

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

LAND APPEAL NO. 323 OF 2023

(Originates from Application No. 248 of 2020, Ilala District Land and Housing Tribunal)

JULIANA FRANCIS MLOKA.....1ST APPELLANT
MARIA FRANCIS MLOKA.....2ND APPELLANT
HYASINTA FRANCIS MLOKA.....3RD APPELLANT

VERSUS

**LENEI THOMAS LAURENT (Administrator of the Estate
Of the late Laurent John Kupo).....RESPONDENT**

JUDGMENT

5/12/2023 to 14/2/2024

E.B. LUVANDA, J

The Appellants named above are challenging the decision of the Tribunal which decreed infavor of the Respondent that a house situated on Plot No. 38 Block 'D' Sharifu Shamba Ilala is a property of the late Laurent John Kupo and therefore subject to be administered by the Respondent who is the administrator of the estate of the late Laurent John Kupo.

For clarity it is appropriate to preface facts giving raise to this matter. Essentially parties herein are lingering over inheritance.

According to the Tribunal records the late Laurent John Kupo passed away on 4/7/1988 at the age of eighty-nine, as per certificate of death exhibit P1. The late Laurent John @ Kupo was offered a right of occupancy over the land described as Plot No. 38 Block 'D' Sharifu Shamba Dar es Salaam (herein suit property) on 1/12/1973, as per offer of a right of occupancy exhibit P3 and P4 Swahili and English version respectively.

The late Laurent John @ Kupo had two children, Maria Laurent John and Thomas Laurent Kupo. Maria Laurent John passed away on 23/5/2018 as per a death certificate exhibit D1. Thomas Laurent Kupo passed away on 25/4/1974 as per the testimony of Lenei Thomas Laurent (PW1) the Respondent herein. The Appellants are grandchildren of the late Maria Laurent John. The Respondent on the other hand is a son of the late Thomas Laurent Kupo.

Therefore the Respondent and sibling are claiming inheritance of a suit property for grandfather the late Laurent John Kupo, meanwhile the Appellants are claiming that the suit property was inherited by their grandmother the late Maria Laurent John vide a transfer of a right of occupancy exhibit D3 vindicating that a transfer was predicated on Probate and Administration Cause No. 65/1989 Ilala Primary Court where the late Maria Laurent John was a grantee and administratrix in respect of the estate of the late Laurent John.

In exhibit D3 on a rear indicate the transfer was approved on 1/12/1989 by the Senior Land Officer on behalf of the Minister for Lands.

Juliana Francis Mloka (First Appellant) who testified as defence witness number one at the Tribunal, also tendered exchequer receipt No. 233401 indicated to have been issued on 11/10/1989 infavour of Maria Laurent for payment of fees in Mirathi Case No. 65/1989, bearing a rubber stamp of Ilala Primary Court, as per exhibit D2. DW1 tendered a notice for land rent which was issued in the name of Maria Laurent, exhibit D4.

In its judgment, the Tribunal ruled that the suit house is a property of the late Laurent John Kupo and decreed the Respondent as having the mandate to administer and distribute it to heirs as the administrator of the estate of the late Laurent John Kupo.

In the memorandum of appeal the Appellants grounded that: -

1. That, the trial tribunal erred in law for entertaining the matter which it had no jurisdiction.
2. That, the trial tribunal erred in law and fact for entertaining the matter which was time barred.
3. That, the trial tribunal erred in law and fact for entertaining the matter which was filed by administrator who was illegally appointed.

4. That, the trial tribunal erred in law and fact for failure to remove the name of the Second Appellant/Second Respondent from among parties to the case while it abated the case of the said deceased.
5. That, the trial tribunal erred in law and facts for failure to consider the Appellant's/Respondents' evidence who had proven the case on balance of probability and decided on weak evidence adduced by the Respondent/Applicant.
6. That, the trial Chairman erred in law and fact for reaching his decision by basing on decision of Ilala District Court which is not a court of record.

Mr. Nehemia Gabo learned Counsel for the Appellants, submitted that the trial Tribunal wrongly entertained Application No. 248/2020 while it was not the court of probate. He cited the case of **Mgeni Seifu vs Mohamed Yahya Khalfani, Civil Application No.1/2009 CAT.**

He submitted that the evidence adduced by the Respondent at the Tribunal including letters of administration exhibit P2, reveal he was appointed by Ilala District Court, argued that Application No. 248/2020 is misplaced as it ought to have been filed at Ilala District Court.

