

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO.07 OF 2020

*(From the Decision of the District Land and Housing Tribunal of Ulanga District at
Kilombero in Land Case Application No. 90 of 2017)*

AMINA NGWALOAPPELLANT

VERSUS

CHIGULU CHIPA.....RESPONDENT

EX PARTE JUDGMENT

Date of Last Order:05.07.2021

Date of Ruling: 20.08.2021

OPIYO, J.

A plot of unspecified size, located at Mtimbira Village within Malinyi District and Morogoro Region, valued 4,500,000/=Tanzanian shillings is at the center of the dispute between the appellant, Amina Ngwalo and the respondent who goes by the name of Chigulu Chipa. Both have claimed ownership over the suit land. When the dispute reached the District Land and housing Tribunal Kilombero/Ulanga, hereinafter called the trial tribunal, vide Land Application No. 90 of 2017, the respondent was declared to be the rightful owner of the suit land. It is against this background, the appellant preferred the instant appeal on the following grounds:-

1. That, the trial tribunal erred both in law and facts in deciding in favour of the respondent on the ground that the appellant had no locus stand to sue for the land of her late father who died in 1977,

although the appellant was using the said land up to 2017 when the dispute arose.

2. That, the trial tribunal erred both in law and facts for deciding the case in favour of the respondent notwithstanding the evidence adduced by the appellant's side that revealed that on balance of probability, the appellant is a lawful owner of the land in dispute.

The appeal was heard by way of written submissions and *ex-parte* against the respondent after the efforts to procure his presence in this court failed to bear fruits as noted in the case file. Mr. Paschal Paschal Luhengo, learned Advocate appeared for the appellant in this appeal.

Submitting on the 1st ground, the appellant's counsel was of the view that, the trial tribunal overlooked the fact that the appellant is the lawful owner of the suit land. The same was allocated by her father one Said Ngwalu in 1977 as stated at clause 6(a) of the Application. The appellant has enjoyed the use of the suit land for 40 years without any interference from any body and her ownership over the suit property is well protected by section 3 (1) of the Limitation Act, Cap 89 R.E 2020. The appellant's counsel cited the case of **Yusufu Same and Another versus Hadija, 1996 TLR 347**. He insisted that it was wrong for the trial tribunal to dismiss the case before it and advice the appellant to seek for letters of Administration for the estate of her late father knowing that she is barred by time as per section 9 (1) and 35 of the Limitations Act, Cap 89 R.E 2019. Above all the appellant has stayed on the suit land for over 12 years undisturbed, hence she is protected under item 22 of the 1st Schedule of the Limitations Act, Cap 89 R.E 2019. He relied in the case of **Nassoro Uhadi versus Musaa Karunge 1982 TLR 302: -**

"... in the present case the respondent and his parents have been in possession of the disputed land for 27 years, cultivating and developing it while the appellant/defendant's family did nothing to stop them. Whatever the circumstances of the appellant's original claim over land, it would be completely contrary to principles of equity to deprive the respondent of his rights over the land which he has acquired (at the appellant's knowledge over his long period occupation. The respondent has in law acquired ownership of piece of land by reason of adverse possession."

Another case cited by the appellant's counsel in support of his arguments in the 1st ground of appeal include the case of **Majura Songo Nyekaji, Probate and Administration Cause No. 03 of 2019, High Court of Tanzania, at Dar Es Salaam (unreported).**

On the 2nd ground, it was submitted that, the appellant proved her case on balance of probability that she is the lawful owner of the suit land. Therefore, she deserved to be declared so by the trial tribunal instead of the respondent whose evidence was weak.

