

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND APPEAL NO. 20 OF 2019

*(C/F Land Appeal No. 04 of 2017 in the District Land and Housing Tribunal for
Simanjiro at Orkesumet, Original, Land Case No. 21 of 2016, Mirerani Ward
Tribunal)*

CHARLES LYIMO.....APPELLANT

VERSUS

ATINESIA JONATHAN LYIMO.....RESPONDENT

~~JUDGMENT~~

19/04/2021 & 18/06/2021

MZUNA, J.:

ATINESIA, the respondent herein successfully filed a complaint against **CHARLES**, the appellant herein, before the Mirerani Ward Tribunal claiming for a plot and a house which she alleged to have built with her late husband one Jonathan Lyimo during the subsistence of their marriage which took place in 1993.

According to the respondent's story, sometimes in 1995 she became sick and had therefore to undergo treatment at Mombasa – Kenya. Thereafter she was taken at KCMC where she stayed for 10 years. There was no marriage certificate which was issued, she relied on the fact that her husband paid dowry to her parents. They lived as husband and wife but were not blessed with issues of the

marriage. She claimed for the said properties because it was acquired during the subsistence of their marriage and that she took part to acquire it.

It is said, in 1997, the late Jonathan passed away at the time when the respondent was sick at Mombasa. So, she did not take part during the burial ceremony. When she emerged, the appellant, the deceased's young brother and brother in law of the respondent, had already been appointed as the overseer of Jonathan's properties. The respondent brought a complaint before the trial Tribunal so that she could have her late husband's properties back from the appellant to her as she has interest in it.

The appellant says, does not recognize her. The matter was instituted at the time when both father and mother of Jonathan were dead. That he was surprised that in the year 2016, the respondent appeared claiming to be the wife of the late Jonathan while the whole family knows that the deceased left no wife or even a child.

In its findings the trial Tribunal decided in favour of the respondent after being satisfied that the respondent is the wife of the late Jonathan. That it was not easy for the appellant to have recognized her as he was not living at Mirerani. It was therefore decided that the properties of the deceased be divided equally so that the appellant takes half of the plot leaving the other half which has a house to the respondent.

Dissatisfied with that decision, the appellant filed his appeal before the DLHT for Simanjoro which confirmed the decision of the trial Tribunal. The appeal was dismissed hence this second appeal.

When the appeal came for hearing the appellant was represented by the learned counsels Ms. Valentina Nyamanoko Bwire and Ms. Angel Edgar Mongi whereas the respondent on the other hand enjoyed legal aid from the Tanzania Women Lawyers Association (TAWLA). With the leave of the court, the appeal was disposed of by way of written submissions.

In this appeal the appellant has raised five (5) grounds of appeal which basically revolve on four issues:- First, whether the Ward Tribunal had jurisdiction to determine the matter before it. Second, whether the respondent was time barred when she instituted the case before the Mwerani Ward Tribunal. Third, whether the first appellate Tribunal was correct to hold that the appellant had no *locus standi* to file his appeal. Lastly, whether the evidence adduced was properly evaluated by both the trial Tribunal and the first appellate Tribunal.

I propose to start with the first ground of appeal on issue of jurisdiction. Arguing on this ground, the appellant argued that essentially the issue filed at the Ward Tribunal was on marriage between the respondent herein and the late Jonathan which the Ward Tribunal had no Jurisdiction to entertain. It was his view that the matter that was brought before the trial Tribunal was on a land case which

to him the trial Tribunal was vested with powers to determine the same but since the trial Tribunal went to determine issues of existence of marriage between the respondent and the deceased, then the trial Tribunal acted beyond its powers/jurisdiction.

Disputing this ground of appeal, the respondent argued that the trial Tribunal directed itself to the matter that was before it which was on the recovery of the suit land by the respondent and not otherwise. The argument that was raised by the appellant that the trial Tribunal had no jurisdiction as it determined issues on the existence of marriage is unfounded.

Reading from the DLHT, this issue was raised but was not determined. It made the finding that the Ward Tribunal was satisfied that the respondent was married to the late Jonathan. Of course, the claim was on land and a house situated thereon. Issue of marriage was auxiliary thereto. The question which have been raised in this appeal being that, can the respondent claim it while it was not mentioned by the deceased in a will or distributed to the beneficiaries. Does the suit land fall under administration of the estate of the late Jonathan Lyimo? If so, is it subject for distribution in a land matter or probate matter?

This takes me to the issue whether one can claim against the deceased for well over 19 years (1997 to 2016) and even then without proof that he/she is the

administrator of the deceased estate or against the appointed administrator, relevant for the second and third ground of appeal.

Submitting on the second ground of appeal, the appellant submitted that both the trial Tribunal and the first appellate Tribunal failed to hold that the respondent's suit before the trial Tribunal was time barred. According to him the cause of action which involve land matter arose in the year 1997 when the deceased Jonathan passed away and the respondent herein brought her suit to the trial Tribunal in the year 2016 after a lapse of about 19 years. Such suit ought to have been filed within 12 years from the date of death of the deceased based on item 22 to the First schedule of the Law of Limitation Act, Cap 89 RE 2019 (herein after referred to as LLA). The learned counsel cited the case of **Yusuf Same and Another v. Hadija Yusuf** [1996] TLR 347.

