

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**PC. CIVIL APPEAL NO.31 OF 2020**

(Arising from the Judgment and Decree of the District Court of Mtwara in Civil Appeal No.4 of  
2020)

**RAMADHANI MOHAMED LEMU.....APPELLANT**

**VERSUS**

**MOZA ISMAIL LEMU.....RESPONDENT**

**JUDGMENT**

9 March & 10 June, 2021

**DYANSOBERA, J.:**

This is a second appeal. The appellant is taking exception to the decision of the District Court (the first appellate court) which reversed the decision of the trial Primary Court of Mtwara District at Nanyamba.

Briefly, the facts of the case are the following. The parties are blood related relatives belonging to the same biological parents. The respondent Moza Ismail Lemu was residing with her late father who was a senile. She was taking

care of him as well as supervising his coconut farms till the deceased's demise. After the death of the parties' father a clan meeting was held on 9<sup>th</sup> December, 2019 so as to appoint an administrator and ascertain the deceased's estate. The appellant was duly appointed. In a bid to marshal the deceased's estate, the proceeds of the cashewnuts in particular, the appellant successfully instituted a Civil Case No. 13 of 2020 against the respondent before Nanyamba Primary Court claiming Tshs.2, 200,000/= being proceeds of sale of cashew nuts harvested by the respondent from the farm of the late Mohamed Lemu.

The trial court was satisfied that there was proof that the appellant had sold ten sacks of cashewnuts and got Tshs. 2, 200,000/=. In arriving at that finding, the learned Resident Magistrate relied on the clan meeting held on 9<sup>th</sup> December, 2019 which was admitted as exhibit A and in which the respondent stated that she had sold the said crops at that price. Further, it was the finding of the trial court that the respondent had admitted at the police the harvesting of such amount of cashewnuts.

The respondent was aggrieved by that finding and appealed to the District Court. The District Court heard the appeal and found that the appellant had failed to prove all the facts necessary to establish the claim and when it arose. In other words, the first appellate court held that the appellant had failed to

discharge the duty which was imposed on him under rule 1 (1) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations.

Further, the District Court found that the appellant had not sued as administrator of the deceased's estate, rather, he had sued in his personal capacity and therefore, lacked locus standi.

It was further observed by the said District Court that the trial court relied on the minutes of the clan meeting whose admission the respondent had objected to and whose contents were not read out to the respondent after it was admitted.

Lastly, the District Court observed that the admission of the clan meeting contravened rule 11 (1) (a) and (b) of the Regulations in that exhibit A was not the original document.

With those reasons, the respondent's appeal was allowed and the decision of the trial Primary Court quashed and set aside.

The appellant was dissatisfied with the decision of the District Court, hence this appeal in which three grounds have been raised, namely:-

1. That the District Court Magistrate erred in law and fact in holding that the Appellant's witnesses (sic) evidences contradicted each other regarding the amount of harvested cashew nuts.

2. The District Magistrate erred in law and fact in holding that Exhibit A was improperly admitted by the trial court.
3. The District Court erred in law and fact in upholding the appeal while the Respondent to clarify the grounds of appeal.

When this matter was called for hearing on 9.3.2021 both parties appeared in person and argued the appeal orally.

Supporting the appeal, appellant submitted that he has filed three grounds of appeal. He argued that witnesses who testified at the trial court had attended the meeting. He raised a complaint that the respondent had failed to cooperate with him as the administrator of the estate of their deceased and told this court that he had reported the matter to the OCS of Nanyumbu. In his further submission, the appellant argued that the trial court was correct in its decision.

The respondent, in response, strongly argued that the District Court was right in its finding as there was no document showing that she sold the cashew nuts. She insisted that the appellant failed to produce any document to support his claims.

In a very brief rejoinder, the appellant submitted that the respondent was inconsistent in her testimony and maintained that the members of the family testified on what they heard.

I have taken into account the grounds of appeal. I have also perused the records of both lower courts. I have equally considered the competing arguments of the parties with deserving concern. On the basis of the facts gathered by the trial court and what the first appellate court pinpointed in its judgment, it is apparent that the appellant whereat was claiming the stated amount of money from the respondent as proceeds of the estates of their deceased father one Ismail Lemu Chimbwina, which, according to the appellant, they are subject to be distributed to the heirs /beneficiaries of the deceased. In view of that, the issues for determination are whether the appellant had *locus standi* to sue and claim such amount of money from the respondent at his personal capacity and whether the claims were proved.

I think the answer must be in the negative. As rightly pointed out by the first appellate court, the appellant had not sued the respondent as an administrator of the deceased's estate but in his personal capacity. That was wrong. The law is settled that a matter concerning the estate of the deceased can only be instituted in a court of law by either the administrator who has been granted letters of administration or an executor who has been granted a probate of a will. On this I need not cite any authority save to insist that the appellant lacked capacity to initiate and prosecute the matter before the Ward Tribunal of Nanyamba as well as before the District Land and Housing Tribunal for Mtwara.

In other words, the appellant had no *locus standi*. Besides, even if, for the sake of argument, the appellant was appointed as administrator of the deceased's estate, the suit could not be maintained as he had sued the respondent not in the capacity as an administrator but in his own capacity.

Second, as rightly found by the first appellate court and argued by the respondent in this court, the appellant failed to prove the claims he had presented before the Ward Tribunal. This is partly because, there was no evidence to prove not only which amount the respondent harvested from the deceased's farm but also if the alleged proceeds of the cashewnuts formed the deceased's estate. Normally, a deceased's estate is the estate the deceased owned at the time of his death. The appellant did not prove this fact. He produced neither Form No. 1 nor Form No. V which is an inventory.

And partly, because, the respondent explained well what the proceeds of cashewnut were and how she spent them. According to her, she only harvested three bags of cashew nuts which were sold and the proceeds were used for treatment of the appellant and taking care their late father. The evidence of the respondent was supported by the evidence of Musa Lemu Chimbwinya.


This evidence was, in my view plausible as it was not controverted by the appellant in his evidence or even during his cross-examining the respondent. This also means that the appellant had failed to prove the claims against the

respondent. The decision of the District Court was, in the circumstances of the case, justified. I find no material to interfere. It is endorsed.

This appeal is dismissed with costs to the respondent.

It is ordered accordingly.



  
W.P. Dyansobera

Judge

10.6.2021

This judgment is delivered under my hand and the seal of this Court this 10<sup>th</sup> day of June, 2021 in the presence of the Appellant and the Respondent.



  
W.P. Dyansobera

Judge