 28 of 2019. In its decision, the appellate Tribunal upheld the decision of the Namhula Ward Tribunal (hereinafter referred to as “the trial Tribunal”) in Application No. 4 of 2018 which declared the respondent, **Musa Zakaria** as the lawful owner of the land located at Namhula Village (hereinafter referred to as “the disputed land”).

The material facts giving rise to the appeal at hand can be stated as follows: The appellant, **Lusato Tulanda** is surviving son of the late **Tulanda Mkama** who died in 1979. Upon the demise of the said **Tulanda Mkama**, his family including, **Lusando Tulanda** left the disputed land in 1980. **Lusato Tulanda** and his family resurfaced in 2008. He found several people on the land of his late father. The said people vacated and became the appellant’ lessee save for **Musa**

**Zakaria** who claimed to be lawful owner of the disputed land. In that regard, **Lusato Tulanda** sued him in the Namhula Ward Tribunal. He called other witnesses including, **Mwima Mgaga** (his mother) and **Muyabi Messo** who testified along the above stated facts.

The respondent, **Musa Zakaria** denied the appellant's claim. His defence was to the effect that, the disputed land was allocated to his father in 1976. It was deposed by the defence that, **Musa Zakaria** and his family had been living on the disputed since then.

Having considered the evidence adduced by both parties, the trial Tribunal was satisfied that, **Lusato Tulanda** had failed to prove his claim. Thus, **Musa Zakaria** was declared lawful owner of the disputed land. Dissatisfied, **Lusato Tulanda** appealed to the appellate Tribunal. His appeal was dismissed for want of merit. Still aggrieved, he has filed the present appeal. The grounds advanced in the petition of appeal can be summarized as follows:

1. The trial Tribunal did not record the quorum of each meeting.
2. Letter dated 6/11/1976 tendered by the respondent to prove allocation of the disputed land was not original.
3. The respondent agreed to be a lessee until when he was told that he will shifted to another place.
4. The appellate Tribunal misdirected in holding that the appellant had no letter of administration.
5. The appellate Tribunal misdirected when failed to observe that no complains was lodged before the trial Tribunal.

This appeal was disposed of by way of written submissions. Mr. Thomas Makongo, learned advocate filed submission in support of the appeal while the

respondent's submission against the appeal was filed by Mr. Sifael Mguli, learned advocate. I am thankful to both counsel for their submission.

It is on record that the trial Tribunal and appellate Tribunal were of the concurrent findings that, the appellant had no *locus standi* to institute the suit. In that regard, I prefer to start with the fourth ground of appeal which is premised on the issue whether the appellant was entitled to institute the suit. I am live to the settled law that, the second appellate court can only interfere with the concurrent findings of the two lower courts if it is proved that such findings were unreasonable or are a result of a complete misapprehension of the substance, nature and quality of the evidence; misdirection or non-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of justice. The same position was taken by the Court of Appeal in **Amratilal D.M t/a Zanzibar Hotel** [1980] T.L.R 31, where the court stated that:

*"Where there are concurrent findings of fact by two courts below, the court should as a wise rule of practice follow the long-established rule repeatedly laid down by the court of appeal of east Africa. The rule is that an appellate court in such circumstances should not disturb concurrent findings of facts unless it is clearly shown that there has been a misapprehension of the evidence, miscarriage of justice or violation of some principles of law or practice".*

Submitting on the fourth ground, Mr. Makongo argued that, the appellant had locus standi because he inherited the disputed land from his father who passed away in 1979. In response, Mr. Muguli stated that, the evidence does not indicate how the appellant inherited the land from his father. He contended that, his father left two wives and five children and that, the appellant could not inherit the land because he was minor. For that reason, Mr. Mguli maintained

his position that appellant had no locus to sue. He cited the case of **Lujuna Shubi Ballonzi Senior vs Registered Trustees of Chama cha Mapinduzi** (1986) T.L.R. 203 to support his argument. Mr. Makongo rejoined by arguing that, the appellant filed the suit as successor of in title. He was of the firm view that, in the circumstances of this case, the letters of administration was not required. The learned counsel relied on the decision of **Chaina Chacha Marwa vs Kirumi Village Council and 7 Others**, Land Case No. 43 of 2014, HCT at Mwanza (unreported) where this Court (Matupa, J., as he then was) held that:

*“the plaintiff...has brought the suit in his own name as successor in title, he having inherited the land from his parents. As such, the question of the being letters of administration does not raise, as these are not concern of the beneficiary, but the administrator if any.*

