

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA.
LAND CASE NO. 81 OF 2016**

GIDEON D. MMARY

*(Suing as an Administrator of the estate
of MAGDALENA ELISA SARO)*.....**PLAINTIFF**

VERSUS

DORIS MARTINE @ DORIS M. MINJA

*(Sued as Joint Administratrix of
the estate of GASPER JOHN MINJA)*.....**1ST DEFENDANT**

AND

DALGREEN G. MINJA

*(Sued as Administrator of the estate
of GASPER JOHN MINJA)*.....**2ND DEFENDANT**

JUDGMENT

9/10/2018 & 30/11/2018

MZUNA, J.:

Gideon Dekiro Mmari was appointed as the Administrator of the estate of the late Magdalena Elisa Saro. Apparently, the said Magdalena @ Mkuru was first

married to Dekiro Mmari who passed way in 1956 and they were blessed with five children, the plaintiff inclusive. Gideon, the plaintiff was appointed as the administrator of the estate of the late Magdalena vides Probate No. 122/2005 of Arusha Urban Primary court (issued 4th July, 2016) as evidenced by Exhibit P1).

Magdalena, the plaintiff's mother got married to John Minja with whom they were blessed with one son Mr. Gaspar John Minja. The said Gaspar married Doris Martine @ Doris M. Minja, the 1st defendant. They were blessed with two children including Dalgreen G. Minja, the second defendant. The defendants were appointed as Administrators of the estate of the late Gasper John Minja vides Probate No. 298 of 2014.

The dispute centers on ownership of a house with thirteen rooms, a house with four bedrooms and two chicken 'banda' which was included in the land with Title No. 8625 in the name of the late Gasper John Minja now under the administrator ship of the defendants which the plaintiff says fall under the estate of the late Magdalena, her late mother.

During hearing Mr. Petro Pendael Munis, the learned counsel represented the plaintiff while the defendant was represented by Mr. Hamis

Mkindi, the learned counsel. Three issues were framed and therefore subject to determination by this court;

First, whether part of the land under Title 8625 fall under the administrator ship of the plaintiff?

It was affirmatively found that during the livelihood of the late Magdalena and John Minja the late Gasper managed to register land above referred which is at Kijenge Chini Arusha in his name as evidenced by Exhibit P2. Under it there were separate ownership titles to other children including the plaintiff who opted to sell his plot.

Now, what are the estates of the late Magdalena which the plaintiff was appointed to administer? Does it include the land in dispute?

PW1. Gideon Dekiro Mmari said was born at Nrao Siha in 1940 where his parents were living before shifting to Olerian, Arusha in 1946. At first they stayed in a rented house and their father acquired land at Kijenge Chini. That, Gasper (the late husband of the 1st defendant) was staying with their mother because his father had another family with his wife at Marangu, Moshi. He said that before his mother got married to Gasper's father she was living in her own house which she built together with his father the late



Dekiro Mmari. When Gasper married the first defendant he built a house behind PW1's house but at his mother's land. That house of Gasper had its gate and was handed to the first defendant after death of his husband as at one time they were separated.

He said that as an administrator of the deceased's (his late mother's estate) he failed to distribute the estate to the beneficiaries namely Gasper and Elisa's Children and himself because the whole land is granted to Gasper John Minja, whose estate is under the defendants. That it was mortgaged and therefore not free from incumbrance.

He admitted however that part of the land was subdivided to include land which PW1's late mother sold to other people as well as the land which was given to the plaintiff by her late mother but opted to sale it.

He insisted that the said two houses and two chicken banda falls under his administration of the estate of his late mother except one house which was occupied by Gasper. He insisted that John Minja never owned any property at Kijenge.

The defence case on the other hand led by DW4 Doris Martin Minja is that she was appointed as an administratrix of the estate of the late Gasper John

Minja. That before the death of Gasper John Minja he filed a caveat objecting the prayer by the plaintiff to administer properties of Mr. Gasper, a 17 rooms house and two chicken banda. That even the alleged ownership of title No. 8625 which is in the name of Gasper John Minja was acquired in 1992 at the time when the plaintiff's mother and her father in law were present at Kijenge. It included the plots of Elisa, Fadhili, Chelema, Godfrey Lukwaro, Nicholas Kisharuli, Ernest Mwamari, Abdi Mndeme and the said house with 17 rooms with its chicken bandas. However, in 2007 and 2008 the plot was demarcated.

Actually, according to DW1 Catherine Dekiro Mmari who shared the same father and mother with the plaintiff, said that after their mother had cohabited with John Minja, they lived in a house built by John Minja. That, even the house of Gasper and that of their mother is one and some house.

