

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MMILLA, J.A., MWANGESI, J.A., And MWAMBEGELE, J.A.)

CIVIL APPEAL NO. 195 OF 2013

JOHN BARNABAS ----- APPELLANT

VERSUS

HADJA SHOMARI ----- RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dodoma)

(Kalombola, J.)

dated the 9th day of May, 2016

in

Land Appeal No. 75 of 2013

JUDGMENT OF THE COURT

23rd & 28th, August, 2019

MWANGESI, J.A.:

The appeal before us, has its genesis from Land Dispute No. 4 of 2013, which was lodged by the respondent at the Ward Tribunal of Kinyangiri, in the District of Iramba within Singida Region, complaining that the appellant herein, had trespassed onto her plot of land measuring about seven and half (71/2) acres. The decision which was given in her favour by the Ward Tribunal, aggrieved the appellant, who successfully challenged it at the

District Land and Housing Tribunal for Iramba District, vide Appeal Application No. 37 of 2013. In turn, the respondent through Miscellaneous Land Case Appeal No. 75 of 2013, successfully challenged the finding of the District Land and Housing Tribunal for Iramba, in the High Court of Tanzania at Dodoma. The decision of the High Court, which aggrieved the current appellant, is the subject of this appeal.

In assailing the decision of the High Court, the appellant has premised his grievance on four grounds namely: -

- 1. That, the Honourable High Court Judge, erred in law and in fact in not considering the point of time limitation raised by the appellant herein.*
- 2. That, the Honourable High Court Judge, erred in law and in fact in not considering the fact that, the respondent lacked locus standi to claim for the land of her deceased husband.*
- 3. That, the Honourable High Court Judge, erred in law and in fact, in not considering the fact that, the respondent could not object the sale of the land in dispute after the death of her husband.*

4. *That, the Honourable High Court Judge, erred in law and in fact, in upholding the decision of the Ward Tribunal whereas the property in dispute was not matrimonial property.*

On the date when the appeal was called on for hearing before us, Mr. Elias Michael Machibya, learned counsel, entered appearance to represent the appellant whereas, the respondent entered appearance in person, legally unrepresented. Upon having failed to comply with the stipulation under the provision of Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 as amended by the Tanzania Court of Appeal (Amendment) Rules, 2019 Government Notice No. 344 of 2019 (**the Rules**), which required him to file written submission within sixty days in support of the appeal, the learned counsel, sought leave of the Court which was granted, to argue the appeal orally in terms of Rule 106 (10) (b) **of the Rules**.

In his amplification to the grounds of appeal, the learned counsel argued the first ground separately, while the remaining three grounds were argued jointly. His argument in the first ground was that, the dispute lodged by the respondent at the Ward Tribunal of Kinyangiri, was legally untenable because it was time barred. This was so for the reason that, while the appellant came into possession of the disputed landed property in the

awareness of the respondent on the 3rd April, 2000 as reflected at pages 59 to 60 of the Record of Appeal, the respondent lodged her dispute in the Ward Tribunal on the 22nd February, 2013, as noted at page 6 of the Record of Appeal. When the period between the two dates is computed, it gives out a period of about 12 years and 357 days. The said period according to Mr. Machibya, was by very far beyond the period of 12 years, provided under the provision of paragraph 22 of the First Schedule to the Law of Limitation Act, Cap. 89 of the Revised Edition of 2002 (**the Limitation Act**). The named provision sets the limitation period to lodge a claim related to ownership of land to be twelve years. In that regard, the learned counsel urged us to allow the first ground.

With regard to the other remaining three grounds of appeal, Mr. Machibya, faulted the decision of the High Court, which was based on the fact that, the respondent had not consented to the sale of the disputed land by her late husband to the appellant. He argued that the same was not the gist of the complaint, which was lodged by the respondent at the Ward Tribunal. And, even if the same could have been the case which they argue it was not, he submitted that it could not stand, because it was raised after

the demise of her husband. The learned counsel, concluded his submission by imploring us to allow the appeal with costs.

