

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPEAL NO. 29 OF 2020

*(Arising from Land Appeal No.35 of 2019 at the District Land and Housing Tribunal of Tanga at Tanga,
originating from Complaint No.1/4 of 2017 of Mtindiro Ward Tribunal.)*

FRANK MNGOMAAPPLLENT

VERSUS

EVERINA YAKOBO.....RESPONDENT

JUDGMENT

MRUMA,J.

Frank Mngoma and Everina Yakobo ar in laws in that the respondent married the appellant's cousin, George Lukindo (deceased), George Lukindo's and Frank Mngoma's fathers are siblings. Parties herein are battling over a piece of land measured at about three acres located at Mtindiro Ward, Muheza District in Tanga Region which the appellant claims that it forms part of clan land left behind by Johnson Lukindo, the respondent's father- in – law while the respondent claims it was personally owned by her deceased husband, George Lukindo.

The matter was heard at Mtindiro Ward tribunal and both parties fetched their respective witnesses. The tribunal visited the locus in quo

and draw a sketch map of the area, showing the area in dispute something for which I commend them. In the end it was the trial tribunal's conclusion that the land in dispute belonged to Frank Mngoma.

The respondent, Everina was unsatisfied by that decision hence appealed to the District Land and Housing Tribunal of Tanga at Tanga in Land Appeal No.55 of 2017. In its judgment, the District Land and Housing Tribunal found in favour of the respondent herein and declared her as the lawful owner of the land in dispute. Frank Mngoma was aggrieved and has come to this court by way of an appeal based on three grounds namely:

- 1. That the honourable chairman/ chairperson grossly erred in law and fact when she upheld that the appellant is a trespasser without evaluating fundamental proof evidence that the respondent, she has no locus standi to claim ownership of the said land without having a letter of administration of the said his (sic) late husband one George Lukindo who died in 2016. Thereafter failed to know the applicant herein acquired the suit land and this violated the law of do documentary(sic) and witness evidence.*
- 2. That the Honourable Chairman/ Chairperson erred in law and fact when she ignored and or disregarded the concrete evidence of the appellant and his family*

occupied the suit land (sic) since the year of 1960 which period is above the claim ownership limitation (sic) period of 12 years.

- 3. That the Honourable Chairman/ Chairperson grossly misdirected himself when she upheld that the late George Lukindo, husband of the respondent died on 2016(sic) and the father of the appellant Johnson Lukindo died on the year 2005(sic) the time which the appellant continues to develop (sic) the said land of acres the land given with his father (sic) during alive (sic) hence failed to evaluate the virginity ownership (sic) of the suit land.*

In these proceedings, both parties were unrepresented. When the matter came for hearing verbally on 08/04/2021, the appellant Frank Mngoma submitted that the respondent has no letters of administration hence she has no locus standi to claim the disputed land which she says was owned by her late husband. Regarding the second ground it was the appellant's submission that his family has been using that land since 1960s as it was testified in the trial tribunal hence, they have attained adverse possession of the land. Also that the suit land is to be distributed to three other children of the deceased ie Joyce Lukindo, Frank and Mbwana Lukindo since the deceased already got his share. On the other

hand, the respondent just trespassed in the suit land after the demise of her husband in 2016.

Against the appeal, the respondent Everina Yakobo stated that she got married to her husband in 1995 and since then they have been using that land with her husband. She agreed that she has not been appointed by court to administer the estates of her late husband. She disputed the statement that the family of her husband has been using that land since 1960. She also claimed that the appellant is not related to the late Johnson Lukindo. Finally, she prayed that the appeal be dismissed.

In rejoinder the appellant stated that he sued Everina Yakobo because she personally trespassed into that land.

In the first ground of appeal, appellant claims that the respondent had no locus standi to claim ownership of the land. However, it is the appellant herein who primarily dragged the respondent in this matter. I think he was not wrong as the respondent is the one whom he found intermeddling with the land therefore there was no better person to be sued other than her. Further, the term locus stand is a latin word meaning "*place of standing*". It is a technical legal jargon which stands for the right to bring an action or to be heard in a given form(See **Black's Law Dictionary 9th Edition by Bryan A. Garner page 1026**).

