

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND APPEAL NO. 26 OF 2021**

*(Arising from the Appeal No.34 of 2020 in the District Land and Housing Tribunal for Mara at  
Musoma)*

**JOHN TOKEJI ..... APPELLANT**

***VERSUS***

**KEYA PALAPALA ..... RESPONDENT**

**JUDGMENT**

2<sup>nd</sup> August and 27<sup>th</sup> August 2021

**MAHIMBALI, J.:**

This appeal emanates from the decision of Nansimo ward tribunal whereby the respondent, Keya Palapala had sued John Tokeji for trespassing into his two acres piece of land. The respondent deposed to have obtained the disputed piece of land from his brother, one John Mabuga in the year 1986. He alleged that when his brother went to seek medical attention in Ukerewe that is when he was given the piece of land. And in the year 1974 during operation vijiji the village leaders took some of

the land from Mzee Tokeji and left him with 30 acres of land. Other villagers' lands were also taken. The respondent claimed that they were given land and the appellant was also allocated land by the village council. They all occupied the pieces of land in peace until the year 2018 when he found out that the appellant had trespassed into his land by cultivating sisal. He further alleged that he inherited the disputed piece of land from his brother and his brother was given by the village council. And he was appointed the administrator of the estate of his late brother

On the other hand, the appellant alleged that the respondent was a refugee from Uganda and when his parents came to Tanzania, they became relatives through '*amini*'. As they were relatives, they were allowed to use their land. In the year 1979 he went to Ukerewe to open a pharmacy, and he left Kubhambara Kachumlilo to look after his land and Keya (the respondent) to supervise minor works in his '*shamba la miti*'. They also rented their land to other people. In the year 2016 he also told them all to vacate from their land and they all agreed except Keya. He decided to put a boundary on his farm by planting sisal and that is when the respondent instituted a suit against him.

The trial tribunal decided the matter in favour of the respondent. He was declared legal owner of the disputed land.

The appellant was aggrieved by the trial Tribunal's decision. He unsuccessfully appealed to the District Land and Housing Tribunal for Mara. The appellant still aggrieved has come to this court with four grounds of appeal. He raised the following grounds of appeal in verbatim;

1. That, both the trial tribunal erred in law and fact by entertaining the incompetent land application by allowing the Respondent to institute the suit which belongs to the probate and administration of estates.
2. That, both the trial tribunal erred in law and in facts on evaluating of evidence in record.
3. That, the appellate tribunal erred in law and in facts on holding that there is no irregularities while the proceedings and judgment of the trial tribunal was tainted with biased, irregularities and not signed by other members of the tribunal.
4. That, both the trial tribunal erred in law and fact by entertaining the incompetent land application for want of citizenship, the

respondent is belongs (sic) to Mganda tribe from Uganda.

When this appeal came for hearing, both the appellant and respondent were present in person, unrepresented.

The appellant prayed that the court adopts his grounds of appeal to form part of his submissions. In addition to that he submitted that there was no evidence that the respondent was given land in dispute by the village council, he was given the suit land by the clan as their relative for use only.

He further submitted that there are numerous legal irregularities in the conduct of case at the District Land and Housing Tribunal after the court session had ended. The chairman used to call them in his chamber in the absence of the assessors which according to him it is legally unprocedural.

He also stated that the respondent had been working as a servant for them and later on claimed the suit land is his. He prayed the court to allow the appeal with costs.

Replying the respondent submitted that he resists the appeal as it is baseless. And that the decision of the District Land and Housing Tribunal is

right as he is the lawful owner of the land in dispute and there is enough evidence on record on how he obtained the land.

On the issue of extra proceedings in the chairman's office, he submitted that was not true, as he was not invited nor did he attend those meetings as alleged.

He further submitted that he got the land from his brother (deceased) who gave it to him and when he died, he took possession of the land. Hence it his land. He prayed the appeal be dismissed with costs.

Mr. John Tokeji rejoined and submitted that he reiterates his earlier submission in chief that the land belongs to him and not as the respondent alleges and he went ahead to submit that there were no tribunal assessors present in the case. He prayed the appeal to be allowed.

Having heard the rival submissions of the parties and gone through the court's records the ball is not to the court to determine whether this appeal is meritorious.

