

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(MWANZA DISTRICT REGISTRY)**

**AT MWANZA**

**LAND APPEAL NO. 24 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal for Chato in Land Appeal No. 16 of 2019 originating from Bwina Ward Tribunal Land Application No. 17 of 2019)*

**FITINA MSHINGWA .....APPELLANT**

**VERSUS**

**BUDO YAMLINGA (Administrator  
of Estate of Late YAMLINGA MAGINA) ..... RESPONDENT**

**JUDGEMENT**

**Date of Last order: 11/11/2020**

**Date of Judgement: 11/12/2020**

**F. K. MANYANDA, J.**

The Respondent Budo Yamlinga, in her capacity as the Administrator of Estate of Late Yamlinga Magina who died intestate in 1994, filed Land Application No. 17 of 2019 in the Ward Tribunal for Bwina Ward in Geita District suing the Appellant Fitina Mshingwa for ownership over the disputed land. The said trial Ward Tribunal decided in favour of the Respondent by declaring her a lawful owner of the land in dispute. The Appellant being dissatisfied lodged an appeal in the Land and Housing Tribunal for Chato, hereafter referred to as "the DLHT" against the decision of the trial Ward Tribunal. The DLHT dismissed the appeal and upheld the



decision of the trial Ward Tribunal with costs. Being aggrieved by the DLHT decision, the Appellant appealed to this Court on the grounds of appeal which may be summarized as following:

- 1. That the District Land and Housing Tribunal and Bwina Ward Tribunal erred in law and in facts in holding that the Respondent failed to join the seller of part of the suit land for reasons that he disappeared long ago.*
- 2. That the District Land and Housing Tribunal and Bwina Ward Tribunal erred in law and in facts for not considering that the Respondent's suit was time barred for it was filed in the trial tribunal twelve years after the right to sue arose.*
- 3. That the District Land and Housing Tribunal and Bwina Ward Tribunal both erred in law and facts for not considering that the Appellant is a bona fide purchaser of the suit land.*
- 4. That the District Land and Housing Tribunal and Bwina Ward Tribunal both erred in law and facts in holding that the wives of late Mzee Yamlinga were not involved in the sell agreement; and*



*5. That the Chairpersons of Chato District Land and Housing Tribunal and Bwina Ward Tribunal erred in law and in facts for not declaring that the period of limitation for recovery of such land is twelve years according to item 6 of the schedule to GN No. 411 of 1964.*

The background of this matter is that the Respondent's father died intestate in 1994, he was survived by two widows and some children who included the Respondent. Then the Respondent fell sick and lost her sight, she left her village for treatment to another place. When she regained her sight and returned to her village, she found the Appellant occupying the suit land. Since her father and mother were both dead and his brother had left the village to unknown place, she petitioned for letters of administration of the estate of her late father Yamlinga Magina and then filed Land Application No. 17 of 2019 in the Ward Tribunal for recovery of the suit land.

As explained above she was successful. However, the Appellant who was aggrieved, he unsuccessfully appealed to the DLHT for Chato, hence the appeal at hand.





Hearing of the appeal was ordered to be argued by way of written submissions. The Appellant filed the submissions, but the Respondent failed. The written submissions by the Appellant were drawn and filed by Mr. Renatus Lugwisha, learned Advocate. Mr. Lugwisha chose to argue grounds two and five together, and argued the rest separately. However, in his submissions he did not argue on ground four. This Court takes it that he abandoned the same.

Submitting in support of the first ground, he attacked the decision of the DLHT that it fell in error for failure to hold that it was fatal to the suit for the Respondent's failure to join his brother one Ndele Yamlinga as a defendant. The reason he gave is that the said Ndele is the one who sold the suit land to the Appellant. He cited the case of **Juma B. Kadala vs. Laurent Mkendo** [1983] TLR 103.

As regards the grounds two and five on issue of time limitation, Mr. Lugwisha submitted that the Appellant purchased the suit land from Mzee Yamlinga and his son Ndele in 1987 and 1994 respectively. He has developed and is using the land from that time to date. The Respondent never disputed the sale and since the suit was filed in 2019, the DLHT and



the trial Ward Tribunal ought to have seen that twelve years had elapsed when the suit was instituted, hence it was time barred.

In respect of ground three, the issue of purchasing the land from Ndele Yamlinga, the alleged Respondent's brother, Mr. Lugwisha submitted that the Appellant was a bona fide purchaser when he purchased it from the said Ndele Yamlinga. He cited the case of **Stanley Kalama Masiki vs. Chihiyo Kuisi Nderingo** [1981] TLR 143 where it was held that the bonafide purchaser for value was entitled to a declaration that he was the lawful owner of the suit land, the court said.

*"where an innocent purchaser for value has gone into occupation and effected substantial development on the land the court should slow to disturb such a purchaser for value and would desist from reviving stake claim"*

As stated above I ordered hearing of this matter to be conducted by way of written submissions. The Appellant complied by filling written submissions in support of the appeal, the Respondent did not file any.

