

TANZANIA / JUDGMENT

20100804 TZHC Mbeya

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4• -. IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT MBEYA LAND CASE APPEAL NO.18 OF 2008 (From the Decision of the District Land and Housing Tribunal of Mbeya District at Mbeya in Land Application No. 106 of 2005) JOB MWANJISI APPELLANT VERSUS EDWARD MOMBA & 12 OTHERS RESPONDENTS

JUDGEMENT

1315110 & 4/8/2010 LUKELELWA, J. On 28th day of November 2005 the appellant Job Mwanjisi presented an application In the District Land and Housing Tribunal for Mbeya against the Respondents Edward Momba and 19 others. It was averred under paragraph 2 of the application that the Respondent was Mama Olivia of Kitongoji cha Irundo - Kikondo Mbeya. The cause of action was stated under paragraph 6 of the application that the Respondent had trespassed into a shamba belonging to the late T. Sankey Mwanjisi, estimated at the value of shs. 10,000,000/= (Ten million shillings). The Relief claimed was that the respondents vacate the suit shamba as the respondent were occupying the land without the consent of clan members. The respondents listed themselves in the Written Statement of Defence presented to the trial District Land and Housing Tribunal as:- 1. Edward Momba.

2. William Alimwene. 3. Abraham Mwanyornbole. 4. ASA Mwakwama. (7 J

5. Yesaya Syonga. 6. Asha Kibona. 7. Emmanuel Mwasikili.

8. Boyson Mwakyembe. 9. Philimon Mwankenja. 10. Nsangalufti Mwakwama.

11. Yusuph Mwalugaja. 12. Mikidadi Abdallah. 13. Ibrahim Bukuku. The respondents averred under paragraph 4 of the Written Statement of Defence that they did not trespass to the disputed land but they bought the said piece of land from clan members known as Timothy, and Samweli Mwanjisi vide various sale agreements between the said parties and the Respondents. The application was stalled in the trial tribunal pending the ironing out some administration Cause in Mbeya Urban Primary Court and Mbeya District Court. On 18th January 2008 the application stood adjourned for further hearing on 05/03/2008 to enable the appellant file an inventory in the District Land and Housing Tribunal relation to the estate of the late Timothy Sankey Mwanjisi, so that the respondents could be satisfied that the land in dispute was among the properties of the deceased so collected by an administrator of the estate of the deceased, before proceedings with the case. Earlier on 28th day of January

2008, Mr. Mwakolo learned advocate for the respondent filed a Notice of preliminary objection to the effect that the Application was time-barred. Hence when the matter came for further hearing on 5/03/2008, the preliminary had to be argued first. Mr. Mwakolo learned advocate submitted that the appellant was the administrator of the estate of Timothy Sankey Mwanjisi who died in 1988 in respect of letter of administration. The appellant was appointed as an administrate on 16/9/2004 that is 16 years after the death of his late father. The application had been filed on 28/11/2005. That is seventeen years after the death of his late father. Further that Act 10 of 1971, the Law of Limitation Act provide a period of twelve years. 2 Hence the appellant was late for a period of five years. The learned counsel had cited the case of Yusuph Same and Another Vs. Hadija Yusuph [1996] TLR 347 where it was held that - Right of action for recovery of Land where owner deceased - Period of twelve years runs from death of deceased irrespective of when letters of administration granted. Limitation may be raised at any stage of proceedings. Mr. Kayange learned advocate for the appellant had submitted that the matter before the trial tribunal was for the appellant to present an inventory of the deceased estate, and further that no reason was advanced for the respondents failure to give the notice of preliminary objection when the application was filed in 2005. In the ruling dated 16th day April, 2008 the trial District Land and Housing Tribunal upheld the preliminary objection, and dismissed the application with costs. The appellant was aggrieved by the ruling, and on 29th day of July 2008 lodged a memorandum of appeal in this court raising the following grounds of appeal:- That the trial tribunal erred in law and point of fact for failing to note that some beneficiaries of the estate of the deceased Timothy Sankey Mwanjisi without the authority of the whole family of the deceased sold the estate something which in law is unlawful. That the trial tribunal erred in law and point of fact that because it had accepted that it was the appellant who was the administrator of the estate of Timothy Sankey Mwanjisi, deceased, then this appellant has a right of knowing how that estate is disposed off. By sale of the estate by just some beneficiaries of the estate it is proper for the appellant to claim the estate for and on behalf of other beneficiaries. 3 That the trial tribunal erred in law and point of fact for not noting that the appellant has no relationship with the Respondents which could make the latter qualify to be beneficiaries of the estate of the deceased Timothy Sankey such that their right to estate would have pivoted on the right as beneficiaries. They therefore have no colour of right to the estate. That the tribunal erred in law and point of fact that the appellant was accepted as the person appointed to be the administrator of the estate of the deceased Timothy Sankey Mwanjisi. The Respondents wrongfully purchased the holdings in the said estate and that was the basis of the Application in the lower Tribunal. That the trial tribunal erred in law and point of fact for imposing costs on the Appellant because on a balance of probabilities the circumstances show that the Application was for the benefit of the beneficiaries to the estate of the deceased Timothy Sankey Mwanjisi. The appeal was argued by way of written submissions. The appellant was represented by Mr. Kayange learned advocate while the respondents maintained the services of Mr. Mwakolo learned advocate. Mr. Kayange learned advocate for the appellant decided to adopt the memorandum of appeal which was drawn and filed by the appellant himself. I have failed to understand, why

the learned counsel of the appellant decided to do so. The grounds of appeal raised in the memorandum of appeal had nothing to do with what was decided in a Ruling given by the Trial District Land and Housing Tribunal on 16th April, 2008. The fact remains that the Land in dispute is claimed to be part of the estate of the late Timothy Sankey Mwanjisi who had died on 22nd day of January, 1988. There was no reason given why there was such an inordinate delay in, the administration of the estate of the deceased as expected, to the extent that until 28th day of November, 2005 when the appellant applied for letters of administration of that estate, a period of seventeen years after the death of the deceased. The delay as expected creates an ample opportunity for Waste of an estate of a deceased person. This is what is being alleged by the appellant. The law on the matter is exactly as that which is submitted by Mr. Mwakolo learned counsel for the respondent. The appellant has not made any attempt to challenge that legal position. I find this appeal devoid of any merit. I therefore dismiss this appeal with costs. Order accordingly. S.B.LUK L A JUDGE. 04/08/2010 5

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