As for the registration of the said land, DW2 Melkizedeki Isack Saro to whom the late Magdalena Saro was his aunt, said that it was by the instruction of Mr. John Minja to register in Gasper's name because Gasper's land was at Kijenge Chini at Arusha not at Marangu. That evidence was also given support by DW3 Aloyce August Ulomi who said that he was present

even when Gasper's mother (Magdalena) directed for the plot to be registered in his name (Gasper's name).

DW5 Yunis Betwel a grand daughter of Magdalena Saro said was aware when the late Gasper was processing the title deed.

As for who bought the plot in dispute, DW6 Maliaki s/o Meriki Masangwa said that it was bought by John Minja. He bought it from Mr. Longolori as evidenced by lease (exhibit D2) as by then land was subject to lease not sale. That, under their tradition, the last born stays at the house where his father and mother were staying and that is why DW4 and the late Gasper were staying in that house.

The question relevant for the first issue does part of the land under Title 8625 fall under the administration of the plaintiff?

This issue is very broad as it encompasses the house with 17 rooms, a house with 4 rooms and chicken bandas (according to PW1). One point which is clear is that though Title 8625 was originally in the name of Gasper John Minja, however it included other's plots as above shown. Second, according to the defence Gasper John Minja inherited what he was given by his late

father just like Magdalena bequeathed her properties to all her children like the plaintiff, Elisa and Catherine.

Though it was revealed that the late Magdalena met her death when she was staying in the house with 17 rooms, however according to the evidence of DW6 said that Doris (DW4) and Gasper, (her late husband) stayed in the house of their father. It was built in another plot not where a hut built by Magdalena was situated.

Further, DW6 cemented her evidence just like Court Witness (CTW.1) Eliezer MLaki who is also a Street Chairperson that under their tradition the last born (in our case Gasper) stays at the house where his father and mother were staying. Further that the problem arose after Gasper's death not before his death though he stayed in that house together with Doris even after Magdalena's death.

So, the argument by PW1 that Gasper's estate included only one house (meaning the one which is co-joined with the main house) is without any merit.

This court visited the locus in quo and do agree entirely with DW1 that Gasper John Minja and her mother's house is one. It is attached to one

another. Since the plaintiff never claimed it at the time of livelihood of the late Gasper John Minja, he is precluded or estopped to claim it now. The holding of Hon Maghimbi J in Pc Civil Appeal No. 26 of 2014 between **Gideon D. Mmari vs. Dorice Minja**, High court Arusha District Registry, unreported (tendered as Exhibit D1) is very clear on this. She observed at page 7 that:-

"It is obvious that if the appellant was interested in regaining his late mother's property, as he so claims it is, he would have done so at the time when his brother was alive and lodged a caveat..."

After making a historical background of an on and off institution of baseless cases, the Honourable Judge remarked as a **"gross abuse of the court process."** She advised the parties to institute a Land case of which they did and this brought the present suit.

However, reading from the evidence of the Plaintiff, it cannot be affirmatively held that he is the administrator of the estate of the late Magdalena for properties which were already listed in the estate of the late Gasper Minja in Probate Cause No. 298 of 2013 to which the defendants are the appointed administrators.

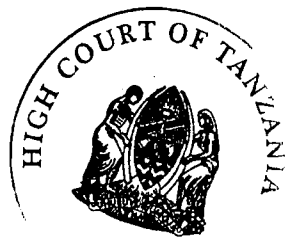
I should say in passing, based on the drafted sketch map, the properties which Magdalena bequeathed to her children with exception of the late Gasper, are lined at the North West and those which Gasper owned are lined at the North East a demarcation which is clearly marked with a fence. A grave yard of the late Magdalena is within the plot of the defendant. That of the late John Matanda Minja is at Marangu.


The first issue is resolved in favour of the defendants because even by the application of limitation period to claim land which is 12 years, still from 1992 since when the late Gasper John Matanda Minja title No. Title 8625 was registered in his name and PW1 was aware but never complained, then he is barred to claim it now.

Having answered the first issue in the negative, then the second issue as to *whether the late Gasper John Minja trespassed into a portion of land which was not bequeathed to him* must also fail because the plaintiff was aware but never lodged a suit against him. In any case, the property was bequeathed to him by his late father on the assumption that he could not claim other properties at Marangu, Moshi which belonged to children who were sired by John Matanda Minja with Mure Matando Minja. The second

marriage according to the evidence on record, was blessed by the late Magdalena after failure to get more children with John Minja after Gasper.

Lastly on the reliefs. From what I have demonstrated above, I dismiss the suit with costs. I further make an order that the suit property is among the estate of the late Gasper John Minja to which the defendants are lawful Administrators, heirs and beneficiaries. The plaintiff is hereby permanently restrained from interfering or further institution of suits in connection therewith.




M. G. MZUNA,
JUDGE. 30/11/2018