For ground number two, the learned Counsel submitted that Application No. 248/2020 was filed by the Respondent who is an administrator of the estate of the late Laurent John Kupo, is time barred, arguing it was filed on 18/9/2020

while the deceased died in July 1988. He cited section 9(1) of the Law of Limitation Act, Cap 89 R.E 2019. He submitted that from the date of cause of action arose in 1988 the Applicant had to file this suit in 2010, but the Applicant lodged in 2020 after 32 years from the death of the deceased, arguing it is time barred. He cited section 3(1) of Cap 89 (supra).

Ground number three, the learned Counsel submitted that it was wrong for the Tribunal to entertain the matter filed by the Respondent who was wrongly appointed by Ilala District Court vide exhibit P2 while Maria Laurent had already petitioned for letters of administration on the same subject matter vide Probate Cause No. 65/1989. He submitted that if the Respondent was agrieved with the administration of the said estate by the late Maria Laurent had to challenge the same at the Probate and administration Court which is Kariakoo Primary Court, citing **Mgeni Seifu** (supra).

The Respondent opposed the appeal, in reply to the above, Mr. Amin Mohamed Mshana learned Counsel for Respondent submitted that the Tribunal was correctly seized with jurisdiction to entertain Application No. 248/2020. He submitted that the Tribunal had authority to decide the application because it was a typical related to land ownership contested between two warring parties. He submitted that it was not a question of distribution or who are the rightful heirs entitled to administer or have power of sale, which to his opinion could be

the reserve of the probate court as held in **Mgeni Seifu** (supra). He submitted that even pleadings and reliefs sought, the matter was purely a land matter where there is a contest of ownership based on whether the land belongs to Laurent John Kupo, so as to form his estate administered by the Respondent or the Appellants who allegedly derived a title from one Maria Laurent Kupo whose estate had no administrator as she had no a single property to administer.

For ground number two, the learned Counsel submitted that in the Probate and Administration of Estates Act, Cap 352 has no such limitation for seeking and appointment of administrator. He submitted that there was no cause of action at the time of the death of the late Laurent John Kupo until appointment of the Respondent as an administrator in 2020, which the efforts to administer and distribute the estate met rival claim of ownership, hence requested the assistance of the District Court of Ilala at Kinyerezi in the year 2021. According to him, time start to run not only after appointment of the administrator but after interference of the administrator by the said rival claim of ownership. He cited section 24(1) read together with sections 33(1) and 35 of Cap 89 (supra), also cited **Elizabeth Sambulisingi Ngowo vs Arthur J. Mwanri** Land Appeal No. 38/2022; **Habiba Bush (Administrator of Estate of Bush Mwinyibohari) vs Ramadhani Lila Gogo and Another**, Land Appeal No. 40/2020.

Ground three, the learned Counsel did not respond to this ground.

On rejoinder, the learned Counsel for Appellant submitted that the probate and administration court which appointed the Respondent had to decide on ownership of the property in dispute between the late Laurent John Kupo and Maria John since there was evidence that the said property was already transferred to Maria Laurent vide Probate and Administration Cause No. 65/1989. He submitted that the Respondent did not sue the administrator of the estate of the late Maria Laurent.

For ground number two, the learned Counsel submitted that the law requires computation of time from the first anniversary from the date of death of the deceased which was in 1989, arguing time to sue accrued in 1990, therefore time for instituting the said suit lapsed in 2011.

On my part I will start with ground number two. As per recap on my preface above, the Respondent claim to administer the suit property alleged form part of the estate of the late Laurent John Kupo who passed away on 4/7/1988.

However, exhibit D3 indicate that the suit property was transferred to the late Maria Laurent effectively on 1/12/1989. In his testimony, the Respondent who testified as PW1 at the Tribunal stated to had rushed to the probate court to petition for letters of administration for the estate of Laurent John Kupo, after the demise of his aunt the late Mary (sic, Maria) Laurent.

This confirm a fact pleaded by the Appellants in their joint written statement of defence at the Tribunal that the Respondent and siblings were aware that the suit property was transferred to the late Maria Laurent since 1989 and stormed out to sue after her demise. The Respondent didn't file a rely to the joint written statement to rebuke this statement. However, in paragraph 6 of the application (plaint), the Respondent pleaded that the late Maria Laurent Kupo during her life time have been purporting to be the owner by inheriting it from the late Laurent John. This confirm a fact that indeed the Respondent was aware of the transfer dated 1/12/1989.

To my respective view, this matter which was filed at the Tribunal on 16/9/2020, being after expiry on more than thirty (30) years counting from the transfer which was officially approved on 1/12/1989, at any rate is time barred. I am aware that in the application (plaint), the Respondent avoided to claim specifically for an order that the suit property belong to the late Laurent John Kupo, also avoided to seek for an order for a declaration that the Appellants are trespassers. However, a fact that the Respondent pleaded that the Appellants are illegal occupants and users of the suit property, technically he claim to be trespassers. Sequel to that, he claim ownership by virtue of being appointed to be the administrator of the estate of the late Laurent John Kupo.

