

**IN THE COURT OF APPEAL OF TANZANIA**

**AT ARUSHA**

**(CORAM: MWANGESI, J.A., NDIKA, J.A., And KITUSI, J.A.)**

**CIVIL APPEAL NO. 102 OF 2016**

**MADAM MARY SILVANUS QORRO ----- APPELLANT**

**VERSUS**

**EDITH DONATH KWEKA ----- 1<sup>st</sup> RESPONDENT**

**WILFRED STEPHEN KWEKA ----- 2<sup>nd</sup> RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania**

**at Arusha)**

**(Moshi, J.)**

**dated the 12<sup>th</sup> day of September, 2014**

**in**

**Land Appeal No. 57 of 2013**

**JUDGMENT OF THE COURT**

29<sup>th</sup> March & 8<sup>th</sup> April, 2019

**MWANGESI, J.A.:**

This is a second appeal which has its origin in the District Land and Housing Tribunal for Manyara Region at Babati, where it was instituted as Land Application No. 73 of 2012. The appellant herein who was the applicant, lost both at the trial tribunal and in the High Court of Tanzania at Arusha, in the first appeal. Undaunted, she has come to this Court for the second chance.

The brief account of facts from the appellant which moved her to institute proceedings against the respondents herein, at the trial tribunal was that in the year 1998, she purchased the suit premises from one Elipokea Bahati Mbise. The said property is situated on Plot No. 597 Block "R" – Nyunguu Area within Babati township. At the material time, she was cohabiting with one Donati Stephen Kweka, who happened to be the father of the first respondent to another wife, and a brother of the second respondent. Subsequent to the death of Donati S. Kweka her husband, the respondents without any colour of right, trespassed into her property claiming that it belonged to their late father and brother respectively, a contention which was not correct.

As a result of such intrusion to her property by the respondents, she instituted proceedings against them at the District Land and Housing Tribunal for Manyara Region at Babati, praying for the following reliefs that is, **one**, a declaration order that she was the lawful owner of the suit property situated on Plot No. 597 Block "R" Nyunguu Area within Babati township measuring about three hundred and fifty (350) meters. **Two**, an order to be issued to the respondents, to give vacant possession of the suit premises. **Three**, a declaration that the respondents were strangers and

therefore, trespassers on the suit plot. And **four**, a permanent injunction order restraining the respondents, their agents, workers and any other person working under their instructions, from interfering with the appellant's ownership, possession and quiet enjoyment of the suit premises.

To establish her claim, the appellant summoned three witnesses herself inclusive and tendered three exhibits. The suit was on the other hand vehemently resisted by the respondents relying on their own testimonies which were complemented by other three witnesses. Additionally, they tendered three exhibits.

The finding of the trial tribunal which was upheld by the first appellate Court, was to the effect that the appellant had failed to establish her claim. Aggrieved by the concurrent findings of the two lower courts, the appellant has come to this Court premising her appeal on four grounds of grievance namely:

- 1. That, the Honourable High Court Judge, erred in law and in fact by deciding the appeal in favour of the respondents without proof of appointment by the court to administer the estate of the deceased.*

2. *That, the Honourable High Court Judge, erred in law to declare the respondents the administrators of the deceased's estate while the pleadings are silent.*
3. *That, the Honourable High Court Judge, erred in law for failure to consider the long period which the appellant was in peaceful ownership of the suit plot of land without any claim from the deceased.*
4. *That, the Honourable High Court Judge, erred in law and in fact for failure to evaluate the evidence made by the appellant and as a result, arrived at an erroneous decision.*

On the date when the appeal was called on for hearing before us, the appellant was ably represented by Mrs. Christina Kimale learned counsel, whereas, the respondents enjoyed the services of Mr. Moses Mahuna, learned counsel. Upon taking the floor to expound the grounds of appeal, Mrs. Kimale implored the Court to adopt the written submission which was lodged by the appellant on the 29<sup>th</sup> April, 2016, to form part of her oral submission.

