

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 135 OF 2003

*(From Kinondoni District Court – Civil Appeal No. 4 of 2003, original Kimara
Primary Court Civil Case No. 14 of 1998)*

MOSHI SALUM APPELLANT

VERSUS

JUMA MKOMBOZI RESPONDENT

*Date of last order – 13/11/2007
Date of Ruling – 26/2/2007*

J U D G M E N T

Shangwa, J.

This appeal is against the decision of the District Court of Kinondoni in Civil Appeal No. 4 of 2003 delivered on 19th September 2003. The said appeal originated from the decision of the Primary Court of Kimara in Civil Case No. 14 of 1998 delivered on 14th November, 2002. In its decision, the Primary Court of Kimara held that Juma Mkombozi's claim of ownership of land against Moshi Salum who in this

case are the Respondent and Appellant respectively was time barred. Thus, judgment was entered in favour of Moshi Salum who had filed a suit against Juma Mkombozi claiming for ownership of a piece of land measuring 2.5 acres located at Kibamba area, Kinondoni District, Dar es Salaam Region. Juma Mkombozi was not satisfied with the judgment of the Primary Court of Kimara. He then appealed to the District Court of Kinondoni.

The District Court of Kinondoni nullified the proceedings and judgment of the primary court of Kimara after finding that the dispute between the parties had been heard and determined by the Kibamba Ward Tribunal in case No. 38 of 1997 before it was filed afresh in the primary court of Kimara. It was observed by the District Court Magistrate Mutaki, DM that Moshi Salum (Appellant) was barred from opening a fresh case and that after being aggrieved with the decision of the Kibamba Ward Tribunal, she was supposed to

lodge an appeal to the Primary Court as provided for under S.15 of the Ward Tribunal Act, 1985. After nullifying the proceedings and judgment of the Primary Court of Kimara, Mutaki DM remarked that the decision of the Kibamba Ward Tribunal stood to be valid. In its decision, the said Tribunal gave judgment in favour of Juma Mkombozi who is the Respondent in this case.

There are three grounds of appeal which have been lodged against the decision of the District Court of Kinondoni. These are as follows:

- 1. That the District Magistrate erred in law and in fact in validating the decision of the Kibamba Ward Tribunal, the Tribunal that had no jurisdiction to determine the dispute between the parties.*

2. That the District Magistrate erred in law and fact in validating the decision of the Kibamba Ward Tribunal while the matter before it was time barred.

3. That the District Magistrate erred in law and in fact in nullifying the proceedings and judgment of the Kimara Primary Court, Dar es Salaam.

On the first ground of appeal, counsel for the Appellant Mr. Rwabutaza submitted that in 1997 when the Ward Tribunal heard the dispute between the parties, its jurisdiction was limited to minor disputes relating to land contravening the customs and traditions of the area in the village and not involving possession of land which is a more serious and complex matter, and that it is only primary

courts which had jurisdiction to determine land disputes involving possession of land. He referred to item 1 of part III of the Schedule to the Ward Tribunal Act No. 7 of 1985. He contended that as the Kibamba Ward Tribunal in Civil Case No. 38 of 1997 had no jurisdiction to hear the dispute between the parties, its proceedings were a nullity and that the Respondent cannot rely on the proceedings that are a nullity to defeat the rights of the Appellant obtained in Civil Case No. 14 of 1998 at Kimara Primary Court.

On the second ground of appeal, counsel for the Appellant submitted that the Appellant was in possession of the land in dispute since 1982 and that in 1997 when she was sued in the Kibamba Ward Tribunal, she was in possession of that land for about 15 years. He referred to paragraph 22 of Part 1 of the First Schedule to the Law of Limitation Act No. 10 of 1971 which sets a period of limitation for land claims to be 12 years. He argued that as

the land in dispute was preferred to the Kibamba Ward Tribunal out of the period of limitation it was time barred.

On the third ground of appeal, counsel for the Appellant submitted that the Kinondoni District Court was wrong in nullifying the proceedings of the Kimara Primary Court. He said that the said court was the proper forum to hear and determine the dispute between the parties which relates to possession of land. He prayed that the decision of the Kinondoni District Court in Appeal No. 4 of 2003 be declared invalid.

In reply to the submissions made by counsel for the Appellant, counsel for the Respondent Alhaj Said H. El-Maamry submitted on the first ground of appeal that the Kibamba Ward Tribunal had jurisdiction to hear and determine the land dispute between the parties. He contended that Ward Tribunals have jurisdiction to deal with minor disputes of possession of land acquired through

clearing of the bush, inheritance and purchase except that they do not have jurisdiction to deal with more serious and complex disputes of possession of land acquired through a grant of right of occupancy which involves a lot of procedures. He submitted that a proper interpretation of paragraph 1 Part III of the Schedule to the Ward Tribunal Act, 1985 is that Ward Tribunals are conferred jurisdiction concerning dowry and land but that such disputes should be minor and that when comes the issue of possession, such issue should not be a serious one and complex as such issues need legal minds who have no appearance in the Tribunals. He argues that it was wrong for counsel for the Appellant to interpret that "*possession of land is a more serious and complex matter*" as not every possession of land is serious and complex. He said that the District Magistrate was right to validate the decision of the Kibamba Ward Tribunal as it had jurisdiction to deal with the dispute between the parties.