Regarding the first ground of appeal the appellant's complainant is that the respondent had no locus to institute the suit at the trial tribunal as

the land belonged to the estate of his late brother. Replying the respondent submission is that he is the rightful owner of the land in dispute as rightly ruled. I have gone the court's record and it was the appellant's contention that at the trial tribunal he inherited the disputed piece of land from his late brother and his late brother had obtained it from the village council.

Still, I have gone through the court's records and I do not see it anywhere where the Respondent tendered a letter of administration of his late brother's estate to be admitted in the tribunal to give him jurisdiction to institute the case at the tribunal. The law is settled that one is only allowed to institute a case for his brother's/relative's estate when declared by the court as the administrator of the estate. In the case of **MALIETHA GABO vs ADAMU MTENGU** miscellaneous Land Appeal no. 21 of 2020 my learned brother , I.C.Mugeta, J cited the case of **MGENI SEIF V. MOHAMED YAHAYA KHALFANI** , Civil Application No. 1/2009, Court of Appeal – Dar es Salaam (unreported) where at page 14 , it was held :

*"As we have said earlier, where there is a dispute Over the estate of the deceased, only the probate and administration*

*court seized of the matter can decide on the ownership”.*

Additionally, at page 8 the Court of Appeal’s decision says the following:

*"It seems to us that there are competing claims between the applicant and the respondent over deceased person’s estate. In the circumstances, only a probate and administration court can explain how the deceased person’s estate passed on to the beneficiary or a bona fide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration , where the deceased died intestate or probate , where the deceased passed away testate”.*

From the above holding it is clear that it is the probate and administration of estate courts that hold who is the administrator of the deceased estate.

In the case at hand there are no any letters of administration to show how he acquired the land from his late brother. If this court considers that he obtained the land prior to the demise of his brother, he has not

shown this court and proved on how he got it from his late brother. On that regard this court finds that the respondent had no jurisdiction to institute the case at the trial tribunal and as a result the proceedings were a nullity and they cannot be appealed against.

On the second ground of appeal, the appellant's grief is that the trial tribunal erred in law and in facts on evaluation of evidence in record. I have gone through the trial record and I don't see how the evidence was not evaluated also the appellant has not shown this court how the tribunal erred in law and facts on evaluation of the evidence. In that regard, I find this ground devoid of merits.

Regarding the third ground of appeal, the appellant's grief is that the tribunal's proceedings and judgment was tainted with biasness, irregularities and not signed by other members of the tribunal. I have gone through the tribunal's records and it is my humble view that all members of the ward tribunal signed the proceedings and they were the same throughout the trial. On the issue of irregularities, the appellant's main complainant is that the chairman called them in chambers without assessors. I have gone through the court's records as it shows what



transpired in court and not seen anywhere the parties appeared alone in chambers. Hence, this ground is devoid of merits as well and it is dismissed.

The fourth complaint of the appellant is that the respondent is not a Tanzanian but from Uganda hence the tribunal was incompetent to entertain the application for want of citizenship. With all due respect, I beg to differ with the appellant's claim that a non-citizen cannot acquire land in Tanzania. The law is very clear that, they are laid procedures for both Tanzanians and non-Tanzanians on the acquisition of land. The appellant was supposed to show how the respondent obtained the land illegally to cement his claim. In that regard this ground of appeal is devoid of merits and it is dismissed for want of establishment.

In fine, this court holds that the respondent had no legal capacity to institute the case at the trial tribunal as he had not established his locus in respect of the said land, hence the trial and proceedings were all a nullity and void thus, they are all quashed and set aside. It follows that an appeal cannot be raised against null proceedings, in that regard, this court holds that first ground of appeal has merits and the rest are devoid of merits.

Thus, this appeal is allowed in respect of the first ground of appeal only as being vital and meritorious, the rest are devoid of any legal merits. The parties are at liberty upon strict compliance to law, to file an appropriate suit in the competent court if still in high contest of ownership of the said plots. As per circumstances of this case, each party shall bear own costs of the suit.

DATED at MUSOMA this 27<sup>th</sup> day of August, 2021.



  
F. H. Mahimbali

JUDGE

27/08/2021

**Court:** Judgment delivered this 27<sup>th</sup> day of August, 2021 in the presence of the parties and B/C: Mr. Kelvin S. Rutalemwa – RMA.

Right to appeal explained.

  
F. H. Mahimbali

JUDGE

27/08/2021