According to item 22 of the Schedule to Cap 89 (supra), a period of limitation for suit to recover land, is twelve years.

Herein, counting from 1/12/1989 when the suit property was transferred to the late Mariam Laurent, twelve years expired on 1/12/2001. In other words, the Respondent and siblings to wit Roman Thomas (PW2), Joseph Thomas Laurent (PW3), whom at the time of testifying at the Tribunal, were aged 62 anos, 58 anos, and 55 anos, respectively, they forfeited their right to sue their aunt the late Maria Laurent John, for buying time awaiting her demise which nevertheless was not forthcoming until when she reached 75 anos on 23/5/2018.

Therefore, the Tribunal had no jurisdiction to entertain the matter which is barred by law of limitation.

Next to my deliberation is ground number three. Again, as per my preface above, exhibit D3, titled Transfer of a Right of Occupancy Probate and Administration, which was drawn by the Land Officer was endorsed and signed by a Senior Primary Court Magistrate at Ilala Primary Court on 29/11/1989, confirming the transfer therein on account that the Ilala Primary Court had appointed Maria Laurent (transferee) to administer of the estate of Laurent John (deceased), vide Probate and Administration Cause No. 65/1989. Again, there is an exchequer receipt dated 11/10/1989, exhibit D2 where the Registrar

Assistant acknowledged to have received a sum of Tsh. 100/= as fees in Mirathi Case No. 65/1989.

To my respective view, the two documents exhibits D2 and D3, meet a minimum threshold to establish that indeed the late Maria Laurent was appointed to administer the estate of the late Laurent John and subsequently the suit property to wit Plot No. 38 Block 'D' Sharifu Shamba was transferred to the late Maria Laurent.

Therefore letters of administration granted to Lenei Thomas Laurent in respect of the estate of the late Laurent John Kupo, by the alleged District Delegate, were legally invalid. My undertaking are grounded on the fact that there is no instrument indicating that the appointment of Maria Laurent was revoked or annulled. Section 71 of the Probate and Administration of Estate Act, Cap 352 R.E 2002 provide,

'After any grant of probate or letters of administration, no person other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit or otherwise act as representative of the deceased, until such probate or letters of administration shall have been revoked or annulled'

Therefore, it was wrong for the Respondent to petition for a fresh probate and administration cause. Similarly, it was an error on the part of the learned District Delegate to appoint the Respondent irrespective of some traces, clues and

footage indicating that another Probate and Administration Cause No. 65/1989 was filed at Ilala Primary Court in respect of the same deceased (Laurent John) and same estate or subject matter.

I understand that this Court is not sitting as a probate court and therefore cannot sneak to quash the letters of administration erroneously granted to the Respondent. In the case of **Yusufu Selemani Kimaro vs Administrator General & Another**, Civil Appeal No. 266/2020 CAT, at page 18 the apex Court had this to say, I quote,

'There is no doubt that having found the appointment of the second respondent to be highly questionable as to raise eyebrows, it would be an abdication of duty for the trial Judge to either play ostrich or keep her hands off the matter on the pretext that it did not fall within her jurisdiction...'

At page 20, the apex Court went on to say,

*'Going by the above-quoted commentary by the learned authors, two things are certainly discernable. **One**, that a fraudulent judgment, order or decree can be avoided without necessarily having recourse to setting it aside and **two**, that a judgement, order or decree obtained by fraud will be treated as a nullity by any court be it an inferior or superior court'*

Herein the letters of administration exhibit P2 were not obtained by fraud, rather a grant was useless and inoperative having ignored a fact that there is an

existing letters of administration granted vide Probate and Administration Cause No. 69/1989 in respect of the same deceased and estate, rendering the subsequent grant to the Respondent invalid in law.

Now, in the circumstances the aftermath and proper route to take between the two options suggested by the apex Court, on my view for purpose of these proceedings, a course of avoiding the impugned letters of administration granted to Respondent will be the best option to take. As such it will be taken as no grant was ever made to the Respondent for purpose of these proceedings.

In view of the above reasons, Tribunal's proceedings and judgment cannot be let to stand. Therefore, the proceedings are quashed, judgment and decree set aside.

The appeal is allowed. However, I decline to grant costs, for reasons that parties are lingering over inheritance and they are related.



E. B. LUVANDA
JUDGE
14/02/2024

- Judgment delivered in the presence of the Respondent in person and Mr. Nehemia Gabo learned Counsel for Appellants.



E. B. LUVANDA

JUDGE

14/02/2024