

IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA

MISC. LAND CASE APPEAL NO. 17 OF 2020

(Arising from Misc. Land Case Appeal No. 6 of 2019 at High Court of Tanzania, Tabora District Registry, Misc. Land Application No. 44 of 2018 at Nzega District Land and Housing Tribunal, Original Land Case No. 1 of 2005 of Migua Ward Tribunal)

MSOMA MAGANGA
(Administrator of the estate of
the late Sahani Maganga) APPELLANT

VERSUS

HELENA MABULA (Administratrix of the estate of
the late Michael Mabula Nshimba)RESPONDENT

JUDGEMENT

Date of last Order: 19/8/2022

Date of Delivery: 26/8/2022

AMOUR S. KHAMIS, J:

Helena Mabula as administratrix of the estate of the late Michael Mabula Nshimba, the respondent herein; instituted Land Dispute No.1 of 2005 at Miguwa Ward Tribunal against the appellant, Msoma Maganga as administrator of the estate of the late Sahani Maganga, over a piece of land located at Miguwa Village, Miguwa Ward, within Nzega District, Tabora Region.

The matter was fully heard by the Ward tribunal and Hellena Mabula was declared a lawful owner of the disputed land.

In order to execute decision of the Ward Tribunal, Helena Mabula filed an application for execution in the District Land and Housing Tribunal for Nzega which was registered as Misc. Land Application No. 44 of 2018.

Upon hearing of the application, the District Land and Housing Tribunal for Nzega ordered Musoma Maganga to vacate from the disputed land within 14 days from 27/05/2019.

Dissatisfied with the order of the District Land and Housing Tribunal, Msoma Maganga filed this instant appeal couched on four grounds of appeal, namely:

1. That, the learned trial Chairman erred in law and in fact to execute the so-called judgment of the Ward Tribunal for Miguwa while in fact there was no judgment capable of being executed as the respondent had no locus to file the land dispute at Miguwa Ward Tribunal and application for execution at the District Land and Housing Tribunal for Nzega claiming the land of her deceased father, Michael Mabula Nshimba, as she was not appointed as administratrix of her deceased father's estate by then.
2. That, the learned trial Chairman was to consider that the respondent having been appointed the administratrix of her deceased father's estate on 27/03/2016, had no locus standi to file the land dispute at Miguwa Ward Tribunal in 2005 claiming the land alleged to be the property of her late father who died on 21/09/1969 as the law cannot act

retrospectively. The learned trial Chairman was obliged to nullify the proceedings of Miguwa Ward Tribunal and order fresh retrial with competent parties.

3. That the application for execution filed by the respondent at the District Land and Housing Tribunal for Nzega was a non-starter and it cannot be executed as the same was filed against the deceased person (Sahani Maganga). It was his administrator who is the appellant herein who was to be sued.
4. That the application for execution filed by the respondent at the District Land and Housing Tribunal for Nzega was time barred.

When the appeal was called on for hearing, Msoma Maganga was unrepresented while Helena Mabula as administratrix to the estate of the late Michael Mabula Nshimba, enjoyed legal services of Mr. Kelvin Kayaga, learned advocate.

The appeal was canvassed by written submissions and the timeline set by the Court was complied with.

In support of the appeal, Msoma Maganga jointly submitted on the first and second grounds of appeal. He contended that it is a settled law that a person cannot sue or be sued on behalf of a deceased person without having letters of administration for that purpose.

He also contended that Form No. IV annexed to the Memorandum of Appeal, showed that on 27/3/2015 the respondent was appointed by Nyasa Primary Court as

administratrix of the estate of her late father, Michael Mabula Nshimba who died intestate on 21/09/1969.

He asserted that Land Case No. 01 of 2005 was filed by the respondent against the appellant's late father, Sahani Maganga, before she was appointed as administratrix of her deceased father's estate.

He moved the Court to uphold those two grounds of appeal and thus set aside the order in Misc. Application No. 44 of 2018.

On the third ground of appeal, Msoma Maganga submitted that Misc. Application No. 44 of 2018 was a non-starter and the same cannot be executed as it was filed against the deceased person, his late father.

Msoma Maganga argued that as per form No. IV annexed to the Memorandum of Appeal, his late father died on 23/1/2018 and he (the appellant) was appointed as administrator on 21/08/2018.

He contended that it was wrong for the respondent to sue Sahani Maganga, and thus moved this Court to invalidate orders emanating from those proceedings.

On the last ground of appeal, Msoma Maganga submitted that Misc. Application No. 44 of 2018 was unmaintainable as it was time-barred.

He submitted that the impugned judgment in Land Case No. 1/2005 at Miguwa Ward Tribunal was delivered on 27/11/2005 whereas the application for execution was filed in 2018 after an expiration of 13 years.

He further asserted that the limitation of time for execution of the judgment of the Court according to Item No. 20, Part III to the Schedule to the Law of Limitation Act, Cap 89 R.E 2019 is 12 years. On that ground, he urged this Court to nullify and set aside the order of the District Land and Housing Tribunal.

In reply, Mr. Kelvin Kayaga contended that the appellant did not appeal against the decision in Land Dispute No. 1/2005 but on the execution proceedings.

He cautioned that the Court or tribunal while seating in execution proceeding or the higher court while exercising its appellate jurisdiction arising out of execution proceedings cannot validly go on to disturb the merit of the original proceeding since the law provides a room to challenge the same on merit.

The learned counsel referred to the case of **HADIJA MSHINGO V. ABEID ATHMAN, LAND CASE APPEAL NO. 16/2018, HC AT TANGA (UNREPORTED)** Wherein the Court was of the view that powers of the administrator of the estate cannot operate retrospectively but far more importantly cannot operate against the sole legal heir of the estate.

He also referred to the case of **ABDALLAH SHAMTE V MUSSA (1972) HCD NO. 9** as noted at page 7 of the **HADIJA MSHINGO V. ABEID ATHUMAN** (supra). In that case the Court explained that:

“this Court was of the view that a presumption should be made to the effect that in the case of an African living in the village or rural areas the law applicable for the administration of his estate is customary law rather than statutory law” ,

The learned counsel contended that the suit land is in the village and the parties herein let alone their deceased fathers are still living in village customary life as per records of the tribunal, hence the suit land had already passed to the respondent when she filed the application, by virtue of customary law.

On the issue of time-barred, the learned counsel submitted that the same parties were busy in the District Land and Housing Tribunal prosecuting several appeals related to the same subject matter, Land Application No. 14/2015.

There were also Land Application No. 59/2017 and Misc. Land Appeal No. 13/2017 in the High Court. He asserted that such matters were covered by Section 21(1) and (2) of the Law of limitation Act, Cap 89 R.E 2002.

Lastly, the respondent's counsel propounded that the impugned application was well within time. He urged this Court to dismiss the appeal for lack of merits.

Having considered the parties' rival submissions the question for determination before this Court is whether the appeal is meritorious.

In conveniently determining this appeal, I propose to consolidate the first and second grounds of appeal.

It is trite law that to maintain any proceedings in a Court of Law, the party initiating such proceedings must demonstrate that he/she has the right or capacity to bring an action or to appear in a Court. This position was well re-stated in ***LUJUNA SHOBI BALONZI SENIOR V. REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI (1996) TLR, 203.***

Having examined the tribunal's records, it is clear that on 27/03/2015 Helena Mabula was appointed by Nyasa Primary Court as administratrix of the estate of the late Michael Mabula Nshimba who died intestate on 21/09/1969.

Land Dispute No.01 of 2005 was filed by Helena Mabula at the Miguwa Ward Tribunal on 27/11/2005. That means, Helena Mabula filed Land Dispute No. 01 of 2005 about ten (10) years before she was duly appointed as administratrix of the deceased's estate.

The evidence on the record show that Helena Mabula identified herself before the tribunal as daughter of the late Michael Mabula Nshimba who was said to be owner of the disputed piece of land.

At such point, it can be said that at the time of instituting Land Dispute No. 1/2005 at Miguwa Ward Tribunal, Helena Mabula was neither administratrix nor executor of the estate of her late father, Michael Mabula Nshimba, and therefore lacked locus standi.

It is a cardinal principle of law that an appointed administratrix or executor is a qualified person at law to deal with the property of the deceased according to the wishes of the deceased and or the law.

That position was restated in **MOHAMED HASSAN V. MAYASE MZEE & MWANAHAWA MZEE 1994 TLR 225 CA** wherein it was observed that,

“Administrator is the person who has the mandate to deal with the deceased's properties”

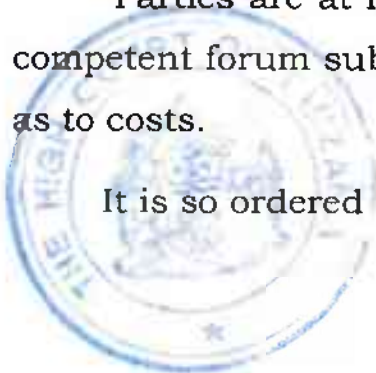
Lack of Locus standi alone may suffice as a ground to dismiss the application by the respondent, Helena Mabula. But as argued by the appellant, the tribunals' Chairman was obliged to struck out Miscellaneous Application No. 44 of 2018 upon finding that it originated from void proceedings. Instead, the Hon. Chairman proceeded to determine the application which was bad at law and thus occasioned a miscarriage of justice.

Under Section 43 (1), (b) of the **LAND DISPUTES COURT ACT CAP. 216, R.E. 2019**, this Court is empowered to revise the proceedings and make such order as it thinks fit in the Course of hearing the appeal or revision.

Exercising those powers, I hereby quash and set aside the whole judgment and order of the trial Ward tribunal and of the District Land and Housing Tribunal for Tabora in Miscellaneous Land Application No. 44/2018.

Parties are at liberty to institute fresh proceedings before a competent forum subject to the law of limitation. I make no order as to costs.

It is so ordered



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AMOUR S. KHAMIS
JUDGE
26/08/2022

COURT

Judgement delivered in presence of the appellant in absence of the respondent in the open Court.

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G.P. NGAEJE
AG. DEPUTY REGISTRAR
26/08/2022

COURT

Right of Appeal fully Explained.



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G.P. NGAEJE

AG. DEPUTY REGISTRAR

26/08/2022