

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISCELLANEOUS LAND APPEAL NO. 11 OF 2022

(From the District Land and Housing Tribunal for Mbarali at Rujewa in Land Appeal No. 65 of 2021. Originating from Land Case No. 17 of 2021 in Itamboleo Ward Tribunal.)

VAILET D/O MBILINYI.....APPELLANT

VERSUS

GODY S/O CHAWE.....RESPONDENT

RULING

Date of Hearing: 14/07/2022
Date of Ruling : 21/09/2022

MONGELLA, J.

This matter emanates from Itamboleo Ward Tribunal (WT, hereinafter) in Land Case No. 17 of 2021 in which the appellant sued the respondent for trespass over her land. She claimed that the respondent invaded her land and started cultivating. The WT ruled in favour of the respondent leading the appellant to appeal to the District Land and Housing Tribunal for Mbeya vide Land Appeal No. 129 of 2021 whereby she lost again. Still determined to fight for her land she preferred this second appeal.

During the hearing however, the respondent's counsel, Ms. Pamela Kalala, informed the Court that there were legal issues that needed to be



addressed prior to addressing the grounds of appeal by the appellant. She had three issues to the effect that:

- (i) *That the appellant lacked locus standi in the trial Tribunal and continues to lack locus standi on this appeal as well.*
- (ii) *That the appellant sued a wrong party.*
- (iii) *That the matter was filed out of time.*

The appellant's counsel was ready to argue the legal issues and thus the hearing pushed through on that date. The legal issues were argued orally.

As to the issue of *locus standi*, Ms. Kalala argued that the appellant had no legal legs to stand upon as what she claims is the property of his late father one, Mzee Daniel Mbilinyi. She based her contention on **section 99 and 100 of the Probate and Administration of Estates Act**, which she said, directs that the one with legal powers to recover or administer the deceased's estate is the administrator of the estate. She contended that the administrator must be the one appointed by the Court and not just proposed by the family. On similar account, she referred further to **section 19 (1) (c) of the Magistrates' Courts Act, Cap 11 R.E. 2019**; the case of **Edson Mwaipungu vs. Amani Ramadhani Mwakisale**, Misc. Land Appeal No. 14 of 2013; and that of **Lyandeli Mgumba vs. Pancras Mbala**, Misc. Land Appeal No. 30 of 2010.



Considering the evidence adduced in the WT, she said that the appellant testified that the farm belonged to her late father and that it was left to her by her father way back in 1982. This was also testified by the appellant's witness, one Wilson Bwanji. About the time the appellant was in use of the farm, she argued that the appellant testified that she had not used the farm since 1999, but appointed the administrator of the deceased's estate in 1985. In the premises, Ms. Kalala contended that the appellant was expected to have obtained letters of administration.

As to the second point, she argued the point referring to the case of **Edson Mwaipungu** (supra). She contended that the respondent was sued over the property belonging to his late mother one, Enela Nselu. The said Enela Nselu bought the land from one, Chesum Nzinku. In the circumstances, she argued that it was not correct for the appellant to sue the respondent, Gody Chawe, over his deceased's mother's property. She added that Gody Chawe was the administrator of her mother's estate and should have been sued as such as provided under **Part II Column 6 of the 5th Schedule to the Magistrates' Courts' Act**. I find Ms. Kalala has however misconceived the application of the Magistrates' Court Act in the Land Tribunal. The law is inapplicable.

With regards to the third issue, she argued that the matter was time barred when instituted in the WT. She argued so saying that the respondent's mother bought the land in dispute in 1990 and the appellant has been present in the area for all that time. She said that the said Chesum Nzinku who sold the land to the respondent's mother owned the farm since 1974. That, the appellant claimed the suit land in 2021



rendering her time barred for about 46 years. She insisted that the appellant was present at the area for all the time as her farm is in the North of the farm in dispute in accordance with an identification witness, one Maria Mponzi. She referred to **Part I of the Law of Limitation Act, Cap 89 R.E. 2019**, which puts the limit of 12 years for claims on land matters. She thus prayed for the appeal to be dismissed.

