

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

LAND APPEAL NO. 21 OF 2020

(From the Decision of District Land and Housing Tribunal of Nzega District at Nzega in Land Case Appeal No. 10 of 2020 and original Ward Tribunal of Lusu Ward in Application No. 2 of 2020)

SELESTINE MLEKWAAPPELLANT

VERSUS

JUMA GIDIONRESPONDENT

JUDGMENT

Date: 20/5/2021-9/7/2021

BAHATI,J.:

The appellant **Selestine Mlekwa** aggrieved by the decision of Nzega District Land and Housing Tribunal, (E.R Mhina) appeals to this Honourable court against the whole decision and orders dated 3/6/2020 that:-

- 1. The District land and Housing Tribunal misdirected itself to reach its decision and deliver judgment without addressing the issues that feature in the appellant's filed ground of appeal.*

2. *The District land and Housing Tribunal failed to appreciate, take into account the evidence that was adduced by the appellant in Lusu Ward Tribunal.*
3. *The District land and Housing Tribunal erred to believe, as being true, the respondent submission on appeal.*

The appellant prays for the following:-

- a. *That this appeal is allowed in entirety.*
- b. *That the District Land and Housing Tribunal decision be quashed and orders set aside.*
- c. *That, the decision of the ward Tribunal be quashed.*
- d. *Costs of this appeal are provided for and those at the District Land and Housing Tribunal as well as at the Ward Tribunal.*
- e. *That, any other order (s) in favour of the appellant be provided for as this honorable court deems just to grant.*

The facts leading to this appeal are briefly as follows; the appellant in this matter instituted a suit at Lusu Ward Tribunal claiming that sometimes in 2011 he agreed with Daniel Mhenga, now deceased, to sell him the suit land for a total consideration of TZS 140,000/= in installments of 70,000/= and TZS 22,000/= respectively. That he agreed with the owner that the balance of TZS 48,000/= would be paid to the owner by the appellant through one Juma Gidion, the respondent. He

narrated further that after he had paid the first installment, the owner referred him to the respondent for being shown the borders. He complained that he had already paid the respondent TZS. 45,000/= and that the balance of the TZS. 3000/= ought to be paid at the date of executing the deeds of the agreement but the respondent refused to execute the agreement deeds. The owner of the suit is now dead.

During the hearing of this appeal, both parties were unrepresented hence could not address the grounds of appeal but narrated the story which I will not reproduce here.

Having considered the grounds of appeal and perused the records of the court, the issue before this court is whether or not the appeal has merit.

In this case, the appellant is holding responsible the respondent for not executing the agreement deeds on behalf of the deceased, Daniel Mhenga.

It should be noted that it is a trite law that no one may have the capacity to dispose of the deceased property or signing any document on his behalf unless he has been properly appointed as the administrator or executor of the deceased's estate.

Section 99 of the Probate and Administration of Estate Act, Cap. 352 provides that;

"Character and property of executor or administrator as such the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes and all the property of the deceased person vests in him on such."

Basing on the above provision it is clear that one may not place himself into the shoes of the deceased and sign documents to dispose of the deceased's estate unless he has been properly appointed as the administrator or executor of the estate.

As cited by the District Land and Housing Tribunal, in the case of **Theresia Daudi Mpendakula v Jonasy Poliyamgunda, Mis. Land Appeal No 53 /2018** it was held that;

"In this country that for one to have the capacity (locus stand) to bring matters or claim interest of the deceased person must be an administrator/administratrix or executor/ executrix of the estate of the deceased person. If one fails to observe that mandatory requirement of the law and demonstrate such capacity in his pleadings the matter or application thereto shall be rendered incompetent."

Likewise section 40 of the Probate and Administration Act, Cap. 352 and Order VII Rule 4 of the Civil Procedure Code, Cap.33 are to the similar effect that ;

“ Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.”

This court went further to examine and peruse the entire record of the trial Ward Tribunal to establish whether the respondent has letters of administration or even probate which gave him a mandate to institute the said case, but none was found.

I'm of the view that although the respondent was sued; then the fault is on the part of the appellant who sued the wrong party or filed a suit against whom had no cause of action.

Also in the same vein, **Lucas Mkuya v Honorath M Urassa Misc. Land Appeal No. 52 of 2018(Unreported)** which cited with approval the case of **Momanyi (suing on behalf of the Late Masira Onsaе) vs Omwoyo & Another Case No. 167 of 2016** has with it a holding that;

“The letters of administration are to the plaintiff in the present suit, meaning that as of 8th June 2016, when he

filed the suit he never had any letter of administration to the deceased estate. The suit is incompetent and filled in abuse of the process of the court; the matter was null and void ab initio and cannot be sustained.”

Consequently, in the matter at hand, it is undisputed that the respondent herein has not been appointed either as administrator or executor for the estate of Daniel Mhenga, the seller of the land in dispute to the appellant. The appellant Selestine Mlekwa only is compelling the respondent to execute the sale agreement (or deed of sale) on the ground that the respondent was a closely related person to the deceased. However, based on the provisions of the law and cases above, this court is of the view that if the respondent, Gidion Juma, is compelled to execute the agreement deed, such agreement shall be invalid for being signed by an incompetent person in law.

From the aforesaid reasons the court has not found any justification to consider the grounds of appeal because the land in dispute still forms part of the deceased's estate and Gidion Juma is not part of the agreement because he is not the owner of the disputed land. Consequently, the appellant would otherwise maintain a cause of action against the legal representative of the late Daniel Mhenga, if any.

I find no reason to differ with the lower tribunals' decisions; in the end result, this appeal is hereby dismissed for want of merit. Given the circumstances of the case, each party to bear its costs.

Order accordingly.



A. A. BAHATI

JUDGE

16/07/2021

Judgment delivered under my hand and seal of the court in the chamber, this 16th day July, 2021 in the presence of both parties.

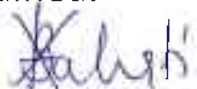


A. A. BAHATI

JUDGE

16/07/2021

Right of appeal fully explained.



A. A. BAHATI

JUDGE

16/07/2021