It is now my time to consider the meritorious of this ground. As rightly argued by Mr. Muguli, a person filing a suit has to demonstrate that his right or interest has been breached or interfered with. This is a common law principle. It was also stated by this Court in the case of as held in **Lujuna Shubi Balonzi Senior** (*supra*). In a suit involving the estates of the deceased, it is the executor or administrator of the estates of the deceased who has the *locus standi* to institute or defend the suit. Such power is vested in him under section 100 of Probate and Administration of Estates Act [Cap. 352, R.E. 2002]. I agree with the decision of this Court in of **Chaina Chacha Marwa** (*supra*) that, a successor in title who inherits the land from his parent may not need to have letter of probate of administration. However, I am of the considered opinion that, if there are more than one heirs entitled to inherit the same property, the issues of letters of administration of the estates of the deceased arises. This is because the Court might be required to declare whether the person instituting the suit is lawful

owner of the property in question. That cannot be done in exclusion of other heirs.

In the instant appeal, **Lusato Tulanda** deposed that his late father left two wives and five children. The appellant did not state as to whether he was the only heir who inherited to the disputed land. His evidence shows that he was not suing the suit on his own. This is reflected in his evidence in chief where he stated:

*“Baba yangu mzee Tulanda Mkama, alifariki mwaka 1979. Akaacha familia ikiwa change sana. Familia ya watoto na wajane wawili... alipokataa akadai kuwa shamba ni lake tukaamua tusitumie nguvu sana tukaamua kuja kwenye ngazi husika Musa Zakaria kumega sehemu ya shamba letu wakati sisi tupo tunaishi humo shambani.*

In view of the above, I concur with the concurrent findings of the lower Tribunals that the appellant had no *locus standi* to institute the suit without having obtained letters of probate administration.

It is also on record that, both lower tribunals were of the concurrent findings that, the appellant’s suit was time barred. The appellant did not contest such findings. The time limitation within which to file cause of action to recover land is 12 years. The appellant did not dispute that his family members left the disputed land in 1980 and returned in 2008. However, the third ground of appeal was to the effect that, upon returning the appellant re-occupied the disputed land and the respondent agreed to be a lessee until when he was told to shift to another land. Mr. Makongo argued that there was no evidence to prove that, the land was allocated to the respondent. On his part, Mr. Muguli argued that, the disputed land was allocated to the respondent in 1976 and that, the suit was instituted in 2018.



Did the **Lusato Tulanda** re-occupy the disputed land from the **Musa Zakaria**? The answer to this question is not in affirmative. There is no evidence to prove that, **Musa Zakaria** surrendered the disputed land to **Lusato Tulanda**. This is evidenced in **Lusato Tulanda's** evidence when he stated: "*Aliyebaki akiendelea kwa kulima alikuwa ni Musa Zakaria.*" Such evidence was also deposed by **Muyabi Messo**, a witness called by the appellant, who stated as follows:

*"aliporudi mwaka 2008 akatuzuia, ambao tulikuwa tunalima kwenye shamba hilo, sisi tukaacha akatuambia tulime kwa utaratibu tukawa tunaendelea kulima kwa kukodi nikamwona mwenzangu akiwa anaendelea."*

Furthermore, the appellant's mother one, **Mwima Mganga** (PW1 to the complainant case), testified that upon return of her family, **Musa Zakaria** told them that the land was his. She testified as follows:

*"Watoto walipokuwa wakubwa wakaamua kurudi kwenye shamba lao. Watoto wakaniita kuja nikakuta Musa Zakaria ameishi. Basi nikamuuliza Musa aliyekukabidhi shamba hili ni nani. Musa akajibu shamba ni langu."*

Therefore, even if it is taken that the third count contests the issue of time limitation, I find that it was not proved **Lusato Tulanda** re-occupied the disputed from **Musa Zakaria**. To the contrary, evidence adduced by the respondent, **Akisa Musa** and **Bandunwa Makalanga** proved that **Musa Zakaria** had been using the disputed land for more than twelve years.

The above reasons on lack of locus standi and time limitation were sufficient to dismiss this appeal. But, I find necessary to address the first the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> ground on the irregularities of the proceedings before the trial Tribunal.

The first ground of appeal is on the failure to record quorum of the trial Tribunal proceedings. Mr. Makongo contended that this ground was not considered by the appellate Tribunal. The learned counsel argued that, the trial Tribunal did not record quorum at each day of sitting. He cited the case of **Juma Hukumu vs Ernest Muhundi** where this Court (Ebrahim, J.) held that such irregularity vitiates the proceedings. Responding, Mr. Muguli submitted that, the quorum was recorded by the trial Tribunal at the end of proceedings each day of sitting. He went on to argue that, the number of members required under section 11 of the Land Disputes Court Act, Cap. 216 R.E 2002 was complied with by the trial Tribunal.