In law a party to a case who fails to file submissions is taken to have waived his right to be heard. My brother Hon. A. Mohamed, J; (as he then was) in the case of **Lucy Kasoma vs. Zaina Abdallah Making'inda,**





Miscellaneous Land Application No 72 of 2019, where he was confronted with a situation akin to this one, held that:

*"failure to file written submissions as ordered is akin to failure to appear on a hearing date and bears similar consequences."*

In another case of **Famari Investment (T) Ltd vs. Abdallah Seleman Komba**, Miscellaneous Civil Application No. 41 of 2018, Hon. Mongella, J. stressed on court orders observance citing the case of **Olam Tanzania Limited vs. Halawa Kwilabya**, Civil Appeal No. 17 of 1999 in which it was held that:

*"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre-determined period? Obviously, such an order is binding. Court orders are made to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submissions is part of hearing. So, if a party fails to act within the prescribed time, he will be guilty of in-diligence in like measure as if he defaulted to appear..... This should not be allowed to occur. Courts of law should always control*

*proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."*

Other cases on this position include the cases of **Harold Maleko vs. Harry Mwasanjala**, Civil Appeal No. 16 of 2000 (unreported), the case of **Geofrey Chawe vs. Nathaniel Chawe**, Miscellaneous Civil Application No. 22 of 1998 and **Andrea Njumba vs. Trezia Mwigobene**, Civil Appeal No. 01 of 2006 to mention a few. In **Andrea Njumba's case** for example, the High Court held that:

*"If a party fails to act within the time prescribed, he will be guilty of diligence in like manner as if he has defaulted to appear and submissions which were filed out of time will not be acted upon."*

However, failure by the Respondent in this appeal to file written submissions will not preclude this Court from taking cognizance of the evidence of both sides and make a decision.

Now, having gone through the written submissions and evidence on record let me start with the question of time limit. It was argued by Mr. Lugwisha that there is evidence showing that the Appellant purchased the suit land from Mzee Yamlinga and his son Ndele Yamlinga in 1987 and on





14/02/1994 respectively. He has developed and is using the land from that time to date. He argued that since the Respondent never disputed the sale. The suit was filed in 2019, therefore it is time barred.

On her side the Respondent lead evidence that she fell sick and lost her sight after death of her father. She was sent to a traditional healer for treatment where she stayed for long. When she returned, she found the Appellant occupying the suit land shamba. According to her testimony, the Appellant occupied it in 2010. She been the administratrix of the estate of her father Mzee Yamlinga Magina dully appointed in 2018, decided to file this suit in 2019.

It is well clear that in our land it is statutorily provided that the time limit for recovery of land whether under customary law or written laws is twelve years. See item 6 of the Schedule to the Magistrates' Courts (Limitation of Proceedings Under Customary Law) Rules, G.N. No. 311 of 1964 and item 22 of Part I of the Schedule to the Law of Limitation Act, [Cap. 89 R. E. 2019].





Reckoning of time starts from the time a person becomes aware and capable to sue for recovery of his or her land. This normally involves the evidence presented before the court.

The issue is whether there is evidence supporting the contention by Mr. Lugwisha that the suit in this matter is time barred.

As explained above, the evidence of the Respondent is that she was not aware of occupation of her late father's land which includes the one occupied by the Appellant. The reason she gave is that after death of her father she lost sight and became a blind. This condition necessitated her to move away from her village for treatment of her illness. By the time she left, her late father's shamba was intact. It was until she returned when she learnt that her late father's land was occupied by the Appellant. It was her testimony that she learned that the Appellant occupied the suit land in 2010. She filed the suit in 2019 after been appointed an administratrix of the estate of her father in 2018.

In my firm opinion, the Respondent became aware that the suit land was occupied by the Appellant after she had returned from the traditional healer for treatment of her eyes. She became capable of suing after

regaining her sight and becoming aware that the suit land was unlawfully occupied by the Appellant. Therefore, there is no question of time bar. Grounds two and five have no merits.

I will now revert to ground three where the Appellant complains that both the District Land and Housing Tribunal and Bwina Ward Tribunal erred in law and facts for not considering that the Appellant is a bona fide purchaser of the suit land.

First of all, the authority in **Stanley Kalama Masiki's case (supra)** cited by Mr. Lugwisha is a good law in our land where it was stated that:

*"where an innocent purchaser for value has gone into occupation and effected substantial development on the land the court should slow to disturb such a purchaser for value and would desist from reviving stake claim"*

However, it depends on the circumstances of each case. I believe the law cannot be used to award a purchaser where the law prohibits for protection of rights of others.

The Appellant's evidence was that he purchased the suit land partly from Late Mzee Yamlinga Magina and partly from the Respondent's brother one Ndele Yamlinga. He contends that the sale agreement with Ndele



Yamlinga was reduced in writing; in fact, he produced a copy of the sale agreement which was admitted by the trial Ward tribunal. The Appellant testified further that the sale agreement with Mzee Yamlinga was oral. The DLHT did not believe him because he did not call any witness to corroborate him.

