IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
PC CIVIL APPEAL NO. 126 OF 2004

(Arising from the Decision of the District Court of Musoma at Musoma in Civil Appeal No.17 Of 2002 dated 9th October, 2003, Originating from Musoma Urban Primary Court in Civil Case No. 93 Of 2000)

MAPESA JUMA SAID (Administrator of The Estate of The Late
HASSAN MATAMBO .....APPELLANT

VERSUS

HALIMA JUMMANNE HAMIS (Administratix of The Estates of The Late
JUMANNE MOTOKA .....RESPONDENT

JUDGMENT

13th September & 7th October, 2022

ITEMBA, J.

This is a second appeal originating from Musoma Urban Primary Court. It is not pleasing to state that, this Land dispute has been in the court, endlessly, for the past 22 years. The dispute has arisen from a rival of a 2-acre plot located at Baruti area within Musoma Urban, herein the suit plot.

The background leading to this appeal is that, in the year 2000, the respondent had filed a civil suit no.93/2000 before Musoma Urban Primary Court alleging that the appellant is encroaching his piece of land. The suit was decided in favor of the respondent. The appellant was also instructed

to claim compensation of development done on the suit plot, from the respondent. Both parties were dissatisfied with the decision and filed cross appeals before the District Court of Musoma. Again, on 9th of October 2003, the decision was issued in favor of the respondent, the appellant is still aggrieved hence this appeal.

It should be noted that, on 8th of January 2004, the appellant filed an appeal before this court. It appears that some of the records went missing and when they were found, on 2nd July 2013 the appeal was already out of time and it was struck out for non-compliance with section 54 of the Land Disputes Courts Act 2016. The appellant tried to file an application for restoration but on 9/5/2014 it was struck out for the reasons that restoration was not the right remedy. It was not until 23rd November 2021 when the extension of time was issued by the Hon. Chief Justice instructing that the appeal should be determined within one year. Having highlighted that background, I will venture in the appeal itself.

The evidence gathered by the Primary Court was as follows; the respondent testified as **SMI,** that he is related to the appellant as a neighbor but also the appellant's brother has married his daughter. That,

he inherited the suit plot from his father who died in 1996 and that he usually plant rice and trees in the suit plot. That upon his father's death, his paternal uncle one Fungo was the custodian of the suit plot because the appellant could not inherit it at young age.

The respondent stated further that his father used to let other people use parts of the suit plot and even the appellant was making his bricks therein. That the respondent later realized that the appellant has built a house in the suit plot and upon questioning him, he stated that he owns the plot and he already had a map. He added that, upon making, follow ups, the village executive authority confirmed that the suit plot was surveyed in favor of the appellant. That, following the respondent's complaint, the appellant was asked not to proceed with any development. This testimony was supported by Anna Malare (**SMII**), a neighbor to both the appellant and respondent, to the extent that the plot in dispute belonged to the respondent and it was owned by respondent's father and then it was under the custody of respondent's uncle. SMII also told the court that he used to cultivate on the disputed plot and knows that the appellant's plot in neighboring the suit plot. **SMIII** also testified that, she used to hire part of the suit plot for cultivation from one Motoka who died

in 1996 and after his death a dispute over the suit plot arose. **SMIV** testified that the appellant's plot in neighboring the suit plot.

In the other hand, the appellant testified as **SUI** and he stated that the respondent is his neighbor and there is inter marriage between their families. However, as regards the suit plot, he stated the plot is his. He explained that the disputed plot initially belonged to Hamisi Madele who died and his heirs sold it to one Fundi Amiri who later moved to Morogoro and left the plot under Mohamed Waziri. He testified that in 1964 he bought the plot from the said Mohamed Waziri. That, he used the plot for cultivation and managed to remove the pond which was in the midst of the suit plot, by directing the water therein towards the lake. That in 1986 he asked for the city council to survey the suit plot. That, when the respondent's father was alive, he had no dispute with the appellant using the said plot. The appellant stated that during the negotiation process before the village council he asked them to consider the developments done on the suit plot and who is the right person to be compensated. He added that, the council asked the village elders to settle the dispute and it was settled in his favor. During cross examination by the respondent, the appellant asked for compensation of the development done on the