As rightly argued by Mr. Makongo, the Ward Tribunal is properly constituted by not less than four members nor more than eight members of whom three are supposed to be women. This is provided for under section 11 of the Land Disputes Courts Act (*supra*) and section 4 of the Ward Tribunals Act, Cap. 206, R.E. 2002. Further, decision of the Ward Tribunal is based on the majority. Therefore, in order to ensure that the law is complied with accordingly, the quorum of members present on each day the Ward Tribunal is convened to determine the matter should be indicated in the proceedings. It is the quorum which determines whether the members were present as required by the law. This position was stated in the case of **Juma Hukumu** (*supra*).

I have gone through the proceedings of the trial Tribunal in the instant appeal. The original proceedings show that, the trial Tribunal sat on 24/08/2018, 29/08/2018 and 06/09/2018. At all sittings, the trial Tribunal was constituted by six members. Their names and signatures appear at the end of proceedings of each sitting. Members who heard the matter were, **Alex Lukololo, Mugeta M.**

**Munubi, Maingu Nduruma, Phinias Magoma, Peter Onyango and Penina Samson.** In attendance, was secretary of the Ward Tribunal one, **Misperesi Masatu.** On the hand, judgement was rendered by four members namely, **Alex Lukololo, Penina Samson, Phinias Magoma and Peter Okeyo.** In that regard, the ground that members of trial Tribunal were not recorded is unfounded and meritless.

I now move to the second ground that, the appellate Tribunal failed to consider that, original letter dated 6/11/1976 was not produced at the trial Tribunal. Mr. Makongo and Muguli did not address this ground. This ground should not detain us for so long. The record does not show letter dated 6/11/1976 that was admitted by the trial Tribunal. Also, the said letter is not reflected in the decisions of the trial and appellate Tribunals. This ground is therefore devoid of merit. I think that is why Mr. Makongo did not pursue it.

Regarding the fifth ground of appeal, Mr. Makongo argued that the trial Tribunal failed to record the complaints lodged before it. He went on to submit that, the omission contravened the provision of section 17(3) of the Land Disputes Courts Act (supra). The learned counsel referred to the case of **Nyangi Marwa vs Kubyo Msubiro**, Land Appeal No. 101 of 2016, HCT at Mwanza (unreported), where this Court (Makaramba, J., as he then was) held that such irregularity goes to the root of the matter as the Tribunal embarked on determining a dispute for which it had not been asked to deal with. In rebuttal, Mr. Muguli's reply was simple. That, the complaint was lodged by the appellant on 16/5/2018.

I am in agreement with Mr. Makongo that, the provision of section 17 (3) of the Land Disputes Court Act requires the Secretary to record the complaints



received orally and put it in writing. In the instant appeal, the trial Tribunal's judgement shows that the appellant's complaint was lodged on 16/5/2018 and that, the hearing commenced on 24/08/2018. Although the complaints put in writing is not in record, I am of the considered view that, such omission cannot vitiate the proceedings of the trial Tribunal due to the following reasons: One, according to section 17(2) of the Land Disputes Courts Act the complaint is intended to be submitted to the Chairman who is required to summons at least three members to mediate the parties. This was done. The hearing commenced on 24/08/2018. Two, the complaint assists the adverse party to understand nature of claims leveled against him/her. In the present case, the appellant is the one who lodged the complaint before the Ward Tribunal. The respondent was then summoned to appear. He adduced his evidence accordingly. Therefore, even if the complaint lodged by the appellant or recorded by the Secretary of the trial Tribunal is not in record, I am of the considered opinion that, such omission cannot vitiate the proceedings as provided for under section 45 of the Land Disputes Courts Act. Even the appellant has not substantiated on how he was affected by the absence of the complaints in record at hand.


In the event, I hold that the District Land and Housing Tribunal was justified to dismiss the appeal. I accordingly dismiss the present for want of merit. I do so with costs.

Dated at MUSOMA this 28<sup>th</sup> day of August, 2020.




  
E. S. Kisanya  
JUDGE  
25/8/2020

Court: Judgement delivered this 28<sup>th</sup> day of August, 2020 in the presence of the appellant in person and Mr. Sitau Makaza, learned advocate for the Respondent who is also present in person.

  
E. S. Kisanya  
JUDGE  
28/8/2020

Court: Right of further to the Court of Appeal is explained to the parties.



  
E. S. Kisanya  
JUDGE  
28/8/2020