On the second ground of appeal, counsel for the Respondent submitted in reply that the Respondent licenced the land in dispute to the Appellant sometimes in 1982 and that from 1982 to 1997 when the dispute arose, the Appellant knew that the land in dispute belongs to the Respondent and that both of them lived peacefully for the whole of that period. He said that the licence was withdrawn in 1997 and that adverse possession arose immediately after the licence was withdrawn. He contended therefore that the limitation period started to run in 1997 when the licence was withdrawn. He said paragraph 22 of Part I to the First Schedule to the Law of Limitation Act does not mean that people should not help each other to occupy land for more than 12 years. Furthermore, he said that the Respondent came to know of the Appellant's intention to deprive him of the piece of land in dispute in 1997 when he filed the suit in the Ward Tribunal to recover his land from the Appellant.

On the third ground of appeal, counsel for the Respondent prayed the Court to adopt the arguments he made in the first ground of appeal to be his arguments in respect of the third ground of appeal.

In this case, it is not in dispute that the Respondent Juma Mkombozi gave to Moshi Salum a piece of land in dispute to cultivate seasonal crops such as rice, maize, cassava, etc. In 1996, Juma Mkombozi got information that Moshi Salum was looking for someone to sell the piece of land in dispute. In 1997, he filed a suit in the Kibamba Ward Tribunal to recover his shamba and he won. In 1998, Moshi Salum went to the Primary Court of Kimara and claimed that the piece of land in dispute belonged to her as she had occupied that piece of land for more than 12 years and that Juma Mkombozi's claim over that land was time barred.

Thereafter, Juma Mkombozi appealed to the Kinondoni District Court against the decision of the Primary Court of Kimara and won. As already mentioned, the Kinondoni District Court Magistrate nullified the proceedings and judgment of the Primary Court of Kimara and validated the proceedings of the Ward Tribunal of Kibamba. The reason for so doing is that as the matter had been heard and determined by the Ward Tribunal the one who was aggrieved with its decision i.e. Moshi Salum was supposed to appeal to the Primary Court instead of filing a fresh case in the same court.

In my view, the District Court Magistrate was right in nullifying the proceedings and judgment of the Kimara Primary Court and validating the proceedings and judgment of the Ward Tribunal of Kibamba. Indeed, Moshi Salum was supposed to appeal to the Primary Court against the decision of the Ward Tribunal of Kibamba which entered judgment in

favour of Juma Mkombozi instead of filing a fresh case in the Primary Court of Kimara. I agree with counsel for the Respondent that the Ward Tribunal of Kibamba had jurisdiction to entertain and determine the land dispute between the parties. It is a common custom for villagers in Tanzania who possess large areas of land which they cannot managed to cultivate to give part of it to their friends or relatives for cultivating temporary crops while retaining its ownership. I believe that is what happened in this case. So, when Juma Mkombozi gave a piece of land in dispute to Moshi Salum for cultivation of temporary crops, he retained ownership over it and he had a right to get it back for his own use. The dispute over that piece of land was a simple dispute and I believe that the Kibamba Ward Tribunal had jurisdiction to deal with it under paragraph (1) of Part III of the Schedule to the Ward Tribunal Act, 1985.

As to whether or not the dispute was referred to the Ward Tribunal when it was time barred, my view is that it was not time barred. This is because the dispute between the parties over the piece of land in issue first arose in 1996 and the suit was filed in the Tribunal in 1997. I agree with Al Haj H. El-Maamry that the limitation period of 12 years set under paragraph 22 of Part I of the First Schedule to the Law of Limitation Act, 1971 starts to run when adverse possession between the parties arose that is, in 1996 and not in 1982 when Juma Mkombozi licenced the piece of land in dispute to Moshi Salum for cultivation of temporary crops. He did so out of kindness and Moshi Salum has no reason to complain.

For these reasons, I uphold the decision of the District Court of Kinondoni in Civil Appeal No. 4 of 2003 and I dismiss this appeal with costs.


A. Shangwa

JUDGE

26/2/2008

Delivered in open court this 26th February, 2008 in the presence of Mr. Rwabutaza, Advocate for the Appellant and holding brief of Al Haji El- Maamry for the Respondent.


A. Shangwa

JUDGE

26/2/2008

