



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

**IN THE DISTRICT REGISTRY**

**AT BUKOBA**

**LAND CASE APPEAL NO. 56 OF 2019**

*(Arising from the Judgment of the DLHT for Muleba at Muleba in Land*

*Application No. 27 of 2017)*

<b>1. GOSBERT MECHADES</b>	}	-----APPELLANTS
<b>2. RESTUTA MERCHADES</b>		
<b>3. GORETHA MERCHADES</b>		

**VRS**

**PROSPER RWAMULEWA -----RESPONDENT**

**JUDGMENT.**

***1/3/2021 & 9/4/2021***

***KAIRO, J.***

Again, this is another family dispute arising from inheritance. The Appellants are the children of the Respondent's late brother; one Merchades and the pieces of land in dispute were previously owned by the late Rwamulelwa Rwasina, a father to the Respondent and a grandfather to

the Appellants. According to record, the late Rwamulelwa Rwasina died in year 1988, after the demise of his son Merchades in year 1986.

Briefly the center of controversy revolves around the claim by the Respondent that the Appellants have grabbed three pieces of land which one among them he lawfully inherited from his late mother; Prisca and the other two pieces he purchased from his sisters Dalianyesi and Winifrida who inheriting them from their late father Rwamulelwa Rwasina.

To get back the parcels of land he believed to be his from the Appellants, the Respondent successfully sued them at the Muleba DLHT in Land Application No. 27 of 2019 praying the court to declare him the owner of the pieces of land in dispute and further order for a permanent restraint from interfering with the land in dispute against the Appellants.

The records further have that the Appellants on their parts claim that the land in dispute was an inheritance of their late father following the distribution done by Paulin Byatao; the Administrator of the estate of their late grandfather Rwamulelwa Rwasina.

Further that the distribution by the Administrator was done to all of the children of their late grandfather including the Respondent.

The DLHT after hearing the case found in favor of the Respondent and grant the order prayed. The Appellants were not amused by the said findings hence this appeal raising the following grounds: -

1. *That, the trial tribunal erred in law and fact when it failed to discover that appellants were not the administrator of the estate of the late Rwamulelwa Rwasina or Merchades Rwamlelwa since they are enjoying the disputed land as they were bequeathed the land of the late Rwamulelwa Rwasina by the Administrator of Rwamulelwa Rwasina who was not the party in the land application in the Trial Tribunal.*
2. *That, the trial tribunal erred in law and fact for failure to discover that the disputed land was not distributed to the beneficiary as per the requirement of the law by the respondent who was the administrator of the estate of the late Prisca Rwamulelwa but he did not distribute the disputed land to the beneficiaries rather he kept it for himself.*
3. *That, the trial tribunal misdirected itself when it relied on the ownership of the land without considering how the respondent obtained the disputed land and he did not tender the inventory or the summary of the clan meeting which passed the ownership from the late Prisca Rwamulelwa to the Respondent because being administrator of estate does not make the respondent the owner of the disputed land.*
4. *That, the trial tribunal erred in law and fact by considering the sale agreements tendered by the respondent without considering the land sold to the Respondent was owned by the late Rwamulelwa Rwasina*

*and it was not properly distributed to the beneficiaries. Since there was no Administrator of the estate of the late Rwamlelwa Rwasina.*

All of the parties decided to paddle their own canoes. When invited for oral submission for and against the grounds of appeal, the Appellants told the court that they have nothing substantial to add to their grounds of appeal and prayed the court to adopt them.

The Respondent on his part started his reply by wondering why the said Administrator Pauline Byatao didn't come to testify being the one who gave the Appellants the parcels of land in dispute. Besides, when the said Administrator distributed the land, his sister and the Respondent weren't involved nor informed. He further stated that when he bought the parcels of land from their aunt, the Respondents were the ones who signed the sale agreement. He further stated that in year 2015, the High court dismissed the case between the 1<sup>st</sup> Appellant and the Respondent for want of prosecution which case concerns the land in dispute.

