

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB - REGISTRY
AT MBEYA
LAND APPEAL NO. 28624 OF 2023

(Originating from the District Land and Housing Tribunal for Songwe at Mbozi, Land Case No. 47 of 2023 in)

NASANI SIMWANZA.....APPELLANT

VERSUS

EUGANIA MAIKO RINGO.....RESPONDENT

JUDGMENT

Date: 8 April 2024 and 27 May 2024

SINDA, J.:

This appeal arises from the judgment of the District Land and Housing Tribunal of Songwe at Mbozi (the **DLHT**) in land case No. 47 of 2023. In brief, the respondent instituted an application at the DLHT against the appellant and six (6) others who did not appear in this appeal. It was alleged by the respondent that she is a lawful owner of 18 acres situated at Isangu Street, London hamlet, Hisanga ward, Mbozi District in Songwe Region (the **Disputed Land**). She bought the Disputed Land with her late husband, Joel Jonas Ringo, in 1970 from one Laston Hepelemele

Mwamlima. In 1972, they left the Disputed Land in the care of Lucas Simwanza. She stated that in 2023, the appellant and six (6) others invaded the Disputed Land and claimed to be the lawful owners of the Disputed Land. They claimed that they were given the Disputed Land by their late father, Lucas Semwanza. They claimed to have used it for a long time. The DLHT decided in favour of the respondent.

Against that decision, the appellant filed the petition of appeal with six (6) grounds of appeal as follows:

1. That, the trial chairman tribunal erred in both law and fact by entertaining the land case and issued judgment favouring the respondent without regard to the effects of the locus in quo conducted by the tribunal.
2. That, the trial chairman tribunal erred in law and fact by issuing judgment and decree which favour the respondent based on weak evidence.
3. That, the trial chairman erred both in law and fact by not considering and determining the evidence adduced by the appellant during the trial.

4. The trial tribunal chairman erred in law and fact for failing to analyze effectively the evidence adduced by the parties during the trial, which resulted in a favouring respondent without merit.
5. The trial tribunal chairman erred in law and fact for not recording the essential explanation of the appellant and his witness, which resulted in a reduction of some words in the judgment recording.
6. That the trial tribunal chairman erred in law and fact for disregarding the adverse possessor of the appellant.

At the hearing, the appellant and the respondent were unrepresented. The appeal was argued by way of written submission.

The appellant argued grounds one and four of the petition of appeal together, namely that parties are bound by their pleadings. He referred to the Case of ***Makori Wassaga vs. Mwanakombo & Another***, 1987 TLR 88 and ***Barclays Bank T. Ltd vs. Jacob Muro***, Civil Appeal No. 357 of 2019 (Tanzlii) to support his argument.

He submitted that during the trial at the DLHT, the application centred on the respondent's claim on the Disputed Land of 18 acres located at Isnaga Street, London Hamlets, in Hasanga ward within Mbozi District was disputed without the respondent disclosing the location and description of the Disputed Land as indicated in paragraph 6 (a) (i) of the application.

That is contrary to the requirement of the law as provided under Regulation 3 (2) (b) of the Land Disputes Court (The District and Housing Tribunal) Regulations, GN 174 of 2003 (the **Land Disputes Court Regulations**). He referred to the cases of ***Daniel D. Kaluga vs. Masaka Ibeho & Four Others***, Land Appeal No. 26 of 2015, ***Aron Bimbona vs. Alex Kamihanda***, Misc Land Case Appeal No. 63 of 2018 and ***Posian Kadugu vs. Muganyizi Samwel***, Misc Land Case No. 41 of 2018.

He argued that the description of the land provided under paragraph 6 (a) (i) of the application was insufficient for the determination of the dispute. He stated that in the case of surveyed land, mentioning the plot and block numbers suffice the purpose. He further stated that in the case of unsurveyed land, the specification of boundaries and or permanent features surrounding the land in dispute are important particulars for the purposes of identifying the land.

He further submitted that the parties decided to conduct the locus in quo to solve the dispute. The findings supported the appellant's argument that the Disputed Land is 8 acres. He added that the respondent failed to show the DLHT during locus in quo where the 18 acres were located. He argued that the DLHT to base its decision on its findings of locus in quo.

Turning to grounds two and three, the appellant contended that at the DLHT, the respondent claimed to acquire the Disputed Land with her husband and tendered before the DLHT a sale agreement believed to be testified by the District Magistrate of Vwawa. He argued that the document tendered by the respondent was not a valid document. It was faint and not readable. It did not disclose the name of the District Magistrate who testified it. The sale agreement had no seal of the court, names of the witnesses and their signatures. The sale agreement did not have the description or particulars of the Disputed Land.

The appellant further argued that it is undisputed that the respondent's husband, Joel Jonas Ringo, and Lucas Simwanza served as police officers at Vwawa, Mbozi. He added that no document was tendered by the respondent proving that the deceased, Lucas Simwanza, was employed by the respondent's husband, a fellow police officer, to supervise the Disputed Land.

The appellant argued that at the DLHT, the children of Lucas Simwanza testified that the Disputed Land was distributed to them before the death of their late father. However, the DLHT did not consider the evidence adduced by the appellant.