In response, the respondent being legally illiterate and unrepresented as aforesaid, conceded to the fact that she became aware of the move by her late husband to sell the disputed land to the appellant in the year 2000 as argued by the learned counsel for the appellant. She however, raised an objection to the alleged sale to the Village Executive Officer (VEO) of Kinyangiri, on the 22nd June, 2000. When she was probed by the Court as to why since then, she never took any action until her late husband passed away, only to come and lodge her complaint on the 22nd February, 2013, which was after the elapse of twelve years, she gave no answer.

The basic issue which stands for our determination in the light of the grounds of appeal lodged by the appellant, and the submission from either side above, is whether the dispute which was lodged by respondent against the appellant at the Ward Tribunal of Kinyangiri, was time barred. We think this is the central issue because, the question of limitation of time went to the jurisdiction of the tribunal to entertain the dispute. We held in **Stephen Masato Wasira Vs Joseph Sinda Warioba and the Attorney General**

[1999] TLR 334, where the High Court had struck out an application filed out of time, that: -

"Having held that the application before the High Court was time barred, the High Court had under section 3 (1) of the Law of Limitation Act, 1971, only the power to dismiss it out and not to strike it out, as happened in this case."

What we could gather from the record of the lower court and tribunals, is the fact that the question of limitation of time was raised by the appellant throughout the prosecution of the matter. At the District Land and Housing Tribunal, it is reflected at page 73, where it is seen in the second ground of appeal. Nonetheless, even though the tribunal sustained the appeal by the appellant, it never addressed itself on the question of limitation of time which had been raised by the appellant. In the High Court, the question of limitation of time, was raised by the learned counsel for the appellant in his submission as noted at pages 98 and 103 - 104 of the Record of Appeal. Unfortunately, however, the learned Judge of the High Court, did not as well address itself to such an issue.

In our view, both the Chairman of the District Land and Housing Tribunal in the first appeal, and the learned Judge of the High Court in the second appeal, misdirected themselves in failing to consider the question of limitation of time which was raised on behalf of the appellant. This is because, it went to the jurisdiction of tribunal and therefore, it could be raised at any stage of the proceeding.

Now coming to the merit of the appeal before us, we noted in the record of the Ward Tribunal as pointed out by Mr. Machibya that, the appellant purchased the disputed piece of land from the husband of the respondent in the year 2000. The first installment of the purchase price that is TZS 50,000/=, was paid on the 3rd April, 2000, while the final payment was indicated to have been made on the 22nd June, 2000. It was further noted in the record that, on the date when the appellant was making the final payment of the purchase price in the office of the VEO, the respondent stormed in the office and found the process in progress, and raised her complaint to the said VEO, in resistance to the said sale. However, the record is silent on the way or mode on how the alleged complaint was resolved. What is on record is the fact that, on the 23rd February, 2013, the respondent

instituted the dispute which is the subject of this appeal, at the Ward Tribunal of Kinyangiri.

When a reckon is made from when the respondent was heard to complain about the sale of the disputed plot of land in the office of the V EO, to when she lodged the dispute in respect of the said piece of land, as submitted by the learned counsel for the appellant, the outcome is a period of about 12 years and 357 days or so. Indeed, such period is by very far beyond the 12 years stipulated under paragraph 22 of the First Schedule to **the Limitation Act**. In terms of the dictates of section 3 (1) of the same Act, the dispute ought to have been dismissed in line with what was held in **Stephen Masato Wasira Vs Joseph Sinde Warioba and the Attorney General** (supra).

A similar scenario was discussed by the Court in **National Bank of Commerce Vs Sadrudin Meghji** [1998] TLR 503, where an application had been lodged out of the period prescribed by the law. In dismissing the application, the Court stated that: -

"We agree with Mr. Kesara that the application is time barred. Under the provisions of section 3 and

paragraph 21 of the First Schedule to the Law of Limitation Act, 1971, the application should have been filed within two months (60 days) from the date of its delivery on the 6th February, 1996. The application before us was lodged 14 months since the delivery of the decision. This in our considered opinion is very much out of time."

