

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 08 OF 2022

(Arising from Land Application No 81 of 2017 of the District Land

and Housing Tribunal for Mara at Musoma)

MAZIGO BISEKO..... APPELLANT

VERSUS

WEGORO TIMBIRA (Msimamizi wa mirathi ya

Marehemu Matai Matete RESPONDENT

JUDGMENT

27th July & 5th August, 2022

F. H. MAHIMBALI, J.

The appellant and the respondents are in dispute of ownership of land located at Karukekere in Namhula within Bunda District in Mara Region. The size of the disputed land is estimated to be 32 acres. Whereas the respondent claimed the land in dispute to be owned by his deceased father one Matai Matete, the appellant claimed that the said land is his as granted to him by the "*Mwanangwa*", a local leader whose

name was wamulanga and only left that land during operation Vijiji. In his return, he found his land invaded.

The respondent on the other hand, testified that his father acquired the said land in 1987 and has been using it during all his life time until his demise in 1990. That following the death of his father, he was appointed as administrator of his father's estate and he has been living and using that land with his siblings peacefully. The deceased is survived by his wife and his children. That this dispute arose in 2013 when he first received summons and eventually the said decision was nullified by the higher tribunal/court.

That the nullification of the previous proceedings paved way for the commencement of this suit at the District Land and Housing Tribunal of Mara. The said DLHT ruled in favour of the respondent on the basis that by the time the appellant had returned to the disputed land in 2013, the respondent had been in continuous use from 1987 to 2013, thus he had abandoned his land and the respondent who were in actual occupation of the said land from 1987 or 1990 (after the death of his father), in law they are actual owners. This decision aggrieved the appellant, thus the current appeal which is propped on only one single

ground that the respondent prosecuted the case at the DLHT without locus standi.

During the hearing of the appeal, the appellant was represented by Mr. Thomas Makongo learned advocate whereas the respondent had a self-representation.

In support of the appeal, Mr. Makongo submitted that, first the land belonged to the deceased (see first page of the DLHT's judgment). Thus, the respondent ought to be the administrator of the estate of the late Matai Matere. Assuming that he was appointed in 2016, there is no proof that the respondent ever was granted extension of time in the administration of the said estate. As there was no any extension of time granted, his appointment could not legally be considered as everlasting. In the case of **Ruth Makune vs John Festo Makune**, Land case no 22 of 2015, High Court Mwanza, at page 7 ruled that there is no perpetual/life time administration of the deceased's estate. As per law, administration of the estate does not exceed 12 months.

Secondly, he submitted that as per page 2 of the DHLT's decision, it is clear that there is wife of the deceased, who obviously has the right of survivorship of her husband's ownership on jusci-accrecendi. For that

purpose, he claimed the current owner is Nyasatu Timbira who is the wife of the deceased. She is thus, the lawful owner from 1990 to the date of judgment. In that sense, there was no need of appointing legal administrator in the presence of the spouse.

He further referred this Court in the case of **Jackson Nyasari vs Nyama Sagare Nyasari**, Probate Appeal No 6 of 2007, High Court Mwanza, Nyangarika J (a.h.w) stated

"where one spouse dies, the entire estate remains in the hands of his wife as both of them have equal rights in that estate".

Thus, it is his candid view that the rightful claimant is the spouse and not the respondent. With this submission, he prayed that this appeal be allowed with costs.

On the other hand, the respondent resisted the appeal arguing that as per Kuryas customary law, when a head of the family dies (father), then the elder son must be appointed administrator of the estate of the deceased or any other male person in the family (if no elderly and capable son). He is the elder son of the deceased. The said deceased's spouse is 95 years and his mother. He wondered if in the

circumstances he cannot be administrator of the estate of his deceased father.

As regards to the time limit of his administration, he had admitted that he had no legal knowledge that administration of the estate expires. Nevertheless, he urged this Court to digest this matter deeply as per law and wisdom so that justice should prevail as this case had commenced just after his appointment. He then prayed that the appeal be dismissed.

In his rejoinder submission, Mr. Mkongo reiterated his submission in chief and added that as the respondent admits that he thought he was a perpetual/life time administrator of the said estate, it is purely ignorance of the law. This being a court of law we should not abide by it. He added further that all customary laws (of the tribe) must comply with the laws of the land. He insisted that the appeal be allowed with costs.

I have digested the parties' arguments and submissions made for and against the appeal. I have equally gone through the trial tribunal's records; I am satisfied that the respondent filed this case at the capacity as administrator of the estate of the late Matai Matete who is his father.

