

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND APPEAL NO.88 OF 2022

(Originating from Land Appeal No. 48/2021 at District Land and Housing Tribunal of Bukoba, Original civil Case No. 10/2021 at Bugandika Ward Tribunal)

JESCA NYONYI.....APPELLANT

VERSUS

THEONESTINA NYONYI..... RESPONDENT

JUDGMENT

Date of Judgment: 26.05.2023
A.Y. MWENDA, J

This is as second Appeal originating from Land Appeal No. 48 of 2021 the Before the District Land and Housing Tribunal of Bukoba at Bukoba. In that appeal the present appellant was dissatisfied with the decision Bugandika Ward Tribunal in Civil Case No. 10/2021 which ruled out that the respondent sold the land in dispute without the consent of the appellant but ordered the purchaser, who had by that time developed the land by planting pine trees, to occupy the land for seven (7) years pending maturity and the harvest of the said trees.

Having heard the submissions from the parties, the District Land and Housing Tribunal overruled the decision of the Ward Tribunal on two grounds. One that the Appellant had no locus Standi to sue for lack of production of a letter of administration of estate and two, that the consent from her relatives she purported she was appearing on their behalf was not availed.

In the present appeal, the counsel for the appellant crafted one ground which reads as follows:

"That, the subordinate tribunal erred in Law. The Decree entered contradicts the findings of declaring the respondent as the judgment debtor."

At the hearing of the present appeal, the Appellant was represented by Mr. Eliphaz Benges, learned Counsel whilst the Respondent marshalled the services from Mr. Ibrahim Muswadik, learned counsel.

While submitting in support of the ground of appeal, Mr. Benges said that after the Ward Tribunal have ruled out that the respondent sold the land in dispute illegally, then it was not proper to order the purchaser to keep using the land in question for seven (7) years pending the harvest of the trees he had planted. According to Mr. Benges, such Decree is not executable, and by allowing the purchaser to use the land for seven (7) years pending the harvest of the trees it, impliedly, denies the appellant her rights to enjoy the use of the land. The learned counsel submitted further that before the District Land and Housing Tribunal, the issue of locus standi surfaced alleging the appellant had none while she (the appellant, being family member) had the right to do so as she had interest in the suit land. To support his argument, he cited the case of SAMSON MWAMBENE V. EDSON JAMES MWANYIGILI [2001] TLR at Page 4 and JOHN SHIGELA & TWO OTHERS V. BEATUS G CHANIKA, LAND CASE APPEAL NO. 13 OF 2009. On top of that, the learned Counsel for the appellant averred that the appellant inherited the

land in dispute from her late mother before her death, inheritance which the respondent disputes contrary to Rule 179 of GN. 219/1963 & Rule 38 of GN 436/1963. To wind up, he prayed the present appeal to be allowed.

Responding to the submissions by the learned Counsel for the Appellant, Mr. Ibrahim Muswadik, learned Counsel for the respondent commenced by praying the court to adopt the reply to the petition of appeal as part to his oral submission.

The learned Counsel submitted that the records are clear that the present matter emanates from a dispute pegged on inheritance. He referred to page one of the trial tribunal's record which reads as follow:

*"Kujimilikisha na kuuza Shamba la urithi wa
mama yetu mama Helena Nyonyi bila ridhaa
yetu."*

From the said quote, the learned Counsel for the respondent, said that the claimant (now the appellant) was claiming inheritance on behalf of her relatives but she failed to tender a power of attorney from the said relatives. On top of that he said letter or the letters of Administration of the Estate (i.e. Form No IV, V or VI) were not produced. The learned Counsel stressed further that in Inheritance Law, the letter of administration is crucial. To support his argument, he cited the case of IBRAHIM KUSAGA V EMMANUEL MWETA [1986] TLR 26, KAYENZA ANTHONY V. RENATUS FAIDA, MISC. APPLICATION NO. 11/2009, HC-BUKOBA; FELIX CONSTANTINE V. GEOFFREY MODEST, LAND APPEAL NO. 09/2010 at pg7&8; SHAABAN MUSSA V. MWAIJIRA HASSAN & ANOTHER, MISC. LAND CASE

APPLICATION NO. 31/2015 and also EDWIN KAZINJA V ELIUD EUSTACE NYONYI, LAND APPEAL NO. 86 OF 2022 at page 4&5.