See also: Tanzania Cotton Marketing Board Vs Cogeat Cotton Company S.A [2004] TLR 132.

In the same vein, the fact that the dispute leading to the appeal before us was lodged at the Ward Tribunal of Kinyangiri, twelve (12) years and 357 days from when the cause of action accrued, it was out of time. Under the circumstances, the Ward Tribunal ought to have dismissed it because it lacked the requisite jurisdiction to entertain it. Unfortunately, this anomaly was not noted by the District Land and Housing Tribunal in the first appeal, as well as the High Court in the second appeal. This finding moves us to allow the first ground of appeal. And, with the foregoing position, we find no need to delve in the remaining other three grounds of appeal.

The learned High Court Judge in the second appeal, in sustaining the appeal preferred by the respondent, she quoted the second paragraph of the decision of the Ward Tribunal, after which she stated that: -

"... the appellant before the Ward Tribunal made efforts to stop and challenge the sale and according to the evidence, she failed. It is therefore not true as it was said by counsel for the respondent that the appellant's issue is an afterthought. I hereby quash the decision of the District Land and Housing Tribunal and restore the decision of the Ward Tribunal."

In view of the above quotation, it is our understanding that the holding of the learned Judge in the second appeal, was based on the fact that the objection of the respondent in the sale of the disputed plot of land, was not put into consideration by the Village Executive Officer. In our view, the learned Judge misdirected herself because the issue of consent of the respondent to the sale of the disputed property, was not the issue before the Ward Tribunal. Our stance is fortified by the wording of the dispute which was lodged by the respondent at the Ward Tribunal, of which we take the liberty to reproduce it *verbatim* thus: -

"Maelezo ya Dai

Namdai John Barnabas shamba langu ambalo analitumia bila idhini yangu. Shamba lenyewe lina ukubwa wa ekari saba na nusu (71/2)."

Additionally, in her testimony before the ward tribunal, the respondent was recorded to state that: -

"Nakumbuka shamba lenye mgogoro nilifyeka mimi mwenyewe, na shamba hilo nilikuwa nalitumia pamoja na watoto wangu. Baada ya mimi kuondoka kwenda kumuuguzwa mtoto wangu, na baada ya kurudi, nilipata habari kuwa shamba langu limekodishwa na John Barnaba (mdaiwa). Ndivyo alivyoniambia mme wangu. Nilimuuliza kwa nini iwe hivyo, kaniambia mimi nilitaka kuchomwa moto, kwani mimi nilituhumiwa kuwa eti ni mchawi wa mvua ndiyo maana nimemkodishia nipate fedha ya kujikimu. Nilimuuliza je kwa nini umemkodishia na mimea sisi tutakula nini? Alijibu kuwa kwa sababu ya matatizo ilibidi suala hilo nilifikishe kwa mtendaji wa kijiji kuuliza kuwa mimi na watoto tutakula wapi..."

Consequently, in line with what we have endeavoured to traverse above, we hold that the Ward Tribunal of Kinyangiri, lacked jurisdiction to

entertain the land dispute which was lodged by the respondent because it was time barred. As a result, the proceeding before the Ward Tribunal and those subsequent thereto, were nullity and we nullify them. To that end, we allow the appeal with costs.

Order accordingly.

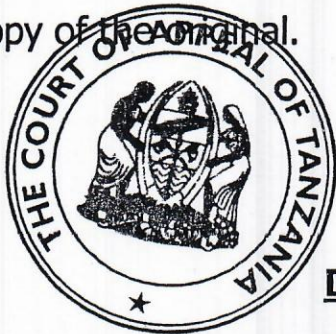
DATED at DODOMA this 27th day of August, 2019.

B. M. MMILLA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The Judgment delivered this 28th day of August, 2019 in the presence of Mr. Elias Michael Machibya, learned counsel for the appellant and Ms. Hadija Shomari, the respondent who is present in person is hereby certified as a true copy of the original.



S. J. Kainda
S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL