IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

LAND CASE APPEAL NO. 1 OF 2013

(From the Decision of the District Land and Housing Tribunal of SHINYANGA District at SHINYANGA in Land Case No. 18 of 2008)

SHIJA KITINA .....APPELLANT

VERSUS

MAYIGE S/O SELELI & 5 OTHERS.....RESPONDENT

JUDGMENT

4th Dec 2013 and 10th Feb 2014

S.M.RUMANYIKA, J

Originaly the dispute is over 60 acres of a parcel of land located at the Usanda ward – in the region of Shinyanga according to the district land and housing tribunal (DLHT). Shija Katina (the appellant) claims, and this is the gist in evidence, that his deceased grandfather found it in 1887, and bequeathed it to the appellant's father. He now owns the same. Having too bequeathed it in 1979 from late father. On their part, the 3rd and 5th respondents disown the story. Having occupied it in 1999. Six and 9 acres each respectively.

As regards the 1st and 6th respondents, judgment on admission was entered against them. Whereas the 2nd and 4th respondents died when the matter was still pending in the DLHT, the latter marked the matter as abated in respect of both of them.

The DLHT was satisfied that the appellant proved no case on the balance of probabilities required at law. However, the learned trial chair awarded the land only on the basis of the principle of acquiescence, to the present 3rd and 5th respondents. The appellant not satisfied, here he appeals against judgment and decree. Basically on the ground- failure by the DLHT to evaluate the evidence properly.

The 4 grounds boil down as such. In fact the trial chair was respectfully not right. Having marked the suit abated following untimely deaths of the said 2nd and 4th respondents. Nevertheless the 4 names of the respondents in this appeal are, on that basis misplaced. I will give the reasons shortly herein after.

As said before, the learned chair held that the 3rd and 5th had better title. Having occupied the disputed land for a long time undisturbed. To borrow the words;

It cannot be properly held that the 3rd and 5th respondents inherited pieces of (sic) in their occupation.

.....it would again, appear on entire evidence on record that such 3rd and 5th respondents have been in occupation of

respective pieces of land for some what long time. So since applicant's evidence is too scanty to establish his title ..... I do not think that, the 3rd and 5th respondents can fairly and justly be dispossessed of the same.

I trust that what determines the length of period for the purposes of computing the limitation period is not the assessment and sentiments of a presiding judge. But only whatever is set by the law. It is twelve (12) years. I do not, with due respect think that the learned chair had this law dictates in mind. Perhaps the chair was at loss on how long exactly, had the respondents occupied and perhaps made use of the disputed land. To him the period was only "somewhat long".

I think whenever one is not clear with what exactly the limitation starts to accrue, the court cannot go by speculations. Instead, the cause of action may be presumed to have arisen on the date the suit was instituted. In this case the 25th February, 2008. This means that by simple mathematics the lapse of about nine (9) years w.e.f. 1999 when the 3rd and 5th respondents alleged to have occupied the disputed land,surely the principle of acquiescence was improperly invoked.

Moreover I do not see how scanty was the appellant's evidence. Much as the trial chair was satisfied that the parties were claiming it on behalf of their respective family members. As long as the law,

(section 34 (1) (2) (b) of the land disputes court Act cap. 216 R.E. 2002) gives room for such representation. In fact the appellant was an interested party. He had the **locus**.

Even going by the 3rd and 5th respondents' evidence, that had occupied it during operation vijiji (i.e Mid 1970's), yet still the 1887 appellant's title was better.

Now, as promised earlier on, the issue of suit against the 2nd and 4th having abated on their deaths. In fact given nature of the suit, the deceased should not have gone with the suit. So long as unlike the case, say of adultery or defamation and this was not the case here, the claims were not solely attached to them. The best the trial chair should have done was to direct that the appellant either withdraw the suit against the deceased respondents/defendants or hold the matter in abeyance pending appointment and availability of such legal representatives. Rather than declaring as it did, the matter abated. The appellant is at liberty if interested further, to parsue such case(s).

In up short, appeal is allowed entirely with costs. Decision of the DLHT quashed. Its orders set aside.

R/A explained.

S.M.RUMANYIKA

JUDGE

10/2/2014

Delivered under my hand and seal of the court this 10th February 2014. In the presence of .....

S.M.RUMANYIKA

JUDGE

10/2/2014