

IN THE HIGH COURT OF TANZANIA

AT TANGA

PC. CIVIL APPEAL NO.12 OF 2005

(Originating from Civil App.No.36/2000 Lushoto Pr. Court

Original civil case No.28/2002 Bumbuli Pr. Court)

BAKARI RASHID SHEMZIGWA,.....APPELLANT

VERSUS

1.IMAMU SAID SHEMZIGWA

2. YUNUS HUSSEIN KILUWARESPONDENTS

Date of Last Order: 23/9/2009

Date of Judgment: 20/11/2009

JUDGMENT

Teemba, J.

This appellant sued the respondents in the Bumbuli Primary Court for recovery of a piece of land, approximately one acre. The suit was dismissed. He appealed to the District Court of Lushoto but again he did not succeed. The District Court upheld the decision of the Primary Court, hence this appeal.

This appeal was prosecuted by the appellant in person. Likewise, the respondents were not represented. They appeared in persons. Each side argued strongly in favour of their respective cases countering seriously the views by each other. The appellant had seven points in his memorandum of appeal. The first and seventh grounds of appeal are that the District Court rejected his appeal without properly evaluating the evidence adduced at the trial court, while the second ground is challenging the language used in the judgment. In ground number three, the appellant is disputing a finding that the respondent's father owned 18 farms. The fourth ground is that the District Court failed to hold that the appellant's case at the trial court was proved to the balance of probability as required by law. The fifth and six grounds are related to the extent that the appellant is challenging the District Magistrate for failure to believe his evidence

that the land in dispute was occupied by his parents and later by himself peacefully at all material time until when the 1st respondent claimed it in 2002.

The respondents, in their reply to the memorandum of appeal, strongly resisted this appeal. It was argued that the District Court correctly upheld the decision of the Primary Court after taking into account the relevant laws and the evidence adduced by elders before the village Land Tribunal and the Primary Court. He argued further that there was a dispute over the land in 1968, that is, civil case 47/68 at Bumbuli Primary Court and the first respondent's father was declared the owner.

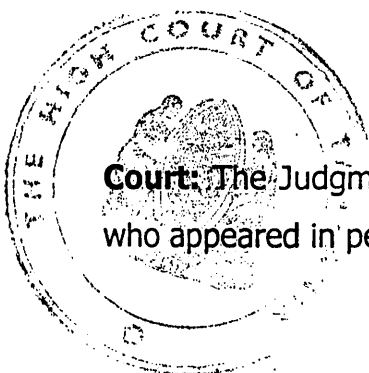
I will start with the fifth ground of appeal which was also one of the grounds presented to the first appellate court, that the District Court of Lushoto. The appellant claimed that the District Magistrate erred in law and facts for his failure to believe the evidence of the appellant that the shamba in dispute was never at all at any material time contested. He further claimed that he had peaceful enjoyment after inherited it and his clan members including his parents occupied the same land for more than 100 years. It was argued that the respondents did not demand the land until 2002, the aspect which amounts to frivolous claim as the respondents are barred by the doctrine of prescription to claim any right on that land.

The 1st respondent claimed that there was a court dispute in 1968 in respect of the same land and his father won the case. But then, what happened thereafter? From the decisions of the two courts below, it appears that the appellant's parents were left to occupy the land during their life time. This position is supported by the 1st respondent's sister, Mwanaisha Saidi (SU 3) whose evidence was to the effect that the appellant's parents were given just a plot to build a house but not the farm, although the same witness said she was once accused of stealing cassava from the same land.


It is a common fact that the appellant's parents occupied the place for many years and the appellant inherited from them. It is also settled that, even if it is assumed that the land in dispute was the same one referred to in the former dispute in 1968, then the appellant's parents were allowed to occupy it by the first respondent's father. The question to be considered at this juncture is whether the first respondent had a right to claim the land in 2002. Under the **Law of Limitation Act, (Cap 89 R.E. 2002)**, a suit to recover land must be instituted within the period of twelve years.


In the instant appeal, the land in dispute continuously remained occupied by the appellant's parents for more than twelve years and thereafter inherited by the appellant. Under the mandatory provisions of section 3 of the Law of Limitation Act, the first respondent had no right to claim the land. Thus, the two courts below erred in law for failure to consider the issue of period of limitation which was/is relevant in the circumstances of this case.

Having determined this ground of appeal, which in essence determines the dispute, there is no need for me to consider other grounds. The appeal is hereby allowed. Decisions of the lower courts are quashed and set aside. The appellant is also awarded costs. It is so decided.



Court: The Judgment is delivered in the presence of appellant and respondent who appeared in persons.


R.A. TEEMBA, J.
20/11/2009


R.A. TEEMBA, J.
20/11/2009.