The learned counsel for the respondent also submitted that the appellant allegations that she inherited the land in dispute before her mother's death is an afterthought as the said allegation was never raised at the lower levels.

Regarding the cases cited by Mr. Bengesi to justify filing of suit without letter of administration or power of attorney, Mr. Muswadick was of the view that the said cases are distinguishable to circumstances of this matter. The reasons advanced were that in the said cases, the claimants were the sole heirs. The learned counsel stressed that before the Ward Tribunal, the Appellant claimed she filed the case on behalf of her relatives who were not mentioned. The learned counsel showed his concern in that if the appellant is declared the rightful owner, then there is a likelihood of denying her relatives their right to the said property. He then prayed this court to advise the appellant to refer this matter to its special forum which is under administration of estates. He then concluded and prayed the present appeal to be dismissed with costs.

In rejoinder, the learned counsel for the appellant submitted that the learned counsel for the respondent failed to respond to his submission. He said that his main argument was that the Ward tribunal's decree is not executable, and the judgment of the district Land and Housing Tribunal affected the appellant's right of title to the land. According to him, the position/principles in cases he cited in

his submission in chief were not responded to. He then concluded by reiterating to his previous prayer to have the present appeal allowed.

That being the summary of the submissions from the Learned Counsel's for the parties, the issue is whether the present appeal is meritorious.

As I have summarized earlier, the counsel for the appellant is beseeching this court to allow this appeal on the ground that the decree entered by the trial tribunal contradicts the findings of declaring the respondent as the judgment debtor.

In order to be more focused, this court found it pertinent to briefly point out the background of the matter. Before the Ward tribunal, the appellant who alleged to appear on behalf of her relatives, filed a suit against the respondent for unlawful occupation and sale/disposal of the land inherited from their deceased mother, without their (her) approval. The records reveal that the respondent sold the said land and the purchaser planted pine trees. Having analyzed the evidence before it, the Ward Tribunal adjudged that the respondent wrongfully disposed/sold the land in dispute. The appellant, on behalf of her relatives, was then declared the decree holder but the purchaser was, since he developed the land by planting pine trees, allowed to remain in occupation of the land for seven (7) years until the harvest of the planted trees.

In the present appeal, the appellant is challenging the ward tribunal's findings in that it is not executable and it denies the appellant the right to use the land. He then prayed this court to order the respondent to vacate from the suit Land. I have put the learned Counsel's ground of appeal and the argument there to under

scrutiny and with much respect, I failed to see merits on them. This is so because, at this stage, following the judgment of the District Land and Housing Tribunal which overruled the decision of the Ward Tribunal, then the discussion on executability of the Ward tribunal's decree is closed. What the appellant ought to have focused would at this stage, be on the legality of the first Appellate tribunal's findings which overruled the decision of the ward tribunal.

Even if the present appeal would have challenged the first appellate tribunal's findings (which is not the case), the end result would not be different. This is so because, at the trial tribunal, the appellant alleged she instituted the said suit on behalf of her relatives which she did not mention their names. She also alleged the land in question was theirs as they inherited it from their late mother. On her part, the respondent alleged that she acquired the said land from her late mother. By looking at the evidence of both parties, it is clear that there are competing claims of ownership over the estates of the deceased mentioned above. That being the case, as it was rightly submitted by Mr. Muswadik, the appellant ought to have firstly referred her grievances before the special forum which is the probate and administration court and not before land tribunals. This is a legal position which was emphasized in the case of MGENI SEIF V. MOHAMED YAHAYA KHALFAN, CIVIL APPLICATION NO. 1 OF 2009, CAT (Unreported) where the Court among other things stated as follows:

"As we have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership..."

Again, in the same case the court went further and held:

"As we have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide ownership. Our decision to intervene by way of revision is fortified by recent decision of the Court directing what should be done where beneficiaries to an estate of the deceased apply for letter of administration in two different Courts."

Even if the lower tribunals were proper forum to entertain the matter at hand, still the appellant's failure to produce a letter of administration or a power of attorney from her purported relatives left her with no locus standi to sue.

On that basis, this court finds the present appeal unmerited and as such it is dismissed with cost.

Right of appeal fully explained.

It is so ordered.


A.Y. MWENDA

JUDGE

26.05.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Ibrahimu Muswadik learned counsel for the Respondent and in the present of Ms. Jesca Nyonyi the Appellant


A.Y. Mwenda

Judge

26.05.2023