The respondent was represented by Ms. Irene Mwakyusa, learned advocate. She conceded one issue regarding suing a wrong party. Replying on the issue of *locus standi* of the appellant, she contended that the appellant claimed her own land as it was testified in the WT. She said that the evidence adduced by the appellant in the WT was to the effect that the appellant was given the farm in dispute by her own father while he was still alive. That, the handing over of the farm was done before a 10 Cell leader.

She disputed the appellant's witness' statement to the effect that the appellant was appointed administrator of his father's estate in 1985 arguing that the said witness said what she was not aware of and that she did not well know the disputed land. While admitting that the appellant contradicted with her witness, she contended that there was overwhelming evidence from the appellant herself to the effect that she was given the farm by her late father while still alive. Ms. Mwakyusa insisted that the appellant was not the administrator of the deceased's estate and that even the respondents did not furnish any evidence proving that the appellant was the administrator of her father's estate.



Ms. Mwakyusa then addressed the third issue. On this, she disputed the matter being time barred. While conceding that the time limit for land matters is 12 years, she argued that the dispute at hand arose in 2020 when the respondent invaded the land by destroying the appellant's ridges in the farm. That the appellant made efforts to resolve the problem, including reporting the matter to the hamlet chairperson, but the respondent never attended leading her into filing the matter in the WT. She disputed the assertion by the respondent's counsel that 46 years had elapsed from 1974 when the said Chesum Nzinku obtained the farm. She said that the appellant used the farm from 1982 to 1990 and thereafter used to rent it out to some people and in 2020 the respondent trespassed.

Lastly on the second issue, she conceded that the respondent being the administrator of her mother's estate was sued wrongly. She said that the appellant found the respondent on the farm and had no choice than to sue him personally. That it was on defence case that the respondent claimed that the farm belonged to his late mother. Ms. Mwakyusa however, challenged the WT decision for declaring the respondent the rightful owner of the suit land in the circumstances. She said that the same concern was raised in the appellate Tribunal; however the Tribunal refused the argument and blessed the WT decision. In the premises, and considering that this issue has been conceded, she prayed for both lower tribunals' decisions and proceedings to be quashed.

In rejoinder, Ms. Kalala to a large extent reiterated her submission in chief. As to the first issue, she added that there was no evidence by the appellant that she obtained letters of administration or that she was given



the land *inter-vivos* by her father before the 10 cell leader. That, the said 10 cell leader was never presented in the WT to testify to that effect. She added that the appellant's witness contradicted her testimony thus the whole appellant's evidence ought to be rejected.

As to the 3rd issue she referred to page 6 of the WT proceedings arguing that when the appellant was asked if she knew who farmed before the respondent invaded the farm, she replied she did not know. She challenged Ms. Mwakyusa's argument that the appellant used to rent the farm saying that the same was untrue and was raised during this second appeal stage. She further argued that if the appellant was given the farm in 1982 and stopped farming in 1999 she should have stated where she was from 1982 to 1994 when the farm was sold by the owner to the respondent's mother. Counting from 1999 to 2021, she saw it was 22 years that had already elapsed which still renders the matter time barred.

As regards the 2nd issue she as well conceded to Ms. Mwakyusa's argument that the WT erred in declaring the respondent the owner of the suit land while he was a wrong party to be sued.

After considering the arguments by the learned counsels for both parties and gone through the lower Tribunals records, I prefer to start with the issue on time limitation. As correctly submitted by both parties, the time limit for institution of land matters is 12 years. This is provided under **Item 22 Part I of the 1st Schedule to the Law of Limitation Act**, as well as **section 9 of the Law of Limitation Act** where the land to be recovered belonged to the deceased. In the matter at hand, while the appellant claimed that the



cause of action arose in 2020 when the respondent invaded the land; the respondent claimed that the time started to run in 1994 when her mother bought the land from one Chesum Nzinku.

It is the settled position of the law that time starts to accrue when the cause of action arises. See: **section 5 of the Law of Limitation Act** which provides for the general accrual of cause of action. The provision states:

*"Subject to the provisions of this Act, the cause of action, in respect of any proceedings, **shall accrue on the date on which the cause of action arises.**"* (Emphasis added).

