

IN THE HIGH COURT OF TANZANIA

AT TANGA

(LAND DIVISION)

MISCELLANEOUS LAND CASE APPEAL NO 45 OF 201

**[From the Decision of the District Land and Housing Tribunal of,
KOROGWE District at KOROGWE in Land Case Appeal No 136 of
2011 and Original Ward Tribunal of BAGA Ward in Application No
15 of 2011]**

CLEMENT RAPHAEL.....APPELLANT

VERSUS

ELIAS SEKIETE.....RESPONDENT

JUDGMENT

H. KALOMBOLA, JUDGE

This is a second appeal, the first appeal was heard by the District Land and Housing Tribunal for Korogwe. The matter originated from the decision of Baga Ward Tribunal in Lushoto District.

The respondent was aggrieved by a decision of the District Tribunal in Land Appeal No 136/2011 who in this appeal has raised four grounds:-

1. That the Trial Tribunal chairman erred grossly Chairman erred grossly misdirected himself in holding that the respondent herein and his father occupied the suit land for 26 years, while it is the appellants and his late father who occupied the suit land more than 26 years.
2. That the trial Tribunal Chairman erred in law and in prosecuting and granting the respondent's land appeal against land case instituted by the respondent herein while claiming the suit land on behalf of his deceased father, without complying with the law and procedure relating to Probate and Administration of Estate Act, Cap 352 R.E. 2002 hence its whole proceedings are nullity.
3. That the trial tribunal chairman grossly misdirected himself in granting ownership of the suit land to the respondent herein under wrong findings that the respondent herein planted trees on the suit land, while all the mature trees on the suit land were planted by the appellant herein.
4. That the trial tribunal chairman erred in law and on fact in entertaining the land appeal arising from incompetent proceedings of the Ward Tribunal, which are nullity.

The crux of the matter in hand is whether the proceedings of the Ward Tribunal are correct. And whether the District Land and housing Tribunal was proper to entertain the appeal which is said to have arose from incompetent proceedings.


When perusing the record of the Ward Tribunal, respondent was the one who took complain at the tribunal against the appellant over a piece of land which he said was owned by his late father. Respondent filed that complain/suit on his own name instead of filing the same as an administrator of estate of his late father. In this respect the respondent had no locus standi to sue the appellant because he could not say his interests or rights have been infringed. He was thus, ought to have been filed a suit as an administrator of estate of his late father in order for him to acquire locus standi in the suit.

In the circumstance, the first appellate court erred in entertaining the appeal which arose from incompetent proceedings.

For this reason the proceedings and judgment are hereby quashed and all orders arose from the same are set aside. The respondent is at liberty to file a fresh suit before the Ward Tribunal in accordance to procedure.

Each party to bear own costs.

It is ordered.


H. KALOMBOLA, JUDGE
11/7/2014