

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO. 66 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for
Tarime at Tarime in Land Appeal No. 14 of 2020)*

MWITA MUNIKOAPPELLANT

VERSUS

CHACHA MUNIKO.....RESPONDENT

JUDGMENT

A.A. MBAGWA, J.:

This is a second appeal from the District Land and Housing Tribunal (DLHT) sitting as the first appellate Tribunal. The appellant Mwita Mniko instituted a Land Case No. 99 of 2019 in the Ward Tribunal for Kemambo against the respondent. The appellant was claiming that the respondent trespassed into his land, dumped waste and started cultivation therein. In the end, the trial Tribunal adjudged in favour of the respondent. Aggrieved, the appellant appealed to the District Land and Housing Tribunal for Tarime at Tarime via Land Appeal No. 14 of 2020. However, his appeal was unsuccessful as the appellate Tribunal upheld the decision of the trial Ward Tribunal.

According to the facts as gleaned from the record of appeal, the dispute between parties boils down on the ownership of the landed property. While the respondent alleged that the land in dispute belongs to him and that he has been cultivating and living within it for seventeen years, the appellant contended that the respondent invaded and dumped waste materials on the disputed land which in fact belongs to him.

Having heard the parties, the trial Tribunal declared the respondent a lawful owner of the suit premises as majority votes of the members of Ward Tribunal voted in favour of him. The said decision did not amuse the appellant. He thus appealed to the District Land and Housing Tribunal of Tarime. His memorandum of appeal to the DHLT contained six grounds. The learned Chairman heard the submissions from the parties and finally composed the judgment in which he upheld the decision of the Ward Tribunal thereby dismissing the appeal with costs.

Still dissatisfied, the appellant has come to this Court to seek to assail the two lower Tribunals' decisions. His petition of appeal before this Court contained two grounds namely:

- 1. The appellate Tribunal grossly erred in law and facts for failure to consider that the Respondent did not tell the tribunal who gave*

him/Respondent the suit land after the death of his father in 2005 as his father demised intestate.

2. The appellate Tribunal grossly misdirects itself on the issue of adverse possession as the same is not applicable as per the nature of this case.

When the appeal was called on for hearing, both parties appeared in person (unrepresented). The appellant, being a layperson, was so brief in his submission. He simply adopted the grounds of appeal and prayed the Court to consider them and finally allow the appeal.

Similarly, the respondent did not have much to tell the Court. He opposed the appeal and fully supported the decisions of the lower courts to wit, DHLT and the trial Ward Tribunal which decided in his favour.

Upon a thorough perusal of the record, I have been satisfied that the first ground of appeal is sufficient to dispose of the appeal. In determining this ground of appeal, I have been compelled to keenly re appraise the evidence of the trial Tribunal. Both appellant's witnesses namely, Mwita Muniko and his son Wegesa Mwita Muniko stated that the appellant sold the land to the respondent in two occasions. They said that the first sale was by exchange with four goats in 2003 and in 2017 he sold him another parcel of land at the purchase price of TZS 1,000,000/=. They claimed, however, that the

respondent had encroached the appellant's piece of land which is different from the one he sold to the respondent. The appellant further stated that he obtained the land in dispute (into which the respondent had allegedly trespassed) from his late father Muniko Marande but he did not clarify how he got it from his late father.

On the contrary, the respondent Chacha Muniko and Chacha Kizota Zacharia contended that the land in dispute belongs to their late father Muniko Marande. According to the record, it appears that the appellant and respondent are siblings of different mothers. Chacha Kizota Zacharia testified that he is a secretary of the clan and that upon death of the late Muniko Marande, the clan customarily appointed Mzee Nyahiri administrator of the estates of the late Muniko Marande. He clarified that the land in dispute has not been distributed to anybody. The evidence of Chacha Zacharia was not controverted as the appellant did not even cross examine him on these important facts. It is a settled position of law that a matter which is not cross examined is taken to have been admitted. See the cases of **Nyerere Nyague vs the Republic**, Criminal Appeal No. 67 of 2010, **Bomu Mohamedi vs Hamisi Amiri**, Civil Appeal No. 99 of 2018, CAT at Tanga

and **Athanas Ngomai vs the Republic**, Criminal Appeal No. 57 of 2018, CAT at Dar es Salaam.

From the foregoing analysis, it is my findings that the two lower court misapprehended the evidence. Had they properly analysed the evidence adduced before the trial Tribunal, they would have arrived at the findings that neither the appellant nor respondent is a lawful owner of the suit premises. The evidence is cogent that the land in dispute is the property of their father, the late Muniko Marande.

It is a trite law that only administrator of the deceased's estate is legally capable of suing or being sued on behalf of the deceased. In this case neither party is appointed administrator of the estates of the late Muniko Marande as such, they had no locus standi to institute the proceedings from which this appeal emanates. in the case of **OMARY YUSUPH (Legal Representative of the late YUSUPH HAJI vs ALBERT MUNUO**, Civil Appeal No. 12 of 2018, CAT at Dar es Salaam, the Court held;

'Apart from fully subscribing to the cited decision, it is our considered view that the existence of legal rights is an indispensable pre-requisite of initiating any proceedings in a court of law. In this particular case, since Yusuph Haji had passed away, according to the law it is only the

lawful appointed legal representative of the deceased who can sue or be sued for or on behalf of the deceased which is stipulated under the provisions of section 71 of the Probate and Administration Act [CAP 352 R.E.2002]’

In view of the above stated position of law, it goes without saying that the appellant, Mwita Muniko who is not an appointed administrator of the estates of the late Muniko Marande had not locus standi to institute the suit hence the proceedings before the lower Tribunals were incompetent. Consequently, I nullify the proceedings and the resultant judgments before the two Tribunals. Whoever is interested to sue in respect of the land in dispute should first obtain a letter of administration of the estates of the late Muniko Marande.

This appeal is therefore allowed in the matter indicated above. Each party should bear his own costs.

It is so ordered.

The right of appeal is fully explained.




A.A. Mbagwa

JUDGE

21/06/2023