The question therefore to be considered in the matter at hand, is when did the cause of action accrue? The respondent claims that the land in dispute was purchased by his late mother in 1994 and therefore counting from 1994 to 2021 when the appellant filed the suit in the WT the period of 12 years had elapsed a long time ago. However, going through the WT record, it shows that the conflict between the parties arose in 2020 following the respondent destroying the appellant's ridges in the disputed land. Considering what triggered the suit in the WT I am of the finding that the cause of action arose in 2020. The suit is therefore not time barred.

As regards the issue of *locus standi*, it is the position of the law that a person can only institute legal proceedings if he/she has an interest or right to protect. With respect to the deceased's property, it is the administrator of the deceased's estate that has *locus standi*. See: **Mussa Hashimu vs. Mabula Mshikila**, Misc. Land Appeal No. 04 of 2021 (HC at



Mwanza, reported at Tanzlii) in which it was held by my learned brother, Kahyoza, J. as follows:

"It is trite law that it is an administrator of the deceased's estate who is competent to sue or be sued in relation to the deceased's property. Thus, it is the administrator of the deceased's estate who has a locus standi, that is, the right or capacity, to bring an action or to appear in a court or tribunal to claim the deceased's property or defend it."

See also: ***Ibrahim Kusaga vs. Emmanuel Mweta*** [1986] TLR 26 and ***Mohamed Hassan vs. Mayase Mzee & Mwanahawa Mzee*** [1994] TLR 225 CA (quoted in ***Mussa Hashimu***, (supra); ***Salama Ismail Hanya & 2 Others vs. Tunu Ismail Hanya & 2 Others***, Land Appeal No. 88 of 2020; and **section 100 of the Probate and Administration of Estates Act, Cap 352 R.E. 2019**.

In the matter at hand, the appellant claims to have acquired the land in dispute from his late father way back in 1982 whereby she was given the land for free while the father was still alive. In the premises, she claims the property as her own. In my view, since she admits that prior to be passed on to her, the land belonged to his father, I am of the view that it is a question of evidence as to whether she was really given the property as gift *inter vivos* by his father. The record in the WT shows that she claimed to have been given the land before a 10 Cell leader, one Gabeli Boazi. In that respect, I agree with Ms. Kalala that the said 10 Cell leader ought to have been presented to testify in her favour, but that was not the case.



The witness she presented was one Wilson B. Mbwangi, who testified that the appellant inherited the land in 1985. This evidence contradicted with that of the appellant materially as far as acquisition of the land by the appellant is concerned. Ms. Mwakyusa addressing the contradiction pointed out by Ms. Kalala, she contended that the appellant's witness testified on something he was not aware of. I find the argument absurd. One brings a witness in court to build his/her case and as such one is not expected to furnish a witness who has no idea of the dispute. Considering the fact that the appellant failed to furnish the 10 Cell leader whom she claimed to have witnessed the land being given to her, and considering the fact that she contradicted with her own witness, I find the appellant failed to prove that the land in dispute was her own property entitling her to sue in her own capacity. She failed to prove that she had *locus standi* in the matter.

As regards the 2nd issue considering suing a wrong party, I agree with both counsels that the respondent was wrongly sued in his own capacity as he claimed to have been administering his late mother's estate which included the land in dispute. In the case of **Ibrahim Kusaga vs. Emmanuel Mweta** (supra) the Court held:

"... there may be cases where the property of a deceased person may be in dispute. In such cases, all those interested in determination of the dispute or establishing ownership may institute proceedings against the Administrator or the Administrator may sue to establish claim of deceased's property."



Since the respondent had no capacity to be sued in his own name with regard to the land in dispute, I further agree with both counsels that it was incorrect for the WT to declare the land in dispute the property of the respondent. The appellate District Land and Housing Tribunal as well erred in blessing the WT decision in spite of the issue being raised on appeal. In the premises, I quash both lower tribunals' proceedings and decisions for entertaining a matter that was incompetent before them. The appellant is at liberty to institute fresh proceedings in adherence to the legal procedures. Costs to be borne by the appellant.

Dated at Mbeya on this 21st day of September 2022.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 21st day of September 2022 in the presence of both parties and their legal counsels, Ms. Irene Mwakyusa and Ms. Pamela Kalala, respectively.




L. M. MONGELLA

JUDGE