In addition, appearances before and reference of disputes to the Ward Tribunals are governed by Section 11 of the Ward Tribunal Act [Cap 206 R.E. 2019) Under sub section 2 of the latter provision , the Ward Tribunal may permit any relative or member of a household to appear and act for the family or household.

In actual fact, there is no specific provision of the law which requires one to be appointed as an administrator of an estate before he/she can have locus standi to appear before a Ward Tribunal in land disputes involving a land which was previously owned by a deceased person.

Therefore, any member of a family or household may appear before a Ward Tribunal to represent that family or house hold. Fortunately, this position of law also favours the appellant herein as he at the trial tribunal, stated and I quote;

" Mimi Frank Mngoma ni msimamizi Mkuu wa familia ya Mzee Johnson Lukindo ambeye ameteuliwa tangu mzee yup hai, mimi ni Kaka yao mkubwa kwa ukoo".

These words implies that he to possessed no letter of administration of estates from court but stood to defend the alleged family property. Therefore ground No.1 is unfounded.

Moving to ground No.2 in which the appellant claims that the land belongs to the family because of the principle of adverse possession as they have lived there for many years since 1960, in my view the appellant seeks to use adverse possession as a sword and not a shield something which the law prohibits. The Court of Appeal sitting in Dar es Salaam in the case of **Origenes Kashoro Uiso Vs Acqueline Chiza Ndirachuza (As Legal Personal Representative of Joachim Ndirachuza)** Civil Appeal No. 259 of 2017 observed that:-

*" We are in agreement with Dr. Lamwai that the principle can only be used as a shield/ defence but not a weapon. When grappling with an akin situation in **Gurudwala Salib V. Gram Panchayat village Sifthala & Another, Civil Appeal No. 8244/2013** the Supreme Court of India had this to observe:*

" Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is

***arrayed as defendant that it can use this
adverse possession as shield/ defence."***

In this case the court did set a precedent that the appellant cannot rely on the principle of adverse possession in a case which he is a plaintiff. Applying that principle in the facts of the case at hand the second ground fails without further ado.

This court will not bother determining the third ground as it is based on facts while this court is a second appellate court whose jurisdiction is only on a point or points of law.

However, this position applies only where there are no misdirection or non- direction on the evidence by the first appellate court. In case where there are misdirection or non- direction on the evidence a court is entitled to look at the relevant evidence and make its own findings of fact, the learned Chairperson declared as reflected at page3 of the judgment that the present respondent (who was the appellant) as the lawful owner of the land in the dispute since the appellant, who is now the respondent and her late husband George were allocated the farm, its ownership moved to them....

I have been unable to find any facts in the record supporting that at one time the ownership of land moved from Johnson Lukindo to George Lukindo and his wife, the respondent herein. No wonder the sketch map of the dispute land shows clearly that the land in dispute contains no permanent trees like the rest of the area. There is ample evidence that the respondent started working on the land after the demise of her husband. Since it is mutually agreed that the land in dispute was originally owned by Johnson Lukindo who is deceased, and since there is no tangible evidence to show that the said parcel of land was at one time given to the respondent, I find that the appellate tribunal erred in reversing the Ward Tribunal decision.

In the circumstances, I restore the Ward Tribunal's decision with qualification that the land does not belong to Frank Mngoma personally but to the estate of Johnson Lukindo. The order which the Ward Tribunal ought to have made and which I hereby make is that the disputed land in this case belongs to and does form part of the estate of the late Johnson Lukindo, deceased which is under the case by Frank Mngoma, the appellant herein.

That said and for reason given above, the Appellant's ^{appeal} is hereby allowed. Given the nature of parties relationship in this appeal, each party shall bear own costs.

A handwritten signature in blue ink, appearing to read "A. R. Mruma".

A. R. Mruma

Judge

7/2/2022