It is true that Hon Nyangarika J (a.h.w) in in the case of **Jackson Nyasari vs Nyama Sagare Nyasari**, Probate Appeal No 6 of 2007 ruled that where one spouse dies, the entire estate remains in the hands of his wife as both parties has equal rights in that estate. He added that the essence of filing a probate cannot arise until both spouses had died. The only exception provided is to the position where there is a will which is being disputed or where there is more than one surviving wives of the deceased in Islamic and customary laws disputing on the administration of the estate.

However, according to paragraph 6 of the fifth schedule to the Magistrate Court's Act, Cap 11 R. E. 2019 section 71 of the probate Act Cap 352, R. E. 2019 provides that only the lawful appointed legal representative of the deceased estates can sue or be sued for or on behalf of the deceased, and no others. The section reads.

"After any grant of probate or letters of administration no person other than the person 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 the administration shall have been revoked or annulled"

See also 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.

With this, I am of the view that the respondent being duly appointed the administrator of the estate of the late Matai Matete, was not precluded from administering the same so long as the wife of the deceased didn't contest his appointment. Had it been that the administration of the said estate by the respondent had been objected by the deceased's wife, Mr. Makongo's view could hold water. It is not the case here. By the way, there is a thin line between heirship and administration of the estate. Though there is right of junci-accrecendi as rightly submitted by Mr. Makongo, however it is not so in every case. Whereas I agree that there is a right of survivorship where one spouse dies, but that does not mean that there should not be an administration of the deceased estate. Every case must then be decided by its own facts and merits. In the circumstances of the current case where the said spouse is old enough and of an assistance, the respondent had a justification of seeking letters of the administration of the said estate for the safeguard of the interests of deceased's estate.

Regarding the respondent being a lifetime administrator, I agree with Mr. Makongo as rightly submitted and the authorities provided that the duty of an administrator is not lifetime (see also the case of **Sekunda Mbwambo V. Rose Ramadhani** [2004] TLR 439). The appointed administrator, is supposed amongst other things diligently to collect all the properties of the deceased, know all the debts owed by the deceased, take care of the deceased's dependents especially his/her children left behind by using the deceased's assets, pay the debts and distribute all the properties left by the deceased to the rightful heirs. Above all, the administrator of the said estate is duty bound to give account of the said administration of the estate of the deceased (see also **Ally Omari Abdi V. Amina Khalil Ally Hildid**, Civil Appeal No. 103 of 2016, CAT (unreported). According to the Fifth Schedule of the Magistrates Courts' Act, Cap 11, R. E. 2019 (Powers of Primary Courts in the Administration cases), it provides:

"An administrator who distributes the assets in discharge of such lawful claims as he knows of and, after not less than three months after the death of the deceased, distributes the remaining assets among the persons or for the purposes entitled thereto, and who gives effect or complies with the directions of the court (if any), shall not be liable for those

assets to any person of whose claim he had no notice at the time of such distribution:

*Provided that nothing in this paragraph shall prejudice the right of any creditor to assets in the hands of the persons receiving the same” (**Rule 10**).*

*"After completing the administration of the estate and, if the primary court orders, at any other stage of the administration an administrator shall account to the primary court for his administration” (**Rule 11**).*

According to the court record, it is true that the appellant's appointment as administrator was dated 21st March 2017 by Kenkombyo Primary Court in Bunda District. By the time of filing this suit in the trial tribunal in May 2017 was still within time limit of performing his duties as administrator. As those proceedings proceeded up to the High Court in Land Appeal No. 18 of 2019 which then quashed all the proceedings of the DLHT for want of assessors' opinion, and thus ordered trial denovo of the case. and upon rehearing of the case and its decision in January 2022 which decision has given birth to the current appeal. As the proceedings were continuous, I consider that there was no time lapsed by the respondent that he performed his duties to the completion in the place of this case. Though he was appointed in 2017, since he commenced the proceedings of this suit in the same year (2017), he is

considered not to have discharged his duties to the completeness that he is now barred by locus standi.

That said, the appeal lacks merit and it is hereby dismissed.

In the circumstances of this case, each party shall bear its own costs.

DATED at MUSOMA this 5th day of August, 2022.



F. H. Mahimbali
JUDGE

Court: Judgment delivered this 5th day of August, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.

Right of appeal is explained.

F.H. Mahimbali

Judge

5/8/2022