That since he had developed the deceased properties for 19 years and for all this time no one challenged his occupation over the said property, he is the owner of the said property under the doctrine of adverse possession.

Replying on this ground of appeal the respondent insisted that the cause of action arose in the year 2016 and that the appellant cannot in any way claim to have adverse possession as he has not proved the same.

This court has the following to say. Limitation period to claim property left by the deceased is 12 years from the date of his death. In a similar case of **Yusuf**

Same and Another v. Hadija Yusuf (supra), the court was dealing with the issue as to whether the respondent's suit was time barred? After a careful application of sections 9(1) and 35 of the LLA, Msumi, J (as he then was) at page 350 observed that:-

"Applying these provisions to the present case respondent's right of action accrued from 14 January 1979 when the deceased died. The computation of this period still begins from that date despite the fact that respondent was granted letters of administration on 25 February 1992, that is about 12 years after death of the deceased..."

I propose to reproduce the relevant sections for ease of reference:-

Section 9(1) reads:

'Where a person institutes a suit to recover land of a deceased person, whether under a will or intestacy and deceased person was, on the date of his death, in possession of the land and was the last person entitled to the land to be in possession of the land, the right of action shall be deemed to have accrued on the date of death.'

And S. 35 reads:

'for the purposes of the provisions of this Act relating to suits for the recovery of land, an administrator of the estate of a deceased person shall be taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration or, as the case may be, of the probate.'

I agree entirely with this finding. Since the complaint which was filed in the Tribunal is for recovery of land left by the deceased, the limitation period is 12 years from the date of death of the deceased based on section 9 (1) and 35 of the LLA (above reproduced).

The third ground touches on defects of filing the claim without being the appointed administrator of the deceased's estate. According to the appellant the first appellate court misdirected itself by holding that the appellant had no *locus standi* to file his appeal before the DLHT as he was not the administrator of the estate of the late Jonathan. The respondent on the other hand argued that neither the appellant nor the respondent has been appointed as the administrator or administratrix of the estate of the deceased as require by the law in the case of **Ibrahim Kusaga vs. Emmanuel Mweta** [1986] TLR 26. However, she was of the view that despite the fact that she has not been appointed as an administratrix of the estate of the deceased she nevertheless has rights over the disputed property by virtue of being the wife of the deceased.

My answer to this issue is that so long as the respondent claims the suit land is a matrimonial home, she cannot as a matter of right say has interest on the matter because upon death of Jonathan the property forms part of deceased's estate and therefore must be governed under the Probate and Administration of Estate Act, Cap 352 R.E of the Tanzania Laws and Rules made thereunder. I am

fortified to this view based on the decision in the case of **Mr. Anjum Vicar Saleem Abdi v. Mrs Naseem Akhtar Saleem Zangie**, Civil Appeal No. 73 of 2003, CAT at Arusha (unreported) at page 14.

I would agree with the appellant that the respondent had no *locus standi* to file claim in her personal capacity, she being not the administratrix of the estate of the late Jonathan, as the property fell in the deceased estate. To say it fell under the matrimonial property and that she has vested interest in it as it was acquired jointly is a point which could be dealt with by a Court in her capacity either as the administrator not otherwise.

To say that the appellant interfered her interest is absolutely wrong. The appellant is quoted to have said the following at the Ward Tribunal:-

"Kwenye tanga hatukuona mtu yoyote aliyelalamika wala ndugu, kwenye historia ilisema hana mtoto wala mke wa marehemu tuliweka azimio la siku 30 kwa anaedai au anayedaiwa kujitokeza na kufika ndani ya siku hizo kwa hiyo baada ya hapo hilo baraza liliniteua mimi kama mrithi wa marehemu kuwa endapo atakuwa ameacha mtoto nje akathibitika basi nitamlea hii ni pamoja na mali zake zote na nilionywa nisiuze kitu chochote cha marehemu."

The above transcript of the evidence reminds me the decision in the case of **Ibrahim Kusaga vs. Emanuel Mweta** [1986] TLR 26. Kapoor, Ag. J (as he then was) held that;


"I appreciate that there may be cases where the property of a deceased person may be in dispute. In such cases all those interested in determination of the dispute or establishing ownership may institute proceedings against the administrator or the administrator may sue to establish claim of the deceased's property".

The persons covered I can safely say, would cover the appellant as well as the respondent.

For the above stated reasons, the Tribunal was not seized with jurisdiction because it fell under the deceased estate. Above all, the claim was filed by a wrong party (without letters of administration), even then, outside the prescribed time limit without leave of the court and therefore it was time bared.

Both the proceedings and judgment of the trial Ward Tribunal as well as the District Tribunal are hereby set aside. They acted on a nullity. For the interest of justice any party interested to claim against the deceased properties should follow proper procedures before an appropriate court with a competent jurisdiction.

Appeal allowed with no order as to costs.



M. G. MZUNA,
JUDGE.
18/06/2021