disputed plot. That the pond was not owned by anyone before. And that he had planted coconut trees, palm trees, soursop trees, papaws and other plants. **SUII** told the court that he is the neighbor to both parties and that the main dispute is regarding the pond. That it was the appellant who modified the pond and directed the water to the lake, in 1970's, and that when there was less water, he started to plant trees and even built a house. **SUIII** also a neighbor, stated that the suit plot was just a pond which was isolated. That he does not know the owner but the appellant had bought a plot close to the plot in dispute. A land officer testified that indeed, the respondent had applied for his plot to be surveyed, the survey was done and a map was issued. That soon thereafter, the appellant encroached the suit plot and started to cultivate. That the council advised both parties not to develop the plot until the owner is known. The officer also stated that the suit plot only had rice which belongs to the respondent but the coconuts trees were outside the boundaries. Lastly, the trial court had opportunity to visit the *locus in quo* and that marked the end of the suit.

As stated earlier, the judgment was issued in favor of the respondent. It was further ordered that the plants in the plot in dispute

belongs to the appellant therefore he may claim compensation thereof from the respondent.

Both parties were aggrieved with the said decision and filed cross appeals before the District Court of Musoma. Briefly, at the District Court the respondent stated that he was dissatisfied with the court order of paying the appellant compensation for improvements done on the suit plot. He argued that he is the one who planted the trees and that the appellant should not have developed the suit plot knowing that the suit plot is not his. Meanwhile, the respondent stated that he has developed the suit plot since 1964 therefore that is long enough for him to be a lawful owner. He stated further that the fact that the trial court ordered compensation, it is *prima facie* evidence that he is the lawful owner of the plot in dispute.

In the end, the respondent's appeal (No. 12 of 2002) was allowed that he should not pay the appellant any compensation for the development done on the suit plot. The appellant's appeal (No. 54 of 2002) was dismissed.

Being aggrieved with the District Court decision, the appellant has filed the following grounds of appeal in this court:

1. *That the learned District Court Magistrate erred in Law and fact by entertaining the matter in which Appellant (JUMANNE MOTOKA) had no locus standi.*
2. *That the learned District Court Magistrate erred in Law and fact by entertaining the matter without considering the aspect of adverse possession in favour of the Appellant herein.*
3. *That the learned District Court Magistrate erred in law and fact by entertaining the matter which was hopelessly time barred.*
4. *That the learned District Court Magistrate erred in law and fact by failing to properly evaluate the evidence before him.*

At the hearing, both parties were represented by learned counsels, Mr. Al Haji Majogoro appeared for the appellant while Ms. Hellena Mabula was representing the respondent.

Kickstarting the ball, Mr. Majogoro submitted that the respondent who initially filed the case before the Primary Court has no *locus standi*. He explained that the suit was filed for the first time in 2002 and that Jumanne Motoka told the court that he inherited the plot in dispute from his dad who died in 1996. And that, thereafter, the plot was under custody of one Fugo. He argued, that the respondent did not table any documents to prove that he was an administrator of estate of the deceased. He

referred the cases of **Peter Mpalanzi v Christina Mbanila** Civil App No. 153/2019 and **Ibrahim Seif Chubi Vs Hawa Mohamed Chubi and another** Land Appeal 151/218, where courts have decided that a person with *locus standi* to file a case on behalf of the deceased, is the Administrator of Estate.

In respect of the 2nd ground, he stated that the trial magistrate did not consider the idea of adverse possession in favour of the appellant. That the appellant bought the plot since 1964 and in 1998 the respondent emerged and claimed that the plot is his. That more than 12 years have lapsed and that this evidence was not contested. He added that, it is obvious that the respondent saw the appellant developing the plot, as they were neighbors. He supported his submissions with the case of **Nuru Kijudawili v Weme Salum** Misc. 134/2019, Dar es Salam High Court.

