

TANZANIA / JUDGMENT

KELVIN MONGA SCANNED

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12 December 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 26276 OF 2024 (Originating From Application No. 117 of 2023, Kibaha District Land and Housing Tribunal) KELVIN MONGA MVELA..... APPELLANT
VERSUS KONGOWE ADVENTIST PRIMARY SCHOOL..... 1st RESPONDENT

JUDGMENT

4th to 12th December, 2024 E.B. LU VAN DA, J The Appellant named above, is appealing against the ruling of the Tribunal striking out his suit on account of locus standi on the part of the Appellant who was suing over a clan land falling under the estate of the late Mzee Azaria Monga Mahenge who passed away in 2000. In the memorandum of appeal, the Appellant grounded that the Tribunal erred in law and facts in striking out the application (suit) on the ground that the Appellant had no locus standi to claim the suit land in his personal capacity. Mr. Jerome Njiwa and Diana Mussa Advocates for Appellant, prefaced their arguments by citing Lujuna Shubi Ballonzi V The Registered Trustees Of Chama Cha Mapinduzi [1994] TLR 203, also cited Black's Law Dictionary, 10th Edition, page 1084, for a definition of locus standi. They submitted that the Appellant did not claim the suit land because it belonged to his father, Azaria Monga but he claimed it on the basis that following his father's demise, it is the Appellant who inherited and acquired right over the suit land, citing paragraph 6(iii) of the application. They submitted that the Tribunal went astray in finding that the Appellant should first be appointed the administrator of the estate of the late Azaria Monga in order to claim the suit land. They submitted that legally it is not mandatory that every inheritance of the deceased property should undergo the administration process but what matters is the mutual agreement/consent among the heirs and/or the family on how the properties should be inherited by the beneficiaries, citing Edwin Wilson Mtuta And Another V Hezron Mtuta And Two Others, Land Appeal No 46 of 2022, HC. In reply, Mr. Isaac Nassor Tasinga learned Counsel for Respondent submitted that the Appellant has alleged that he delivered (sic) his ownership over the suit land by inheritance from his deceased father, arguing that the Appellant failed to disclose in his pleadings as whether there was any administrator who allocated to him the suit land, for him to have a status to stand in any court of law claiming he own the suit land. Frankly speaking, this appeal has been lodged without sufficient ground of complaint. At paragraph 6(a)(i) of the application filed at the Tribunal, the 2 Appellant pleaded that he is the son of the late Azaria Monga who passed away in 2000. At the preceding paragraph he pleaded that the late Azaria Monga was the owner of the suit land.

Section 100 of the probate and Administration of Estates Act, Cap 352 R.E. 2002, provides, An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living⁷ Therefore, after the death of the late Azaria Monga, it is only either his executor or administrator who can sue over the cause of action arising from his estate. A mere fact that the Appellant is an heir do not confer powers to sue on his personal capacity. Indeed, the Appellant did not say who are the so called entire family and children who conferred ownership to him. A case of Edwin Wilson Mtuta (supra), is distinguishable, in that therein this Court was dealing with the land held under customary titles, particularly in villages, it is where this Court said it can pass to an heir by family meetings resolution not necessarily by formal appointment of administrators. Herein there is no evidence if the suit land is either located at village or held under customary. The Appellant pleaded that the suit land is located at 3 Kongowe, Kibaha District. The Appellant did not describe if Kongowe is a village. At paragraph 6(a)(ii) of the application, the Appellant pleaded that the late Azaria Monga purchased the suit land from Bashuru Saidi Shirima on 23/06/1996 and another portion purchased from Salehe Kizai on 3/05/1998. At paragraph 6(b)(2), the Appellant attached sales agreement. That fact alone, negate a notion or a possibility of the suit land being passing from one generation to another under customary tenure. My undertaking is grounded on the fact that in the application, the Appellant did not plead any fact that the late Azaria Monga was a native at the suit land, neither stated that the late Azaria Monga had rights of occupancy over the suit land by virtue of customary tenancy. Therefore, the question of automatic inheritance does not arise and cannot be entertained. The Appellant is at liberty to take the advice given by the learned Chairperson if at all he is interested to pursue his cause on the right direction instead of being misguided. The appeal is dismissed on its entirety. However, the Appellant is spared to foot costs of this appeal. LUVANDA JUDGE 712/2024 4 Judgment delivered in the presence (^Appellant and Respondent. 5

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