Amplifying the grounds of appeal, the learned counsel argued conjointly the first and second grounds as they were both challenging the *locus standi* of the respondents in the suit. She faulted both the District Land and Housing Tribunal and the first appellate court for holding that the respondents were the administrators of the estates of the late Donathi Stephen Kweka, while there were no letters of administration to establish that either both or any of them had been appointed to administer the estate of the deceased. More so, at page 26 of the record of appeal, the second respondent categorically informed the trial tribunal that he was not the administrator of the estate of the deceased. Mrs. Kimale, strongly urged us to hold that, because the respondents were not administrators of the estates of the deceased, they were mere trespassers to the property.

With regard to the third ground of appeal, it was the contention of Mrs. Kimale that, the District Land and Housing Tribunal as well as the first appellate Court erred in failing to consider the long period in which the appellant had been in peaceful ownership of the suit premises. As the evidence on record could disclose, she purchased the suit premises from one Elipokea Bahati Mbise way back in the year 1998, and remained in uninterrupted ownership of the same until in the year 2010, when she was

registered and granted a certificate of title. She criticized the two lower courts for placing much reliance on the letter of offer which was issued to Elipokea Mbise dated the 18<sup>th</sup> November, 1988 (exhibit R3), purporting to establish that the plot of land was transferred to the late Donati Kweka, after he had purchased it, arguing that, had the late Donati Kweka purchased the plot of land for himself in the year 1995 as argued by the respondents and the purported sale agreement, he would have processed and obtained a title deed in respect of the said property before he passed away in the year 2012. The failure to do so from 1995 to 2012 that is, a period of about seventeen years or so, is a clear indication that there was no such sale.

In the fourth ground of appeal, the challenge of the appellant to the two lower courts is on the way they evaluated the evidence that was placed before the tribunal. It was argued by the learned counsel for the appellant that, there was cogent evidence from the appellant (AW1), Joseph Kimambo (AW2) and Rehema Lucian Isaya (AW3) to establish that the appellant purchased the disputed plot of land from Elipokea Bahati Mbise and later processed for registration as evidenced by the letter of offer and certificate of title which she was granted. While AW3 witnessed

the sale agreement between the appellant and Elipokea Mbise, AW2, who was a Land Officer, informed the tribunal about the presence of the sale agreement document between the two in the Land Office, where they were sent while the appellant was processing for registration and grant of a certificate of title.

Mrs. Kimale concluded her submission by acknowledging that, there were some shortfalls which were occasioned by the appellant in the course of processing for the title deed over the disputed plot of land. She however hastened to point out that, they were inconsequential as contrasted from the misdirection, which was occasioned by the two lower courts, in giving right to the respondents who had no any iota of evidence to justify their occupation to the disputed premises. We were therefore urged by the learned counsel for the appellant, to allow the appeal by reversing the concurrent findings of the lower courts, and hold that the appellant managed to establish her ownership over the suit property and that, the respondents are mere trespassers. Furthermore, we were asked to condemn the respondents to bear the costs of this appeal.

On their part, the respondents did not lodge written submission in opposition to the one filed by the appellant. As a result, Mr. Mahuna, asked

to respond to the grounds of appeal orally. Starting with the first two grounds concerning the *locus standi* of the respondents, the learned counsel argued that, the same was not among the disputed facts at the District Land and Housing Tribunal. Referring us to pages 4 and 5 of the record of appeal, he submitted that the question of *locus standi* was raised by the respondents and conceded by the appellant at page 14 of the record of appeal.

According to Mr. Mahuna, by and large, the prayer by the appellant as gleaned from the reliefs in the application which was lodged at the District Land and Housing Tribunal, was for a declaration order that she was the rightful owner of the suit premises. However, both the trial tribunal and the first appellate court declined to grant the sought prayer for the reason that, the appellant failed to establish as to how she acquired the disputed plot of land, and culminating to the grant of a letter of offer and ultimately a certificate of title.

On the contrary, the learned counsel went on to submit, there was convincing evidence from the respondents to establish as to how the suit plot of land was obtained by the late Donathi Stephen Kweka by tendering in evidence the sale agreement between Elipokea Mbise and Donati Kweka.



They further tendered as exhibit, the letter of offer of Elipokea Mbise, in respect of the suit plot of land which he disposed to the late Donathi Kweka (exhibit R3). Furthermore, there was oral testimonies from the witnesses who witnessed the sale agreement that is to say, Ramadhan Salim Ibebe (RW3), Hassan Athumani (RW4) and Iddi Hussein (RW5).

In his challenge to the certificate of title that was granted to the appellant, the learned counsel for the respondents argued that, the provisions of section 36 of the Land Act, Cap 113 R.E 2002 (**the Act**), stipulate the procedure on the transfer of a right of ownership over plots of land in surveyed areas. However, in the instant matter there was no any trail of documents to illustrate on how the plot of land under discussion, which in the year 1988 had already been surveyed as per exhibit R3, changed ownership to the appellant and thereby, in the year 2009 being granted a letter of offer and later a certificate of title.

Mr. Mahuna concluded his submission by imploring us to find no merit in the appeal which has been preferred by the appellant and that, we be pleased to dismiss it in its entirety with costs to the respondents.

The brief rejoinder of Mrs. Kimale, was a recapitulation to what she had submitted in chief praying that, the appellant should be adjudged the lawful owner of the suit property insisting that, the respondents failed to establish their *locus standi* in the suit, regard being had to the fact that it was a question of law, which is of paramount importance.

In the light of the submission from either side above, three issues stand for our determination that is, **first**, which arises from the first and second grounds of appeal, is whether or not the respondents were bound to establish their *locus standi* in the suit which was preferred against them by the appellant. **Second**, from the third ground of appeal, is whether or not, the appellant was entitled to be declared the lawful owner of the suit premises through the principle of long use or adverse possession. And **third**, which arises from the fourth ground of appeal, is whether or not, on the basis of the evidence that was placed before the trial tribunal, it was established by the appellant on balance of probabilities that she was the lawful owner of the suit property so as to be declared so by the court.

To begin with the first issue, we have been urged by Mrs. Kimale to find that the respondents were duty bound to establish their *locus standi* in the suit against them, and that, they failed to discharge such duty because

they never produced any evidence to show that they were the administrators of the estate of the late Donathi Kweka, whom they claimed to stand for. In support of her stance she referred us to the decision in the case of **Lujuna Shubi Ballonzi Vs the Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203. On his part, Mr. Mahuna, was of the view that the respondents did not bear such duty because the question of *locus standi*, was not at issue at the trial tribunal. After all, the learned counsel went on to submit, even the appellant conceded in her testimony at page 14 of the record of appeal that, she sued the first respondent because she was the administratrix of the estate of her late father, Donati Kweka.

On our part, after dispassionately going through the pleadings and the evidence on record, we are convincingly inclined to side with Mr. Mahuna that, the question of *locus standi* on the part of the respondents was not at issue. We have got three reasons to back up our stance which we mention hereunder:

**First**, the respondents were just dragged to the court by the appellant and hence, they did not bear the duty to establish their status in the suit.

**Secondly**, in their joint written statement of defence, the respondents contended that they were administrators of the estates of the late Donathi

Stephen Kweka. Ordinarily, if the appellant was in disagreement with such averment of the respondents, she ought to have raised it in a reply to the written statement of defence so as to compel them to produce evidence if any to support their contention. Since such a thing was not done, the appellant to raise it afterwards on appeal, is in our view, an afterthought.

And **thirdly**, the appellant conceded at page 14 of the record of appeal during cross-examination that, she sued the first respondent because she was the administratrix of the deceased's estates.