Arguing the 3rd ground, the counsel for the appellant stated that the suit was time barred. That if the appellant bought the plot in 1964, surveyed it in 1986 and in 1998 the respondent filed a case over the said plot. 12 years had already passed. Referring to section 3 of Law of Limitation Act, he stated that the court should have dismissed the suit for

being time barred as it was held in the High Court case of **Rev. Muhunda v Bukoba Municipal Director** Land case 8/2019.

In the last ground he faulted the District Court for failure to evaluate evidence in respect of the above grounds of time limitation and *locus standi.*

In reply, Ms. Mabula forcefully opposed the appeal. Starting with the respondent's *locus standi* she submitted that respondent had *locus standi* as he owned the plot through inheritance, as stated in page 1 of the District Court judgment. She referred the case of **Ali Hassan v Daima Shabani and others** Misc. Case Appeal No. 20/2018 where the court decided that there is no law which direct a person to obtain letters of administration before she/he can inherit from his parents. She stated further that under customary declaration, deceased's properties pass to the heir once the owner passes away and according to the cited case, the heir can sue or be sued over that property. She also cited the case of **Machota Maro Masese v Birage Maro Birage** Land Appeal No. 19/2020 High Court Musoma and submitted that it was decided based on customary declaration orders where the court stated that *'letters of*

administrator are relevant where only property of the deceased have not been inherited by any of the heirs' and added that had the respondent not inherited the land, he would not have *locus standi*"

In respect of the second ground, she argued that, at pages 2 and 3 of the proceedings of the trial court, the appellant stated that he bought the suit plot from one Mohamed Waziri who is the deceased. And that one cannot raise adverse possession if he had bought the plot in dispute. She supported her submission by the case of **Maria Nyarukinga v Mwita Machiche** Misc. Land Appeal No. 51 of 2021 High Court Musoma. She added that adverse possession is coupled with other conditions not just time limitation and that there is no proof whatsoever that the appellant used the pot for 12 years.

She objected the 3rd ground, stating that although it is fact that the law puts a limitation of 12 years, the said limitation is for people who are owners and who were living on such premises for all that time (since 1964) but there is no such evidence that the appellant had lived on the suit plot since 1964.

She added that in the trial court, **SUIII**, Jumanne Said, a witness brought by the appellant, stated that he did not know who is the owner of

the plot, and that the appellant had bought a plot next to the suit plot. As regards to the appellant evidence to have surveyed the land, she stated that proceedings do not reflect that any title deed was tendered and that at page 9 of the proceedings during in cross examination the appellant stated that he had no certificate of title "***sina hati.....na naomba apimiwe" "sikupewa kibali cha kukiendeleza".*** She insisted that the court properly evaluated the evidence.

In rejoinder, Mr. Majogoro insisted that in the absence of letters of administration, the party cannot institute a case. Thus, the court should disregard the case cited by the respondent. That the appellant did not buy the plot from the respondent, and that it is not disputed that the appellant stayed on the plot since 1964 and applied for survey in 1986.

Having appreciated the facts and background of this appeal, the main issue to be ascertained is whether it has merit. I will respond on the grounds of appeal as per amended petition of appeal and as argued by the appellant's counsel.

In the first ground that the respondent is challenge the *locus standi* of the respondent because he could not establish that he was an administrator of estate of his late father who died in 1996. This ground did

not feature in the 1st appellant court but because it is a point of law, it deserves consideration. *Locus standi* is defined as a right or legal capacity to bring an action or to appear before a court. The case of **Lujuna Shubi Ballonzi v Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203, Hon. Samatta, J (as he then was) stated the following in respect of *locus standi*:

> *'Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. the High Court has the power to modify the applied common law so as to make it suit local conditions.'*

I have revisited the Local Customary Law (Declaration) (No. 4) Order, Government Notice (GN) 436/1963, Schedule 2, Laws on Inheritance [Sheria za Urithi], in Judicature and Application of Laws Act, [CAP 358 R.E. 2002], as cited in the decision by my brother Hon. Mruma J, in **Ali Hassan v Daima Shabani and others** (supra). The said 2nd schedule explains that *the heir inherits even the claims and debts of the deceased and that if inherited property is not sufficient to pay all the debts of the deceased, then the heirs shall pay the remaining debts from their own properties*.

