

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

**MUSOMA – SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 31 OF 2021**

*(Originating from Appeal No. 146 of 2020 of the District Land and Housing Tribunal for Tarime; Original Land Case No. 01 of 2019 of Kitembe Ward Tribunal).*

**JESCA ERENEST.....APPELLANT**

***VERSUS***

**DAINES DENIS .....1<sup>ST</sup> RESPONDENT**

**HEZBON AMALA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

9<sup>th</sup> and 30<sup>st</sup> August, 2021

**F. H. MAHIMBALI, J.:**

The case subject to this appeal was first instituted before Kitembe Ward Tribunal by Jesca Erenest where she claimed that the disputed suit land belonged to her late father-in-law one Mzee Mjungu and after his demise the land belonged to her husband one Ernest Mjungu. Thus, when her husband died, the land reverted to her as the heir. To justify the ownership of the land she stated that she had customary right of occupancy over the land. She claimed that the 2<sup>nd</sup> respondent invaded into her suit land by building a

church. She thus, sued him instead of Dainess Denis (1<sup>st</sup> Respondent) who is a stranger to the matter.

On the other hand, the second respondent alleged that his late father obtained the land in dispute from the village council and their land was near the land of the applicant. Following the demise of his father the land belonged to him or his family.

The trial tribunal heard the parties and the case ended in favour of Jesca Ernest as the lawful owner of the suit land in dispute. Upon that declaration as lawful owner of the land by the Ward Tribunal, she applied for execution of the Ward Tribunal's order.

Thereafter, the first respondent Daines Denis emerged and successfully filed miscellaneous application no. 146 of 2020 at the District Land and Housing Tribunal for Tarime at Tarime (Revision proceedings) against Jesca Ernest and Hezbon Amala questioning the land subject to execution in the case before the ward tribunal she claimed it is hers since 1973. Thus it was not lawful for the Ward Tribunal to declare Jesca as the lawful owner of the disputed land and it was not right for the matter to be instituted in her exclusion who is the occupier and user of the said land.

The District Land and Housing Tribunal heard the revision application and found it meritorious and thus went ahead and quashed the judgment and proceedings of the trial tribunal and ordered the case to be heard again and

this time the first respondent Daines Denis to be part of the case. The appellant was not amused with this decision hence she filed five grounds of appeal before this court. The five grounds of appeal as contained in the memorandum of appeal in verbatim are as follows;

- 1. That the chairperson erred in law and in fact for failure to entertain the application before him and engaged in extraneous matters.*
- 2. That the chairperson erred in law for quashing the decision of the land case no. 1 of 2019 of Kitembe ward tribunal on an application which was irregular and incompetent.*
- 3. That the decision of the District Land and Housing Tribunal is otherwise incomprehensible for wrongly exercising revision powers and introducing new issues in composition of the ruling without affording parties an opportunity to address the same.*
- 4. That the chairperson erred in law for granting reliefs which were not sought or subject of the application.*
- 5. That the decision of the District Land and Housing Tribunal was reached on the wrong premises of the law and facts.*

When this appeal came for hearing, the appellant was present in person and unrepresented, the first respondent was also present in person and the second respondent was absent without notice while she was dully served. The matter proceeded exparte against the 2<sup>nd</sup> Respondent.

The appellant submitted that she prays the appeal be allowed with costs. She stated that Daines Denis is a stranger to the case as she was not a party at the trial tribunal, thus the proceedings at the District Land and Housing Tribunal are irregular.

Daines Denis replied and stated that she is 38 years old and was born in 1986. And that the land in dispute is theirs since 1979 during operation vijiji and their fore fathers are buried on that land. She further submitted that the land in dispute belongs to her father-in-law and she is the wife of the late Denis Amalla who is now deceased. Whether she is the administratrix of the estate of her late husband or father-in-law, she negated on this fact that she is. However, later on she became aware of the case against Hezbon as instituted by Jesca during execution stage. As a result, she decided to file revision at the District Land and Housing Tribunal where the case was decided in her favour by the DLHT quashing the decision of the ward tribunal. She prayed this appeal be dismissed with costs.

Re-joining, Jesca Erenest submitted she is not amused with the decision of DLHT and she cannot sue Dainess as she is a stranger to the land in dispute as she is neither the owner nor administrator of the disputed land. She reiterated that her appeal be allowed with costs.

Having heard the parties' submissions and gone through the court's records the issue now for determination is whether this appeal is meritorious.

In determining the merits of this case, I will first consider whether the appellant Jesca has a locus standi to the case on ownership of land. From the court's record and the submission of the appellant it is undisputed that the land belonged to her father-in-law. After his demise the land was in the hands of her husband and when the husband died, she became the owner of the land in dispute.

Having gone through the court's records, I have not seen where she was appointed as the administratrix of the estate of her late husband. The law is settled that when the land in dispute is part of the estate of the deceased the person to sue or be sued in respect of that land is the administrator duly appointed by the court. In the case at hand, there are no letters of administration to show the appellant was appointed and granted letters of administration. That means she had no capacity to claim the disputed land as belonging to her in the absence of clear and proper probate proceedings and orders. 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, on page 8 of the cited case of the Court of Appeal had this to say;

*"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”.*

Having stated the above, this court finds that the appellant had no legal mandate to institute the case at the trial tribunal and as a result the proceedings were a nullity and as such they could not be appealed against. As a result, this ground has merits and it is allowed.

Having discussed the above irregularity, I will not go into detail and discuss the other grounds of appeal as per the memorandum of appeal as the matter can be disposed at this stage. In fine I find it necessary to invoke the revisional powers vested in this Court by section 43 of the LDCA by nullifying the entire proceedings and quash the judgments of the two lower Tribunals and the subsequent orders.

This court thus, advises the party with locus is the one entitled to institute the case before the appropriate tribunal/court. Each party shall bear own costs. It is so ordered.

DATED at MUSOMA this 30<sup>th</sup> day of August, 2021.



  
F. H. Mahimbali

JUDGE

30/08/2021

**Court:** Judgment delivered this 30<sup>th</sup> August, 2021 in the presence of Appellant, 1<sup>st</sup> Respondent and absence of 2<sup>nd</sup> Respondent. B/C. Neema - RMA.

Right of further appeal is well explained.

  
F. H. Mahimbali

JUDGE

30/08/2021