In regard to the holding in **Lujuna S. Ballonzi Vs the Registered Trustees of Chama cha Mapinduzi** (supra), which was relied upon by Mrs. Kimale, we are in agreement with her that although it was a decision of the High Court, it stated the position of law obtaining in our jurisprudence of which we acknowledge that:

*"Locus standi is governed by Common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with,"*

Nonetheless, on looking at the circumstances of this appeal as highlighted above, it is evident that they are distinguishable from the ones

discussed in **Shubi Ballonzi's** case (supra), where the applicability of the principle is in regard to the person who brings a matter to court as opposed to the appeal at hand where the respondents were sued. In the circumstances, the said authority is inapplicable to this appeal. To that end, we answer the first issue in the negative.

The second issue is whether or not the appellant was entitled to be declared as the lawful owner of the disputed plot of land through the principle of long use/adverse possession. It was argued before us by Mrs. Kimale that, from when the appellant purchased the disputed plot of land from Mr. Eliapokea B. Mbise in the year 1998, she remained in peaceful ownership of the property without any interference from the deceased or any other person until the year 2012, which was after the death of her late husband, when the respondents trespassed onto it. The fourteen years which the appellant remained in ownership of the property undisturbed, entitled her to be declared the owner by the principle of adverse possession, argued the learned counsel. On the other hand, Mr. Mahuna, argued that there was no evidence tendered at the trial tribunal to establish that, the appellant was in ownership of the property for the alleged period of fourteen years or any other less period. After all, the

learned counsel went on to argue, such a relief was not pleaded in the application by the applicant.

Our view from what we could gather in the pleadings before the trial tribunal, is that this issue cannot detain us much. This was so for the reason that such relief was never pleaded by the appellant in her application. The claim of the appellant as summarized under paragraph 6 of the application reads in *verbatim* thus:

*"6. Cause of action/brief statement of facts constituting the claim-*

*(i) That, the applicant is bonafide owner of the registered Right of Occupancy with Certificate of Title No. 28425, L.O No. 28425 and L.D No. BTC/5491 for a term of thirty-three years starting from the first day of April, Two Thousand and Nine.*

*(ii) That, the registered right of occupancy in respect of the above cited details constitute Plot No. 597, Block "R" Nyunguu Area, Babati Township within Manyara Region and it measures three hundred and fifty-three (353) square meters.*

On the basis of what was pleaded by the appellant above, and giving effect to the cherished practice in civil litigation that parties are bound by their pleadings, we entertain no doubt in our mind that the prayer by the appellant to be declared the lawful owner of the disputed plot of land by the principle of long use, is alien in the pleadings. Without any further ado, we answer the second issue in the negative.

Evaluation of the evidence by the trial tribunal and the first appellate Court, is the gist of the third issue that is, whether or not, on the basis of the evidence that was placed before the trial tribunal, the appellant was entitled to be declared the lawful owner of the suit property. Mrs. Kimale, strongly urged us to hold that the appellant sufficiently established ownership of the suit property because she tendered before the tribunal, a letter of offer and a certificate of title over the property, both of which bore her name necessarily implying that, she applied for the plot of land from the relevant authority, which in turn allocated her with the same. On the other hand, her learned friend Mr. Mahuna, challenged the letter of offer and the certificate of title arguing that, they were dubiously issued to her and that is why she failed to satisfactorily establish before the trial tribunal

on how she acquired the said plot of land before she processed for being registered as the owner.

According to what we could discern from the record of the trial tribunal, there was no dispute to the fact that the disputed plot of land that is, Plot No. 597 Block "R" Nyunguu area within Babati township, was initially known as Plot No. 373 Block "U". The changes to the plot number came as a result of re-planning the town of Babati, when it was being transformed from a district council to a town Council. Also not disputed was the fact that the suit property was initially allocated to one Elipokea B. Mbise on the 18<sup>th</sup> November, 1988 vide exhibit R3, which is a letter of offer in respect of the suit property to the said Elipokea Bahati Mbise.

The fact that by the year 1988 the suit plot of land had already been surveyed, in terms of the provisions under **the Act**, any subsequent change of ownership by any type of disposition, had to comply with the provisions of section 36 which states thus:

*"S. 36 (1) A disposition of a right of occupancy shall:*

*(a) comply with the provisions of this section and section 37, 38, 39 and 40.*



(b) *be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with.*

Among the things which would be involved in compliance with the provisions named above would include sale agreement, transfer deed, consent of the Commissioner for Land and others. In accounting on the process of how she came to be registered as the owner of the disputed plot of land, the appellant told the trial tribunal that she purchased it from Elipokea Mbise. She however failed to tender the sale agreement between her and the said Elipokea Mbise, nor was there tendered any transfer deed to elucidate that the ownership of the plot of land shifted from Mbise to the appellant. Additionally, there was no sanction of the Commissioner for Land to the alleged transfer.

Even though there was the testimony of one Rehema Lucian Isaya (AW2), to the effect that she witnessed the sale agreement between the appellant and Elipokea Mbise, she could not fortify her contention by exhibiting her signature on the sale agreement because the same was nowhere to be traced and thereby, watering down her oral testimony.

On the contrary, the respondents tendered a sale agreement between Elipokea Mbise and Donathi Kweka, which was witnessed by three

witnesses that is Ramadhani Ibebe, who was the chairman of the area, Hassan Athumani (RW4) and Iddi Hussen (RW5) who were witnesses to the sale agreement and all of them exhibited before the trial tribunal their signatures which they signed on the said sale agreement.

In view of the missing vital documents to the purported sale transaction of the suit premises between the appellant and Elipokea Mbise, we are persuaded to share the feeling expressed by Mr. Mahuna that, the registration of the appellant as the lawful owner of the disputed plot of land was done dubiously. In **Malmo Montagekonsult AB Tanzania Branch Vs Margaret Gama**, Civil Appeal No. 86 of 2001 (unreported), the Court encountered with an almost similar scenario whereby, the respondent failed to explicitly account on the circumstances under which she was registered as the lawful owner of the suit property. The holding of the Court was to the effect that:

*"There was no disposition in favour of the respondent because she was neither the purchaser nor the donee of as gift. The purported transfer of the Right of Occupancy to the respondent was obviously a fraudulent arrangement between Mr. Mkomea on the one hand and the respondent and*

*the land officer who gave the consent for the attempted disposition on the other hand."*

In the same vein, the absence of paper trail leading to the registration of the appellant as the lawful owner of the suit premises in the instant appeal, coupled with the way in which the process of the registration was fast tracked that is, the application for an offer and the letter of offer being made on the same date that is the 1<sup>st</sup> day of April, 2009, and the certificate of right of occupancy being granted some twelve months later on the 13<sup>th</sup> April, 2010, to us looks unusual, suggesting that there was some fishy arrangement between the appellant and the Land Officer who effected the registration.

Be that as it may, in the light of what we have attempted to highlight above, we find ourselves constrained to answer the third issue in the negative that the appellant failed to establish ownership over the disputed plot of land so as to convince the trial tribunal to grant the relief which she sought of being declared as the lawful owner of the suit property.

Consequently, we dismiss the appeal before us by sustaining the finding of the two lower courts. We however slightly differ with them on the award which was given to the respondents. We think it was improper

to declare that the suit property was the deceased's estate in the absence of clear disposition process. To us, it only sufficed to hold that the appellant failed to establish her claim of ownership over the disputed plot of land. And, on the strength of the sale agreement (exhibit R3), the respondents may wish to regularize the disposition of the suit premises in the deceased's estates. We further direct that the respondents will have their costs in this appeal.

Order accordingly.

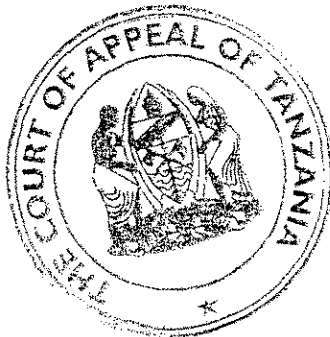
**DATED** at **ARUSHA** this 4<sup>th</sup> day of April, 2019.


S.S. MWANGESI  
**JUSTICE OF APPEAL**

G.A.M. NDIKA  
**JUSTICE OF APPEAL**

I .P. KITUSI  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**