

**IN THE HIGH COURT OF TANZANIA
THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL No. 86 OF 2022

(Originating from Application No.47 of 2020 from the District Land and Housing Tribunal for Muleba at Muleba)

PAULINA REVELIAN APPELLANT

VERSUS

1. ARISTIDES REVELIAN

2. ASTED CHRISOSTOM RESPONDENTS

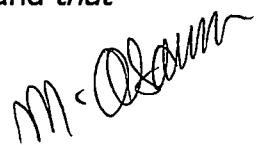
JUDGMENT

06th June & 21st July 2023

OTARU, J.:

The Appellant **Paulina Revelian** sued her son **Aristides Revelian** and her grand daughter **Asted Chrisostom** in the District Land and Housing Tribunal for Muleba at Muleba for harvesting bananas from her shamba situated at Kiga Hamlet, in Rwagati Village within Kashasha Ward in Muleba District, without her permission. She prayed for declaration order that she is the lawful owner of the land in dispute, permanent order restraining Respondents and their agents to enter suitland in dispute, damages and costs. The case was dismissed for want of merits, hence this Appeal.

The Appellant filed this Appeal basing on two grounds; *that the trial tribunal vehemently erred in law and fact by not considering the evidence of the Appellant which was supported by exhibits P1 and P2 respectively and that*



the trial tribunal erred in law and fact to dismiss the case for want of merit while there is concrete evidence of redemption of the suit land by the Appellant.

None of the parties had legal representation as each appeared in person and argued their case orally.

It was the Appellant's case that she and her late husband Revelian Mtoizi, owned some land within Rwagati Village. She continued owning that land even after her husband died in 1969. In 1988 the land was divided amongst their three children. One of the children was Chrisostom Revelian, the 2nd Respondent's father. That he mortgage his land to secure loans from Cecilia Elias and Laurensia Victory among others. That the Appellant repaid the loans after his death in 2007. This claim is also supported by Adolf Revelian (PW2). He delivered the money 360,000/= and 15,000/= physically to Laurensia. As a result, the Appellant claims that the land is hers as she paid back the loan taken by her son, such that the Respondents do not have any right over it.

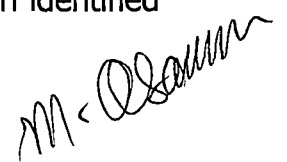
The Respondents on the other side claim that the land in dispute belonged to the 2nd Respondent's father. It should therefore be inherited by the 2nd Respondent. The 1st Respondent is clear that he does not claim any right over the land in question he just assists the 2nd Respondent get her rights.

Having heard the rival parties' submissions for and against the Appeal, I have also gone through the case record as well as the relevant laws. The question for determination before this court is whether the Appeal has merits.

M. Osumu

The Appellant relies on exhibits P1 and P2 admitted at the trial. Exhibit P1 are collective documents in respect of the Decision of the Ward Tribunal of Kashasha in Application No. 17 of 2008 between one Laurencia Victori Rwagati and the present Appellant, whereas exhibit P2 are collective documents in respect of the Decision of the Ward Tribunal of Kashasha in Application No. 18 of 2008 between one Cecilia Elias and the present Appellant. Both matters were based on mortgage of the land in dispute. In Application No. 17/2008 the Appellant won the case. The tribunal found the claimant to have no claim against the Appellant as she had been fully repaid her money. She was thus ordered to release the land she held as security. The Appellant was handed over the land in dispute on 30th July 2010 as per the document titled '*Utakelezaji wa Amri ya Mahakama ya Ardhi na Nyumba Kashasha Kesi Na. 97/2009 na Na. 17/2008*'. Concerning Application No. 18/2008, the tribunal held that loan had not been fully repaid thus the Appellant was advised to repay the remainder of the loan if she was still interested in re-possessing the land in dispute.

