

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: JUMA, C.J., MUGASHA, J.A. And NDIKA, J.A.)

CIVIL APPEAL NO. 218 OF 2017

MAIGU E. M. MAGENDA.....APPELLANT

VERSUS

ARBOGAST MAUGO MAGENDA.....RESPONDENT

**(Appeal from the Judgment of the High Court of Tanzania
at Mwanza)**

(Hon. Makaramba J.)

**dated the 30th day of June, 2015
in
Misc. Land Appeal No. 107 of 2013**

JUDGMENT OF THE COURT

3rd & 5th October, 2018

JUMA, C.J.:

This is the third appeal to this Court in respect of a dispute over the ownership of Plot No. 03 BLOCK "B" in Bwiru area of Mwanza. The dispute pits two siblings against each other; the appellant MAIGU E.M. MAGENDA and the respondent ARBOGAST MAUGO MAGENDA. It was the

respondent who initiated a complaint in the Ward Tribunal of Pasiansi as Land Case No. 8 of 2012.

Before the Ward Tribunal the respondent testified on how he was allocated the disputed land in 1977. He was then an army officer, employed by the Tanzania Peoples Defence Force (TPDF) seconded to train officers of the Peoples' Militia at its training centre at Bwiru. He requested the Principal of the militia training centre to allocate him a parcel of land to farm and carry out some small-scale business activities. He and his three other colleagues were allocated a large chunk of land, which they divided among themselves. On his parcel, he built a small shed and carried out small-scale trading. In 1997, he asked the Principal to endorse a letter he was planning to write to the Regional Land Office to get a formal allocation of his plot.

The letter which he wrote on 6th July, 1997, received the endorsement of the Ward leaders, who allowed him to take it over for signing by the District Land and Housing Officer before it reached the Regional Land Office. The respondent stated that the Surveyor, one Mr. Masanja, who was sent to survey his land, refused because electricity

lines passed overhead. Later the respondent sent another letter asking for a survey of his plot. Again it was declined, this time because that same parcel of land had been allocated to one Nicholas Ujegi. It turned out that there was a mistake, which was rectified when Mr. Ujegi wrote a letter to clarify. Finally, in 2001 he obtained a building permit. When he began building his house in 2004, he asked his sibling, the appellant to supervise the construction of the foundation which still stands.

The appellant gave a different account; he told the Ward Tribunal that during his employment as a public servant in 1980s in Kilosa, he used to visit his elder brother, the respondent. During the course of many communications and visitations, the appellant asked his brother to find land for him to buy. Around 1992 following his transfer from Kilosa to Kigoma, the appellant sent Tshs. 100,000/= to his brother to purchase land. The appellant sent several instalments, including on 07/04/1992 when he sent Tshs. 30,000/=:, and later on another Tshs. 60,000/=:.

When the appellant returned back to Mwanza in 1993 his brother informed him that the militia training centre was relocating away from

Bwiru, and there were vacant plots of land which he may wish to select. That's how, the respondent showed him the disputed Plot No. 3 Block "B" at Bwiru, where he built his house and planted orange trees, tangerine and other trees. In 2003 the appellant applied to the City Council of Mwanza to be allocated the plot, but was told that the plot belongs to another person.

On 23rd February 2012 the Ward Tribunal ruled in favour of the respondent as the lawful owner of the disputed plot. Because the appellant built a house on the land belonging to the respondent, the Ward Tribunal ordered him to compensate the appellant within six months which expired on 23rd August, 2012.

Aggrieved with the decision of the Ward Tribunal, the appellant moved to the District Land and Housing Tribunal for Mwanza (herein referred to as "**the District Tribunal**") where he urged the District Tribunal to find that the respondent had filed his claim in the Ward Tribunal out of the 12 years period and was thus barred by the Law of Limitation Act, Cap. 89. In his Reply to the Petition, the respondent

contended that he invited the appellant, who happen to be his sibling, to look after the land but not to adversely possess the same.

In its judgment which upheld the decision of the trial Ward Tribunal and dismissed the appeal, the District Tribunal observed that the appellant's reliance on limitation period lacks merit because he was a mere invitee to the land who could not be protected by the limitation period.