Amplifying on the land he inherited from his mother Prisca, the Respondent stated that his late father distributed his estate to his children and left his wife Prisca in their matrimonial home but the 1<sup>st</sup> Appellant chased her, the action which forced his mother to shift and went to stay with him (Respondent). She then instituted a case and when she died, he prayed for letters of administration so that he can continue prosecuting it. The Respondent added that when the administrator distributed the estate, the

Appellants took three farms one being that of his late mother, and other one he bought from his sister and the third parcel of land was given to the owner after the case. He concluded by stating that, he owes the Appellants two farms.

When invited for rejoinder, the 1<sup>st</sup> Appellant stated that the Administrator Paulin Byatao distributed the land of their late grandfather to his three children he mentioned to be their late father Merchades, the Respondent and their aunt. Answering to the question why the Administrator didn't come to testify, the 1<sup>st</sup> Appellant stated that Pauline Byatao was sick as he got paralysis. He further stated that, the farm which was bequeathed to their late father is the one in dispute as the Respondent sold the same. He also stated that he was told to stay with his grandmother Prisca on the farm bequeathed to them but later the Respondent instituted the suit claiming the said farm to belong to the late Prisca.

In her rejoinder the 2<sup>nd</sup> Appellant denied that they haven't signed the agreement for sale between the Respondent and their aunt. She also denied that they have not chased away their grandmother but she decided to shift and went to stay with the Respondent.

Having gone through the Petition of Appeal, the reply thereto and oral submissions from the parties, the main issue for determination by this court is whether this appeal is based on founded grounds. However, I wish to state from the onset that the court will determine the grounds of appeal collectively having in mind that this court being the first appellate court is

mandated to evaluate the evidence adduced during the trial afresh and come to its conclusion. The court has decided to take this route instead of determining the grounds of appeal in seriatim after observing that the parties being lay persons have raised some issues which weren't discussed nor determined at the trial court. Thus, in solving this dispute, apart from discussing the grounds of appeal, will also re-evaluate the evidence against the claim at the trial court by answering the question as to which part the three parcels of lands at issue belong by looking as to how each party claims to have obtained the said land.

As earlier stated, the Appellant's father died before their grandfather Rwamulelwa Rwasina who was the owner of all the parcels of land in this dispute. It seems that since the late Rwamulelwa died in year 1988, no administrator was appointed to distribute his estate to his children who according to record were the Respondent, Dalianyesi and Merchades; the Appellant's father.

In my view, there was no administrator appointed presumably because there was no dispute which arose at the beginning. The record further has that when Rwamulelwa died, he left his wife Prisca in a farm with a house, which was their matrimonial home. The wife was living with the Appellants but later Prisca shifted to live with the Respondent until she died in year 1998. The Appellants continued to live into the said parcel of land which the late Prisca was living before shifting to the Respondent and this is one of the land parcels in dispute in this appeal.

That in 1999, the Respondent petitioned to be appointed to administer the estate of his late mother Prisca which was being occupied by the Appellants who are also claiming that this was among the land parcels bequeathed to their late father by the Administrator Paulin Byatao. The Respondent then successfully sued the 1<sup>st</sup> Appellant seeking to recover the said parcel of land which he states to belong to his late mother in Application No. 63 of 2013. The first Appellant was aggrieved and appealed but the appeal was dismissed for want of prosecution and no further action was preferred and thus the land was inherited by the Respondent being the son of the late Prisca Rwamulelwa.

With regards to other two pieces/parcels of land, the Respondent had stated to have been sold to him by his two sisters he mentioned to be Winifrida Rwamulelwa and Dalianyesi Rwamulelwa. According to his testimony, their father Rwamulelwa Rwasina distributed his estates to his children before this death, and that the said sisters decided to sell to him (P4 & 6 Proceedings). The Respondent thus claims the ownerships of the three parcels of land in dispute after inheriting one parcel from his mother and purchasing two parcels from his sisters (Pg 6 proceedings).

On the part of the Appellants they claim to own the parcels of land at issue through inheritance of their late father after the Administrator Paulin Byatao distributed the estate of the late Rwamulelwa in year 2017 following his appointment by Kashasha Primary Court in year 2016. According to the testimony of the 1<sup>st</sup> Defendant, the clan members decided to convene a meeting to appoint the administrator following the unrest

situation/disharmony in the family of Rwamulelwa. The Administrator then distributed the estate to three children of the late Rwamulelwa namely the Respondent, Dalianyesi and the late Merchades whereby the inheritance of Merchades was given to his children; the Appellants herein and these are the parcels of land at issue in this case.

Analyzing the evidence adduced. I wish to state from the onset that it was proper for the Appellants to inherit through their late father as it happened under the Local Customary Law (Declaration) (No 4) Order (GN No. 436/1963). However, the piece of land that the Respondent inherited from his mother Prisca, which was confirmed by the court process cannot be given to the Appellant. This is because the record shows that there was a dispute between the Respondent and the Appellants over the said piece of land, whereby the appeal by the 1<sup>st</sup> Appellant was dismissed for want of prosecution, but the 1<sup>st</sup> Respondent didn't prefer further action over it. It means therefore that he was satisfied with the court decision reached, as such he cannot at this juncture challenge the Respondent's ownership. In other words, the 1<sup>st</sup> Appellant is stopped from claiming it. The second and third ground therefore is without merit.

I now revert to determine the ownership of the two parcels of land which are also at issue in this matter. These are the parcels of land which the Respondent claims to have bought from his sisters. The record reveals that no administrator has ever been appointed to distribute the estate of the late Rwamulelwa before the appointment of Paulin Byatao in 2016. Though the Respondent has argued that neither his sister nor himself were



involved in the clan meeting which elected Paulin Byatao to petition for the administration of their late father's estate but it is on record that they were present when the distribution process was proceedings (Exhibit DE1). I am aware that the records show that they refused to sign which signifies that they didn't agree to the distribution, but it also means that they had the knowledge of what was going on. As such if they had reservations the Respondent was to object the appointment and or distributions accordingly. This is the point of departure with the DLHT findings that the clan meeting to appoint the administrator was conducted without involving the Respondent and his sister. In my conviction, even if the duo weren't involved in the clan meeting, their presence during distribution was enough to make them challenge the appointment as well as the distribution if any of them wishes. As such even if the sisters sold the land to the Respondent, but in my view, the sisters could not sell the said land to the Respondent as they had no titled to pass before being bequeathed the said land. In that regards therefore, the owners of the two parcels of land are the Appellants following the distribution done by the administrator of the estate of the late Rwamulinda Rwesina unless and until their ownership is challenged and succeed. In the circumstance therefore the fourth ground of appeal is with merit.

All having said and done this appeal is partly allowed. The court further orders that: -

- 1) The parcel of land which was owned by Prisca Rwamulelwa and later inherited by the Respondent is the property of the Respondent.

2) The other two parcels of land which the Respondent claim to have purchased from his sisters belongs to the Appellants having been legally distributed to the Appellants by the Administrator.

3) Appeal is allowed to that extent with no order to cost.

It is so ordered.

  
L.G. Kairo  
Judge

9/04/2021

R/A Explained.

  
L.G. Kairo  
Judge

9/04/2021

Date: 9/4/2021

Coram: Hon. L.G. Kairo, J

1<sup>st</sup> Appellant: Present in person

2<sup>nd</sup> Appellant: Reported sick

3<sup>rd</sup> Appellant: Present in person

Respondent: Present in person

B/C : Gosbert Rugaika

Court: The matter is scheduled for the judgment. The same is ready and read over before the parties as per today's quorum.

  
L.G. Kairo  
Judge

9/04/2021