The record indicates that Laurencia Victori appealed to the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No.32 of 2010 which reversed the Decision of the Ward Tribunal and ordered the Appellant to repay the loan or else surrender the land in dispute to the said Laurencia. Aggrieved, the Appellant appealed to the High Court through Land Case Appeal No. 28 of 2011. The Appeal was allowed. Both decisions below were nullified for technical grounds. The Court also noted that the land in dispute having been identified

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to be under ownership of the late Chrisostom, the Appellant had no '*locus standi*' for she was not administratrix of the estate of the late Chrisostom.

It is trite law that in order to sue or being sued, a party must have a legal right to do so, this legal right is known as *locus standi*. In the case of **Lujuna Shubi Ballonzi v. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203 (HC) it was held that;-

'In order to maintain proceedings successfully, a plaintiff or an applicant must show that not only the court has power to determine the issue, but also he is entitled to bring the matter before the court.'

The court further stated that:-

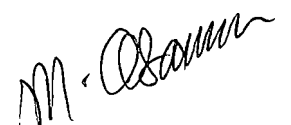
'Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with'.
[emphasis mine].

Having so stated, the land in dispute was part of the land owned jointly by the Appellant and her late husband Revelian Mtoizi. There is no record that the Appellant's ownership has been disputed when her husband died in 1969. She continued owning and using the land in dispute without any controversy. Controversies begun after the land was handed over to Chrisostom as part of inheritance from his father, particularly when he mortgaged that land to Laurencia Victori and Cecilia Elias. According to the record, the late Chrisostom

and his siblings were each given a portion of their father's land in 1988 without there being any probate or administration proceedings. In 2020 one Magdalena Revelian, the 1st Respondent's sister applied for letters of administration of the estate of their late father in Probate Cause No. 4 of 2020 in the Primary Court of Kashasha at Muleba. She was met with objection from the 1st Respondent who stated that each heir already knew his portion of inheritance thus there was no need of appointing any administrators to administer the estate. The court upheld the objection. It is settled as per the case of **Mgeni Seifu v Mohamed Yahaya Khalfani** Civil Application No. 1 of 2009 (CAT Dsm) (unreported), that *'it is only a probate and administration court which can empower an administrator to transfer the deceased person's property'*.

From the above, it is evident that no ownership of the land in dispute has ever passed from the late Revelian Mtoizi to either the late Chrisostom or any of his siblings. The property had been originally owned by the Appellant with her late husband Revelian Mtoizi when he was alive, and the Appellant alone after his death. I see no other way but declare the ownership of the land in dispute to be under the Appellant particularly as the land had been redeemed from securing the mortgages.

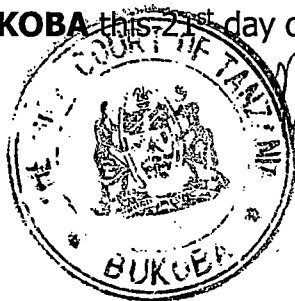
Consequently, this appeal is meritorious and is allowed on the ground stated above. The proceedings, Judgment and Decree of the District Land and Housing Tribunal for Muleba at Muleba are hereby quashed and set aside. The Appellant is declared to be the lawful owner of the shamba situated at Kiga

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Hamlet in Rwagati Village, Muleba. An order is also given restraining the Respondents and their agents permanently from entering the land in dispute. No damages have been proved, thus no such order is given. Basing on the nature of the claim and the relationship of the parties, no order as to costs is also given.

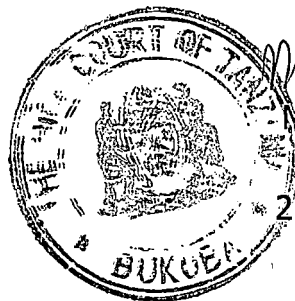
It is so ordered.

DATED at **BUKOKA** this 21st day of July 2023.



M. Otaru
M.P. Otaru
Judge

Court: Judgment is delivered in the presence of Mr. J.S. Rweyemamu, learned senior Advocate for the Appellant and both Respondents in person.



M. Otaru
M.P. Otaru
Judge
21/07/2023