

**IN THE HIGH COURT OF ZANZIBAR  
HELD AT CHAKE CHAKE PEMBA  
CIVIL APPEAL NO. 11 OF 2007**

From Civil Appeal No.11/2005 of RM'S Court at Wete Pemba,  
From Civil Appeal No. 04/2005 of DM'S Court at Konde and From Original Case No. 35 OF  
2004  
of Primary Court at Konde Pemba.

**JOHN SULEIMAN MUHELA**

..... **APPELLANT**  
(Original Defendant)

v/s

- 1. RASHID JUMA ABDALLA**
- 2. MBAROUK MOH'D NASSOR**
- 3. HAMAD ABDALLA HAMAD**

} **RESPONDENT**  
(Original Plaintiffs)

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**JUDGEMENT**

**Mwampashi,J.**

This is a third appeal by the appellant John Suleiman Muhela . The appeal arises from Konde Primary Court Civil Suit NO. 35 of 2004 wherein the appellant was sued by the respondents Rashid Juma Abdalla, Mbarouk Mohammed Nassor and Hamad Abdalla Hamad over a certain shamba

situated at Makangale within the District of Micheweni . It was the respondent's case before the Primary court that they had inherited the disputed shamba from their late parents and that in 1994 they had (respondents) agreed with the appellants father who later died in 2003 that the latter (appellant's father) would be taking care of the disputed shamba and that he would plant trees upon it which would later be divided equally between them .After the death of the appellants father the respondents approached the appellant for the division of the trees but the appellant refused hence the dispute .

The respondent's case was totally denied by the appellant . His defence was that he and his late father had been in a peaceful possession and use of the disputed shamba since 1983 and that the shamba comprises of several small shambas bought from different people by his late father .

The appellant did also deny to know anything about the alleged agreement of 1994 between the respondents and his late father . After hearing evidence from the parties with their respective witnesses and from two court witnesses the Primary court found that the respondents did prove their case to a greater extent and that half of the disputed shamba belongs to the respondents. The court did also order among other things

that it was only coconut plants which were to be divided equally between the parties. The appellant unsuccessfully appealed to the District and Regional courts hence this appeal.

The appellant has been represented by Mr. Iss – haq Sharif learned counsel who has argued that the lower court did err in confirming the Primary cont decision which was supported by no evidence. Mr. Sharif has submitted that the respondents did not prove their case to the required standard. It has err in finding that the respondents had entered in agreement with the appellant's father while there was no evidence that the said shamba did really belong to the respondents. H e has contended that the allegations by the respondents that they had inherited the disputed shamba from their late parents were not proved because no letters of administration over the estate of the alleged parents were ever produced. Mr. Sharif has also submitted that the lower courts did also err in not considering the fact that the respondent's suit was time barred because there was evidence that the appellant had been in undisputed possession and use of the disputed shamba since 1983.

On their part the respondents have opposed this appeal arguing that the lower courts did not err in deciding in their favor because enough evidence

was produced by them to prove their case. They have also argued that their suit was not time barred as it was instituted within the prescribed time limit. They have therefore prayed for the appeal to be dismissed. This court is of a settled view that this appeal has to be allowed mainly because from the very beginning the suit by the respondents against the appellant in the Primary Court from which this appeal arises, was incompetent for being instituted by the parties with no locus standi. The respondents suit was based on the agreement concerning the disputed shamba they alleged they had inherited from their late parents . The respondent produced no letters of administration of the estate of their alleged parents . No letters of administration of the alleged estate had ever been granted to the respondents by any competent court to enable them to sue or enter into any agreement over the disputed shamba they claimed had belonged to their late parents . The respondents could not legally enter into the alleged agreement with the appellant's late father over the said shamba without firstly proving that they had properly inherited the shamba from their alleged late parents or that they have been granted letters of administration over the said shamba by the

competent court . S. 188 of the *Succession Decree*, Cap 21 of the Laws of Zanzibar provides as follows;-

*“No right to any part of the property for a person who has died intestate can be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction”*

It is also observed by this court that since the appellant denied all the allegations made by the respondents including the claim that the disputed shamba had belonged to the respondent's late parents then it was upon the respondents to prove, among other things, that the disputed shamba had really belonged to their late parents . This was not proved at all .

There is no grain of evidence produced by the respondents proving the respondent's allegation that the said shamba had really belonged to their late parents . The respondents needed to firstly establish their title over the disputed shamba before claiming any right over the same . This was important because it is abundantly on record that the disputed shamba is within the Government Forest reserve and that the appellant has been in possession and use of the shamba for some long time . The lower Courts did therefore err in finding that the respondents did prove their case

against the appellant on balance of probabilities while in fact that was not the case as observed above .

The issue in regard of limitation can not, from the available record, conclusively decided although it appears that the appellant and/or his late father had been in undisputed possession and use of the disputed shamba since 1983 till in 2004 . It is unfortunate that it is not in record as to when did the respondent's parents die because of the alleged agreement of 1994, between the respondents and the appellant's late father is put aside, time as against the respondents began to run when their parents died .

This court also thinks that since the respondents case as against the appellant was based on the agreement they allege they did enter with the appellant's father in 1994 and since it is on record that the appellant's father died in 2003 then it was not proper for the respondents to sue the appellant on the alleged agreement to which the appellant was not a party . The appellant in the eyes of Law was a stranger to that alleged agreement and he could therefore not be sued on it . The respondents were required to sue the legal representative of the appellant's late father

or the administrator of his estate . There is no evidence on record that the appellant was sued on either of the two capacities . The respondent's suit was therefore again incompetent for not suing a proper defendant .

For the above given reasons the lower Court's decisions are hereby set aside and this appeal is allowed . The respondents suit against the appellant in the Primary Court was incompetent and ought to have been dismissed . The appeal is allowed and the appellant is awarded costs of this appeal as well as of the lower courts.

Appeal allowed.

SGD: Mwampashi,J.

16/01/2009

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

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**GEORGE KAZI.**

**Ag. DEPUTY REGISTRAR.**