

IN THE HIGH COURT OF TANZANIA

AT MWANZA

(LAND DIVISION)

LAND APPEAL NO. 79 OF 2010

**(Appeal from the Judgment of the District Land and Housing Tribunal for
Musoma in Land Application No. 37/2010)**

DANIEL NYAKUTWI SOLOMONI.....APPELANT

VERSUS

EMMANUEL OMOLO.....RESPONDENT

JUDGEMENT

Latifa Mansoor, J.

The Appellant is represented by Advocate Nkanda and the Respondent appeared in person.

The Appellant filed a claim no. 12/2008 before the Ward Tribunal. He failed, he appealed to the District Land and Housing Tribunal, Land Appeal no. 33/2009, and his appeal was summarily struck out for lack of locus standi that he did not have letters of administration to enable him sue for the estates of the deceased person without. The Appellant obtained the letters of administration through Probate and Administration Cause No.109 /2009 at the Primary Court of Musoma Mjini. He was granted with the letters of Administration on 4/3/2010 to administer the estates of the late

Nyakutwi Simon who died in 1978. After he was appointed the Administrator of the late Nyakutwi Simon, he filed Land Application no. 37/2010 at the District Land and Housing Tribunal for Mara at Musoma. This application was dismissed for being res judicata, hence this appeal.

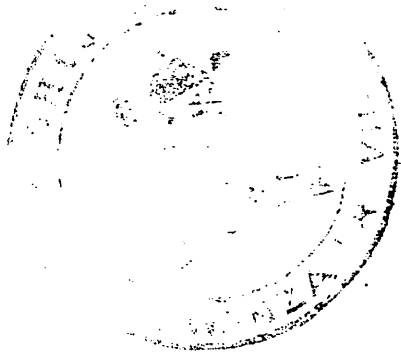
When striking out appeal No. 33/2009, the Learned Chairman of the District Land and Housing Tribunal did not also strike out or quash the decision of the Ward Tribunal in Land Case No. 12/2008. To date that decision still stands unchallenged. In my mind, if the Appellant was dissatisfied with the finding of the learned Chairman of the District Land and Housing Tribunal in Land Appeal No. 33/2009, the only recourse available to the Appellant would be to either seek to review the order or alternatively to lodge an appeal to the High Court against that decision. I lack the jurisdiction to make a finding that would reverse or change anything in the decision by the District Land and Housing Tribunal in the Land Appeal no. 33/2009 as that appeal is not before me. As long as the decision of the Ward Tribunal remains unchallenged albeit it is wrong, that decision is the decision of the competent Tribunal, and a subsequent case on the same subject matter between the same parties is res judicata.

On whether or not the Chairman of the District Land and Housing Tribunal had powers to nullify the letters of Administration granted by the Primary Court, I would say that, the District Land and Housing Tribunal did not have powers to entertain a matter which is not a landed matter, and as decided in the case of

Mtumwa Ally Saidi vs. Mwamtoro Ally Saidi & another HC Land Appeal No. 48/2006, unreported, the District Land and Housing Tribunal had no powers to entertain issues of probate and administration of the estates of deceased persons. The District Land and Housing Tribunal also erred in holding that the Law of Limitation Act, 1971 applies to matters of probate and administration of estates. The law applicable to issues of probate and administration of estates is Probate and Administration Ordinance Cap 445, and the Magistrate Courts Act, Cap 11 RE 2002. I fully agree with the wording of Section 31 (1) of the Probate and Administration Ordinance Cap 445, and the case cited by the Advocate of the Appellant, the case of Mwaka Mussa vs. Simon Simchimba CA, Civil Appeal No. 45/1994, that the Law of Limitation Act is not strictly applicable in matters of probate. The proper way to challenge any grant of letters of administration is through the court which issued it or on an appeal to a superior court having jurisdiction to hear appeals from the Primary Court.

This appeal therefore partly fails in the sense that the District Land and Housing Tribunal was correct in holding that the Land Application No. 37/2007 was res judicata because there still exists the unrevised decision of Land Case No 12/2008 issued by the Ward Tribunal, and this appeal partly succeeds in the sense that the District Land and Housing Tribunal had no powers to nullify letters of administration granted to the Appellant by a competent Court.

It is so ordered.



Latifa Mansoor

Latifa Mansoor

JUDGE

02 NOVEMBER 2012