In the light of the submissions of the appellant's counsel as summarized here in above and in consideration of the records of the trial tribunal, I feel confident to turn on the merits of the appeal. In the 1st ground of appeal, the appellant faulted the trial tribunal for its findings that she had no *locus standi* to institute the case in question. The reasons behind these findings, is the fact that, the suit land as per the testimony of the appellant herself (DW1) belongs to someone else. The evidence on record show that, the original owner of the suit land is the appellant's father. This was

supported by the testimony of her witness (DW2) Rashid Nangolongo who insisted that the suit belonged to one Said Ngwalo who is now deceased. In other words, the appellant derives her right on the suit land from inheritance as one of the beneficiaries of the estate of her late father who have been in occupation of the disputed property. The appellant testified that she got the land from his father. Saying that did not mean she got that after the death, to make the trial court decide that she needed to be administrator of his estate to claim the same. If that was the case and if the appellant was suing for ownership of the property, she truly lacked the *locus standi* to prosecute or defend any case for the interest of the estate of her deceased father in absence of any proof to the contrary that she is a legal representative of the said estate or was given the suit property as her share in the inheritance. But, as per records, she was not suing for ownership on behalf of his father's estate, rather she only proved her ownership through his father. She sued for trespass to the suit land she has been occupying for a long period after deriving interests from his late father.

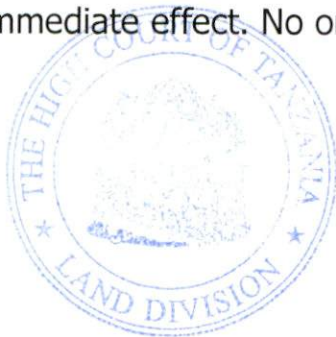
I am alive to the fact that, in law in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he/she is entitled to bring the matter before the court, **see Lujuna Shubi Balonzi Senior versus Registered Trustees of Chama Cha Mapinduzi [1996] TLR, 203.** In our case, the appellant who proved to be the one in occupation and ownership of the property for all that long, beyond twelve years is not barred to bring a suit against anyone who tends to interfere her long standing and well backed occupation for trespass. It is also important to note at this juncture that the appellant brought cause of action in personal capacity after allegedly deriving a title from his late father. Therefore as

long as she was not asked to explain how she derived a title and when, it was wrong to assume that she got it through transmission after the death of her father as the trial tribunal did.

In law one sues for trespass anyone who he thinks is interfering with his peaceful occupation based on inheritance. In such circumstances, what is proved is that someone who was not there has surfaced with no plausible explanation for his coming. In the circumstances of this case, it was the respondent who was supposed to prove his reasons for coming to land the appellant had been using for all that long. Therefore, *locus standi* based on administration of the estate of the original owner is not necessary in the circumstances because the award the court is asked to give was not necessarily the right of ownership to the respondent individually over the property, rather, the said right could still remain with the heirs of the original owner as a group. Questioning that in absence of a complaint from one among the heirs is going beyond what we are asked to determine as land court and not a probate court. For the reason, the 1st appellate tribunal was not right to rule against the appellant on account of absence of the right or capacity to bring the suit in question. She had locus on suing for trespass. The testimonies point to the claim for trespass not on ownership as the trial court framed the first issue. The 1st ground of appeal is hereby allowed.

The second issue is that the trial tribunal erred both in law and facts for deciding the case in favour of the respondent notwithstanding the evidence adduced by the appellant's side. The cases are won on the strength of evidence and not otherwise. The tribunal did not consider the position of parties after it misdirected itself on the issue of *locus standi* as noted above. As a first appellate court I am entitled to re-examine, re-

appraise, and re-evaluate the evidence on record of the trial court. This will entail subjecting the evidence on record to a fresh and exhaustive scrutiny. All the evidence on record points to the appellants long occupation of the disputed property. The respondent admits recent occupation, 2017 after being allocated by his paternal uncle, one Kasto Chipa. He claims that the property is not his but of his clan. That means he is the one who has interfered with the appellants peaceful long-standing occupation. He was the one to explain his entitlement well, but he did not. The uncle he claimed to have given him, testified as RW2, but could not established his title to the property in the first place. Therefore, the appellants testimony was more convincing than that of the respondent. They cannot tie, it is the heavier that wins (**see Hemed Said versus Mohamed Mbilu (1984) TLR 113 HC.**). Consequently, this ground too is allowed, leading to the allowing the whole appeal to the extent that the appellant is the lawful owner of the disputed property, respondent is a trespasser, he is ordered to vacate suit property with immediate effect. No order as to costs.



A handwritten signature in black ink, appearing to be "M.P. OPIYO", written over a horizontal line.

**M.P. OPIYO,
JUDGE
20/08/2021**