The appellant was still aggrieved. He filed his second appeal in the High Court at Mwanza (Misc. Land Appeal No. 107 of 2013) wherein he preferred six grounds of appeal. The first ground contended that the Ward Tribunal lacked pecuniary jurisdiction over the matter. The second, fourth, fifth and sixth grounds fault the first appellate District Tribunal for failing to find that from 1994 to 2012 he was not an invitee, but was in adverse possession over the land and the twelve year-limitation period prescribed by the Law of Limitation Act, Cap. 89 prevented the respondent from claiming the land. The third ground of appeal urged the High Court to fault the District Tribunal for failing to find that the

Principal of the militia training centre at Bwiru had no power or authority to allocate the disputed land.

After considering submissions on the grounds of appeal, the second appellate High Court (Makaramba, J.) dismissed the appeal, observing that the cause of action accrued to the respondent in 2012 when he filed his claim in the Ward Tribunal; hence, the respondent was not barred by the limitation period.

After obtaining a certificate of the High Court contending that the Ward Tribunal was barred by the period of limitation, the appellant has brought this third appeal and sets four grounds of appeal. The **first** ground contends that the second appellate Judge erred in law for failing to see that the appellant had been in possession of the disputed land from 1994, but not from 2012. In the **second** ground the appellant stated that the second appellate Judge erred in law in deciding that the Tanzania Peoples Defence Force had in 1997 allocated land to the respondent. The **third** ground of appeal faults the second appellate Judge for upholding the decision of the trial Ward Tribunal which lacked pecuniary jurisdiction. The **fourth** ground contends that the second

appellate Judge erred in law for failing to find that the appellant had, without any interruption, enjoyed the disputed land since 1994.

The appeal came up for hearing before us on 3rd October 2018. The appellant and the respondent appeared in person. Both had earlier filed their respective written submissions and proceeded to highlight the same.

The appellant, whilst orally highlighting the submissions, insisted he had been using and occupying the disputed land for over 18 years before the respondent raised his claim of ownership. He had also been up to date with paying the land rent to the Government. The appellant submitted that had the second appellate court taken the guidance from the 12-year limitation period provided under Item 22 of Part I of the First Schedule to the Law of Limitation Act, the respondent's claim would have been dismissed under section 3 of the Law of Limitation Act.

The appellant also submitted to question the way the contradictory evidence of the respondent was believed. He wondered why the respondent was believed in the circumstances where he did not produce any document to prove his ownership of the disputed plot. The record of

the trial Ward Tribunal shows the extent he, the appellant has developed the disputed land which is his property. He wondered how come, the Ward Tribunal could hear a matter whose pecuniary jurisdiction is above the three million shillings prescribed under section 15 of the Land Disputes Courts Act, Cap. 216.

On his part, the respondent submitted that there is no evidence that the appellant had been using the land since 1994 without interference as he claimed because, being a civilian, he could not enter military lands. He submitted that being a military officer, he was transferred from one to place to another, that even during these transfers he still retained ownership of the disputed plot.

The respondent revisited the moments when he overtly asserted his ownership. He gave the example of when on 6th February 1997; he wrote a letter to the Regional Land Office, to request a survey over his land. In so far as he was concerned, the appellant insists that his right to take action against the appellant accrued in 2012 when the appellant made several attempts to deprive him of his landed property. He expressed his full support to the decision of the second appellate Judge

to invoke section 9(2) of the Law of Limitation Act, Cap 89 to hold that the respondent was not barred by the twelve-year limitation period.

From the submissions of the parties, we should begin by restating that this being a third appeal from the Ward Tribunal, the scope of our jurisdiction is limited to points of law as clearly spelt out by section 47(2) of the Land Disputes Courts Act. We can only deal with matters of law that had been certified by the High Court for consideration by this Court. The High Court certified to us the point of limitation period for instituting a suit to recover land. Specifically the point of law invites us to determine whether the appellant had without interference, occupied the disputed piece of land since 1994 which occupation renders the respondent's claim over the same land to be time barred by the limitation period prescribed under item 22 in the First Schedule to the Law of Limitation Act which gives a limitation period of twelve (12) years.