In relation to the fifth ground of appeal. The appellant contended that the parties to the case who were summoned as respondents in the DLHT were seven (7) according to the proceedings, but the copy of the judgement and decree appeared to name only one respondent. He further stated that the respondent did not tender letters of appointment as administrator of the estate of her husband, the late Joel Jonas Ringo, for locus stand to institute the case at the DLHT.

Turning to the sixth ground of appeal, he submitted that the late Lucas Simwanza had occupied the Disputed Land more than 15 years before the land was distributed to his children. The appellant and the children of the late Lucas Simwanza have used the Disputed Land for more than 33 years without being disturbed. He stated that the respondent was time-barred from instituting the case at the DLHT as per section 9 (1) and Item 22 of the Schedule to the Law of Limitation Act, Cap 89. He stated that the time to recovery of land must be instituted within 12 years.

In reply to the submission, the respondent argued collectively to the first and fourth grounds that the differences were due to the measurement methodology used. That is, prior to the DLHT intervention, the purchaser and buyer used feet to measure the farm, and during the DLHT intervention, they used GPS for measuring. It was discovered that the

Disputed Land is only eight (8) acres out of eighteen (18) acres claimed by the respondent. She argued that she proved her case and tendered the sale agreement between her husband and Laston Mwamlima. She added the claim that the sale agreement was fake and that the invalid document was an afterthought.

Regarding the fifth ground, the respondent argued that the appellant introduced new issues of probate that ought to be dealt with in a separate application.

He further argued that the assertion that the respondents who were summoned before the DLHT were seven and the judgement and decree bear the name of one respondent does not invalidate the merits of the judgement. They are clerical errors that are curable. No rejoinder was filed.

I have gone through the records, grounds of appeal and submissions by the parties.

I will start with the fifth ground of appeal. The appellant raised the point of law that the records do not show that the respondent tendered a letter appointing her to be an administrator of the estate of her late husband, Joel Jonas Ringo, for locus stand to institute the case at the DLHT.

In reply, the respondent averred that this is a new ground and ought to be dealt with in a separate application. To cement her argument, she referred to section 51 of the Land Dispute Courts Act, Cap 216 R.E 2019 and section 73 of the Civil Procedure Code, Cap 33, R.E 2022.

It is a settled principle of law that a legal point may be raised at any time, even at the appeal stage. This position was stated in various cases, including ***Ms. Fida Hussein & Company Limited vs. Tanzania Harbors Authority***, Civil Appeal No. 60 of 1999 (unreported). On that account, the appellant is justified in raising the same at this stage.

Following the point of law raised by the appellant in his submission, the question is whether the respondent has the locus to institute this case.

The law on locus standi is very clear and has been defined in the famous case of ***Lujuna Shubi Balonzi versus Registered Trustees of Chama cha Mapinduzi*** [1996] TLR, 203, 208 as: -

*"A Principle governed by common law whereby in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has the power to determine the issue but also that **he is entitled to bring the matter before the court**".*

Also, it is well known that, a right to matrimonial properties which is in one spouse's name belongs to that party until when it is proved that the

parties either intended to have community ownership of the properties or the other spouse proves his/her contribution in the acquisition of the property concerned. Therefore, when a spouse dies, the surviving party cannot sue in a normal civil court or on matrimonial rights for the determination of his/her share in the property on the grounds of contribution in its acquisition. This position was stated in the case of **Mr. Anjum Vicar Saleem Abdi v. Mrs. Naseem Akhtar Zangie**, Civil Appeal No. 73 of 2003, (CAT at Arusha (unreported)) and **Leticia Mtani Ihonde vs. Adventina Valentina Masonyi**, Civil Appeal no. 521 of 2021, (CAT at Musoma (unreported)).

In **Mr. Anjum Vicar Saleem Abdi (Supra)**, the wife sued the son on a normal suit for the peaceful enjoyment of the matrimonial home following her husband's demise. The Court of Appeal held that the remedy is available in the probate court through the administration of the deceased estate.

In this case at hand, during the trial, the respondent only stated that they bought the Disputed Land together with her late husband, Joel Jonas Ringo. She tendered a sale agreement, which was admitted as exhibit PE1. I have gone through that sale agreement and find that only one name, Joel s/o Jonas Ringo, appeared as a buyer of the Disputed Land.

In that regard, it is my opinion that the Disputed Land belongs to Joel Ringo. Further, as per evidence tendered by the respondent, her husband, Joel Ringo, has already passed away.

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 stated that

*"...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...."***

In this case, the respondent filed the application in her own name and not in the capacity of administrator of the estate of her late husband. Based on the above authority, I find that the respondent had no locus to institute this appeal, and the effect is to nullify both proceedings and the judgment of the DLHT. As such, I do not wish to determine the rest of the grounds as they all fall short at juncture.

I hereby quash the proceedings of the DLHT and set aside the judgment. The respondent, if she wishes to institute a fresh case, could do so in compliance with the requirement of the law if she wishes.

There is no order as to costs.

Dated at Mbeya on this 27 day of May 2024.



A. A. SINDA
JUDGE