

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TANGA DISTRICT REGISTRY)  
AT TANGA**

**LAND APPEAL NO. 21 OF 2022**

(Arising from LAND APPLICATION NO. 13 OF 2018, THE DISTRICT LAND AND HOUSING TRIBUNAL OF LUSHOTO)

**HASSANI PONDA-----1<sup>ST</sup> APPELLANT**

**RASHIDI PONDA-----2<sup>ND</sup> APPELLANT**

***VERSUS***

**KUNDAEL SHEMELA NKHENDA-----RESPONDENT**  
(ADMINISTRATOR AVUNILWA TITU NKHENDA)

**JUDGEMENT**

**Mansoor, J:**

**Date of JUDGEMENT- 13<sup>TH</sup> MARCH 2023**

The land in dispute is situating at Mabwanya Area and the land situate near Mgwashi Market, in Mgwashi Ward within Lushoto District in Tanga Region. The estimated value of the suit property was THz 6,000,000. The size of the land in dispute was not shown in the Application Form No. 1 filed at the District Land and Housing Tribunal, it was not shown in the proceedings, and not shown in the Judgement.

Kundael Shemmela Nkhenda, the respondent herein, filed a suit at the District Land and Housing Tribunal for Lushoto claiming for the



estate of the Late Avunilwa Titu Nkhenda. Kundael Shemmela Nkhenda was clothed with powers to sue for the estate of Avunilwa Titu Nkhenda as he was granted with Letters of Administration to administer the Estate of the Late Avunilwa Titu Nkhenda by Soni Primary Court through Mirathi No. 3 of 2018. The Late Avunilwa Titu Nkhenda passed away on 7 September 1979 but the respondent applied for letters of administration in 2018, 39 years after the death of the deceased. This raises an eye brow. Although there is no time prescribed for applying for letters of administration or probate, but Rule 31 of the Probate Rules provides that where a probate or administration is for the first time applied for after the expiration of three years from the death of the deceased, the petition should contain a statement explaining the delay, and if the probate court is satisfied that the delay was not inordinate or due to any insufficient cause, the letters of administration or probate would not be granted.

The period will start when the applicant has the right or become entitled to seek a letter of administration from the court. The appellant had accrued the right to administer property of the deceased as his legal heir on the death of the deceased. The

deceased died on 7<sup>th</sup> September, 1979, the period to apply for letters of administration expired three years after the death of the deceased and that would have been in the year 1981. In the absence of the explanation given to Soni Primary Court, which explanation and the decision of the probate court was not availed to this court for stating that there was indeed an explanation given to the probate court which explanation satisfied the probate court to grant the letters of administration 39 years after the death of the deceased, the application for granting a letter of administration was time barred and the Petitioner ought to have applied for extension of time through Rule 31 of the Probate Rules and the Court would have powers to condone the delay if the petitioner/respondent herein had some valid grounds for petitioning for letters of administration outside the prescribed time. If the court was satisfied that the petitioner had a genuine grounds then it would have extended the period of limitation and admit the petition filed out of time for granting letter of administration. Since the respondent herein applied for the letters of administration 39 years after the death of the deceased, the court which granted him i.e. Kundael Shemela



Nkhenda was not vested with jurisdiction to grant the letters of administration to Kundaël Shemela Nkhenda since the petition for letters of administration was barred by limitations. Thenceforth, Kundaël Shemela Nkhenda, the respondent herein had no locus to sue for the estate of the Late Avunilwa Titu Nkhenda.

Again, I read through the Application Form which was filed by the respondent before the District Land and Housing Tribunal for Lushoto. The Applicant, now the respondent, did not show exactly the size of the land in dispute. From the perusal of the Application filed before the DLHT, it is manifest that the plaintiff/Applicant had prayed for adjudication of his title over the suit land. He did not give any description of the land, and so it is not known as to how many acres of land he wanted the Court to adjudicate upon.

It is trite law and as provided in Order VII Rule 3 of the Civil Procedure Act, Cap 33 R: E 2002, where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by a title number under the Land Registration Act, the

plaint shall specify such boundaries or title number. Order 20, Rule 9, CPC provides where the subject matter of the suit is immovable property, the decree shall contain the description of such property sufficient to identify the same and where such property can be identified by boundaries or by a title number under the Land Registration Act, the Decree shall specify such boundaries or title numbers. The land was not properly described in the Application Form and the decree and thus making the case of the plaintiff not proved.

It is the duty of the plaintiff to prove his case on the required standards. This is the requirements of the law that who allege must prove. Section 110 of the Evidence Act, Cap 6 R: E 2009 provides as follows:

"Whoever desires any court to give judgment as to any legal right or liability on the existence of facts which he asserts must prove that those facts exist."

Having pointed out the short falls of the case, and since I declared that the respondent was not vested with powers to sue or be sued for the estate of the Late Avunilwa Titu Nkhenda, as well as the

failure of the applicant to describe the land in dispute, the appeal is meritorious and it is hereby allowed. The proceedings, Judgment and Decree passed by the District Land and Housing Tribunal for Lushoto in Land Application No. 13 of 2018 is quashed and set aside.

A party who shall have locus to sue for the estate of the Late Avunilwa Titu Nkhenda shall do so, if he wishes to pursue the matter, subject to limitations and jurisdiction. Appeal allowed with costs.

DATED at TANGA this 13<sup>TH</sup> day of MARCH 2023



  
**L. MANSOOR**

**JUDGE,**

**13<sup>TH</sup> MARCH 2023**