It seems to us that the **first**, the **second** and the **fourth** grounds of appeal relate to matters which the High Court certified to us, as involving point of law based on the complaint that the respondent was

barred by the twelve year limitation period. However, the **third** ground of appeal which contends that the Ward Tribunal lacked the required pecuniary jurisdiction to determine the respondent's complaint was not certified as point of law that was ripe for our consideration. It is fair to say that although question of pecuniary jurisdiction was not certified to us, we all the same agree with the learned second appellate Judge's statement of the law and findings on the application of section 15 of the Land Disputes Courts Act, Cap 216 to this dispute, to the effect that pecuniary jurisdiction was not at issue at the Ward Tribunal and should not be raised as a point of law at second and third appeals. The learned Judge stated the following with regard to applicability of section 15:

"I am of the firm view... that the law limiting the pecuniary jurisdiction of the Ward Tribunal talks of the 'the disputed land or property valued at three million shillings.' This does not suggest that the claimant should bring evidence on the value of the property the subject of the dispute in the form of a Valuation Report. As I intimated to earlier, since the question of the pecuniary jurisdiction forms part of the pleadings, no evidence be it in the form of a Valuation Report or otherwise is required at the stage of pleading. If

anything since it [is] the Appellant who is alleging that the value of the property exceeded TZS 3,000,000/= it is on him the burden of proving it lies and not the Respondent. This court being a second appeal court, even if the appellant was to bring such evidence, unfortunately this court would not have been in a better position than the trial Tribunal to receive such evidence more so because such issue did not form a disputed fact at the trial stage."

We next determine the merits of the claim that the respondent was barred by the limitation period when he filed his complaint at the Ward Tribunal. It is inescapable fact that from the proceedings in the Ward Tribunal of Pasiansi, right through the first appellate District Land and Housing Tribunal, to the second appellate High Court, concurrent finding of facts had supported the respondent's position that from 1977 when the Principal of the Militia Training Centre at Bwiru allocated him the land, right up to 2012 when he initiated a complaint in the Ward Tribunal of Pasiansi, the respondent did not receive any challenge to dispute his ownership of the land. We see no reason on third appeal to question the concurrent findings of facts that the dispute arose in 2010 after his retirement from the Army following refusal by the Appellant to hand over

to the Respondent the disputed plot forcing the Respondent bring a complaint against the Appellant in the Pasiansi Ward Tribunal to assert his right over the landed property.

On the point of law whether the respondent was barred by the twelve (12) year limitation period, the second appellate Judge is correct to find the answer from item 22 of Part I of the Law of Limitation Act which prescribes the twelve years limitation period within which to institute actions to claim back land, read subject to section 9 (2) of the same Act, which prescribes when the right of action accrues in land disputes. The relevant section 9(2) states:

"9 (2)- Where the person who institutes a suit to recover land, or some person through whom he claims, has been in possession of and has, while entitled to the land, been dispossessed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

Being an invitee to take care of the land belonging to his brother, the respondent; the appellant made clear overtures towards exclusive

possession. The record of appeal shows the evidence of an earlier attempt by a letter dated 10th May, 2003 which the appellant made to hijack the process and obtain formal title in his name instead of the respondent who had initiated the process. It seems to us that the respondent's right of action finally accrued and the twelve-year limitation period began to run against him in 2010, when upon returning back to settle on his land when he retired from the army in 2010, he found the appellant staking his own exclusive claim of ownership over the same Plot of land. This turn of events is what precipitated the respondent's claim in the Ward Tribunal in 2012. In this appeal, although the appellant has argued that he had exclusive ownership for over eighteen years before the respondent staked his claim of ownership in 2012, we do not think continuous use of land as an invitee, or by building a permanent house on another person's land or even paying land rent to the City Council of Mwanza in his own name would amount to assumption of ownership of the disputed plot of land by the appellant.

From the time he returned back to settle on his Plot No. 03 BLOCK "B" in Bwiru area of Mwanza upon his retirement from the army in 2010,

to 2012 when he lodged his complaint in the Ward Tribunal of Pasiansi; the respondent was undisputedly within the 12-year limitation period prescribed for suits to recover land. In the premises, we find that all the four grounds of appeal lack merit and they all fail.

The upshot is that this appeal lacks merit and is hereby dismissed with costs.


DATED at **MWANZA** this 4th day of October, 2018.

I. H. JUMA
CHIEF JUSTICE

S.E.A. MUGASHA
JUSTICE OF APPEAL

G. A.M. NDIKA
JUSTICE OF APPEAL

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


S. J. Kainda
DEPUTY REGISTRAR
COURT OF APPEAL