Further, in **Ali Hassan v Daima Shabani** it was held inter alia that:

'The law does not require the heir to go to court to obtain letters of administration before she can inherit. Letters of administration is crucial when the estate concerned comprises legally registered property. When a person inherits a property, that property becomes his/hers and he can sue or be sued over that property'.

It suffices to say, I am in support of the relevance in this decision and incline to it. The respondent, in his evidence, he was very clear that he had inherited the suit plot from his father. I would agree with the counsel for the respondent that when it comes to land which was acquired by inheritance, the owner do not need to have letters of administration to have the capacity to sue and be sued in respect of that plot. This is because under customary law, property can be inherited without letters of administration from the court and the heir steps into the shoes of the deceased. The cases cited by the appellant are distinguishable from the present case because in **Peter Mpalanzi v Christina Mabruka** the respondent had no *locus standi*, it was the respondent's husband who had capacity to sue as he was the one entrusted with the suit land. In **Ibrahim Seif Chubi v Hawa Mohamed Chubi**, the appellant described himself as an administrator but he did not plead his appointment.

Therefore, as explained having inherited the disputed property, the respondent was the right person to sue the appellant. The first ground lacks merit.

I will jointly consider the 2nd and 3rd grounds as they are corelated. The second ground refers to the District Court's failure to consider appellant's adverse possession of the disputed property. The 3rd ground states that the suit was time barred because the appellant had bought it since 1964 and the respondent had sued him in 1998. The appellant's counsel explains that when the respondent claimed ownership in 1998, more than 12 years has lapsed since he acquired the suit plot. I find that the appellant's evidence before the trial court was far from proving his acquisition of the suit plot. He narrated a long story on chain of ownership from one Hamisi Madele to Fundi Amiri and then to Mohamed Waziri who sold the same to him in 1964. Among the appellant's witnesses, **SUII** said the disputed plot has no owners and **SUIII** stated that he does know who is the owner of the plot in dispute and that the appellant is the owner of the plot nearby plot to the suit. As rightly observed by the District Court, there is no evidence whatsoever to support the respondent's claims of ownership. The appellant mentioned the village elders who convened a

meeting and decided in his favor. He did not bring any of these elders. Among the witnesses whom he brought; one did not talk about ownership while the other testified against him. In the adverse side, the respondent had explained that he inherited the plot from his father and that the appellant's plot is just nearby the plot in dispute and the respondent also brought witnesses **SMII, SMIII and SMIV** who corroborated his testimony. Thus said, the appellant cannot claim adverse possession against a plot which he has never owned before, and based on mere words, while there is strong evidence from the respondent proving ownership of the same plot. It goes therefore, as there is no evidence of the appellant acquiring the suit plot, the ground of time limitation cannot subsist. The 2nd and 3rd grounds have no merit.

Moving to the last ground, it refers to evaluation of the evidence by the District Court. Briefly, as mentioned above, before the District Court there was a cross appeal, the District Court magistrate has given a good evaluation of arguments from both sides as it can be seen from page 1 to part of page 3 of the judgement. At page 3, the magistrate started to analyse the said evidence. He explained that he considered the

respondent's testimony because he inherited the suit plot from his father that his evidence was supported by witnesses who lived and are still living close to the suit plot. At page 4, he explained that the appellant was telling lies because he could not even bring his certificate of tittle. He also set aside the order of compensation relying on the principle of *non-fit injuria* that the appellant developed the suit plot by planting crops and trees while knowing that the plot is not his.

I find this analysis and reasoning as proper evaluation of evidence done by the District Court Magistrate. Therefore, the 4th ground has no merit.

As a result, the issue is answered in the negative as I have found no valid reason to fault the District Court's decision. In the end, the appeal lacks merit in all its' 4 grounds and it is hereby dismissed with costs.

DATED at **MWANZA** this 7th day of October, 2022.

L. J. ITEMBA

JUDGE

Judgement delivered under my hand and seal of the court in chambers in presence of the appellant and Mr. Ignas, RMA and in the absence of the respondent.

L. J. ITEMBA
JUDGE
7/10/2022