The Respondent's evidence was that after the death of their father, they convened a clan meeting which appointed her to apply for administration of the estate of her deceased father. They were ten children in total and two widows including her biological mother and a step mother. Unfortunately, the Appellant lost sight before petitioning for letters of administration. The evidence from the surviving widow is that the Appellant was hiring the suit land but later on claimed to have bought the same after Ndele had left the village. The Appellant lost sight, when she regained after long period treatments and returned home, she found her biological mother and some of her siblings had passed away. Her brother Ndele Yamlinga had left and his whereabouts were unknown. She was told by her step mother that the suit land was occupied by the Appellant.

From this evidence, what is clearly revealed is that Ndele Yamlinga was not appointed administrator of the estate of late Mzee Yamlinga and



there was no any person who was appointed as such by a court of law until in 2018 when the Respondent was so appointed by the Bwina Primary Court. It follows therefore that the purported sale between the said Ndele Yamlinga and the Appellant was void because Ndele did not have good title to pass to the purchaser, the Appellant.

In the case of **Magreth Emson Masangwa** *Suing as Administratrix of the Estate of the Late Emson Lengina Masangwa vs. Godwin Lengina Masangwa*, Land Case No. 12 of 2012 (unreported) this Court dealt with a situation where a person purported to distribute an estate to heirs without been appointed administrator was held that that person had no good title to pass to the heirs. Again, this Court in the case of **Mrs Halima Mchora vs. Robert Edward Hindi and 2 others**, Land Case No. 322 of 2014 (unreported) where a plaintiff who was not appointed the administratrix of the estate of her husband purported to file a suit against the Defendants held that she had no *locus standi*.

The requirement of disposition of estate by dully appointed administrators of the concerned estate is found in Section 101 of the Probate and Administration of Estates Act, [Cap. 352 R. E. 2002] which





was tested by this Court in various cases to name a few; Hon. Makuru, J. in the case of **Kassim Lema and Another vs. Kelvin Atulwa Munisi**, Land Appeal No. 111 of 2017 held at page 5 that:

*"Further to that, under section 101 of the Probate and Administration of Estates Act, Cap 352 RE 2002 the only person who is empowered to dispose of the property of the deceased person is the administrator of the estate".*

In another case of **Abdallah Said Masoud vs. Gharib Suleiman and 5 Others**, Land Case No 398 of 2016 my Sister Hon. V. L. Makani, J. after visiting the provisions of Section 101 of the Probate and Administration of Estates Act, held at page 13 that:

*"The law is well settled that an Executor or Administrator has, in respect of the property vested in him, power to sale immovable property (see section 101 of the Probate and Administration of Estates Act CAP 352 RE 2019)."*

Can in existence of these authorities be said that Ndele passed a good title to the Appellant? The answer is in negative, this ground is also void of merits.

It is also contended by the Appellant that he purchased the other piece of land in the suit land from the late Mzee Yamlinga Magina, the

DLHT found that this contention is not backed up by any evidence. This Court also finds the same. The Appellant did not bring any witness nor produce any documentary exhibit to substantiate his contention. Mere assertion that he purchased the suit land without evidence to support him makes this Court find, as was found by the lower tribunals, that the Appellant failed to prove this allegation at the required balance of probabilities. This ground has no merits also.

In ground one the Appellant complains that the District Land and Housing Tribunal and Bwina Ward Tribunal erred in law and in facts in holding that the Respondent failed to join the seller of part of the suit land for reasons that disappeared long ago. The Appellant contends that since the brother of the Respondent one, Ndele Yamlinga, sold the suit to him, then she ought to have joined him as a co-defendant. The Respondent testified that she sued the Appellant because he is the one whom she found occupying the suit land. She led evidence that her brother went missing from the village to unknown place; she did not lead evidence that her brother sold the suit land to the Appellant. It was the Appellant who claimed to have bought the land from late Mzee Yamlinga and his son Ndele Yamlinga.





This Court failed to see how could the Respondent be condemned for failing to join her brother as a Defendant where she doesn't believe that he sold the suit land to the Appellant. In this issue, I think the DLHT was right to disregard this complaint by the Appellant.

I am also of the same opinion; the Respondent cannot be condemned for failing to join her brother as a Defendant where she doesn't believe that he sold the suit land to the Appellant; **Juma B. Kadala's case (supra)** is inapplicable in this case.

As said above, the Appellant did not submit in support of ground four, therefore, this Court has nothing to consider.

In the upshot and for reasons stated above, I hereby find that the appeal is void of merit. I hereby dismiss it in its entirety with costs. I uphold the decision of the DLHT.

It is so ordered.



  
**F. K. MANYANDA**  
**JUDGE**  
**14/12/2020**