

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISCELLANEOUS LAND APPEAL NO.15 OF 2020

*(From the Decision of the District Land and Housing Tribunal of Lindi District at Lindi In
Land Appeal No.112 of 2019 and Original Ward Tribunal of Rutamba Ward in
Application No.23 of 2019)*

JUMA CHIPINGO..... APPELLANT

VERSUS

FATUMA M. MTALIKARESPONDENT

Date of Hearing: 12/08/2021

Date of Judgment: 19/08/2021

JUDGMENT

MURUKE, J.

The gist of the dispute is piece of land that appellant father gave respondent's father in law before 1964. Later, it was given to the respondent husband in 1964, who then built a house in which respondent is living to the date of dispute 2019. The disputed plot is neighbouring appellant's father shamba. It is on record and not disputed by both appellant and respondent that appellant father died in the year 2000, while respondent husband died in 2014.

In 2019 appellant filed dispute at Rutamba Ward Tribunal, in which he was declared the rightful owner. Same dissatisfied respondent, thus, filed Land Appeal number 112/2019 in the District land and Housing Tribunal of Lindi at Lindi. Decision of Ward Tribunal was quashed and set aside on ground of time Limitation. Appellant was dissatisfied, thus filed present appeal



raising 7 grounds listed in the petition of appeal. At the hearing of the appeal, both appellant and respondent, requested this court to adopt their grounds of appeal and replay thereto, to be their submission of their case, a prayer that was granted by this court.

All grounds of appeal raised by the appellant is on merits of the appeal that was before District land and Housing Tribunal of Lindi, contrary to the decision being appeal. The decision sought to be challenged, quashed Ward Tribunal Judgment on ground of time limitation. that dispute was filed after 12 years prescribe by the Law. In accordance with the ruling of the trial tribunal, time limit for an action to recover land of deceased is 12 years from the date of the death of deceased. The trial Chairperson placed reliance on the provision of section 9(1) of the Law of Limitation act Cap.89, R.E 2002. Counting from 2000 when deceased passed away to 2019 when the dispute at the trial tribunal was instituted, the Chairperson came out with the opinion that, the suit was hopelessly time barred.

In deed section 9 (1) of Law of Limitation Act provides that;

9 (1) Where a person institutes a suit to recover land of a deceased person, whether under a will or intestacy and a deceased person was, on the date of his death, in possession of the land and was the last person entitled to the land to be in possession of land, the right of action shall be deemed to have accrued on the date of the death.

According to the records, appellant testified at the trial tribunal that, her father just gave respondent father in law for temporary use not to plant permanent crops. Respondent on the other hand, she said, that they planted coconut trees and constructed house while appellant father was alive. From the evidence of trial tribunal, and claim by appellant, at the

 2

time of death of his father was the owner of the disputed plot, subject of this appeal. Thought proceedings, of the trial tribunal, appellant has not produced letters of administration of his late father, to have locus to claim land as personal legal representative. There is nothing on records to prove that appellant is an administrator of estate of his late father. Obviously the suit at trial tribunal was instituted by a person having no locus or authority to stand for his late father who claimed to have given the shamba to respondent's father in law.

To this court, issue of time limitation of twelve (12) years will come after ascertaining locus. I agree with decision of District and Housing Tribunal for Lindi to quash proceedings of the trial tribunal, although on a different reasons. Therefore, appeal before this court emanates from the decision of trial tribunal in which the person who instituted the dispute had no locus, thus nullity proceedings. Court will not leave nullity to flourish In the court records.

Therefore trial tribunal records are quashed and set aside. Appeal number 112/2019 at District Land and Housing Tribunal for Lindi is also quashed and set aside. There is no proper appeal before this court as all judgment and Decree emanated from nullity proceedings, thus appeal is struck out. Ordered accordingly.


Z.G. Muruke
Judge
19/08/2021

Judgment delivered in the presence of appellant and respondent both in persons.




Z.G. Muruke
Judge
19/08/2021