

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISCELLANEOUS LAND CASE APPEAL NO 16 OF 2013

(From the decision of the District land and Housing Tribunal of Arusha
in Land Appeal No 60 of 2010; Original Maji ya Chai Ward Tribunal
Application no. 48 of 2010)

JOSEPH ANAEL AKYO.....APPELLANT.

VERSUS

MICHAEL AMOS MUNGURE.....RESPONDENT.

JUDGMENT.

MWAIMU, J.

The respondent Michael Amos Mungure sued the appellant Joseph Anael Akyoo before the Maji ya Chai Ward Tribunal for a piece of land measuring 20 X 30 meters situate at Arudeko within Kiwawa Village. According to him he gave the appellant Tshs. 2,300,000/= to buy a plot for him. After buying it he constructed a wooden house and a semi finished house. However, sometime later the appellant claimed the plot belonged to him.

The Ward Tribunal entered judgment in favour of the appellant by declaring him the owner of the plot but ordered him to refund

Tshs. 2,300.000/= to the present respondent. The respondent, aggrieved by that decision appealed to the District Land and Housing Tribunal which reversed the judgment of the Ward Tribunal and declared the respondent as the rightful owner of the disputed piece of land. Joseph Akyoo was aggrieved and therefore preferred this appeal containing two grounds, firstly, that the appellate tribunal was wrong in declaring the respondent the rightful owner against the weighty evidence tendered by the appellant, secondly, that the tribunal wrongly extracted contradictory findings from Maji ya Chai Ward Tribunal No. 1 of 2007 and its application for execution at the Arusha District Land and Housing Tribunal No. 55 of 2010.

In expounding ground one, the appellant submitted that the appellant was the person who entered into the sale agreement of the disputed land with one Elipokea Mbise on the 27th day of October, 2006 adding that the respondent was not a party to the agreement. He argued that the respondent did not adduce any documentary evidence to prove that he assigned the appellant to by the suit land for him.

Addressing ground two, the appellant contended that to prove that the appellant was the owner of the suit land he was engaged in disputes which forced him to attend courts of law in Maji ya Chai Ward Tribunal in Land Case No. 1 of 2007 the judgment which is in existence to date. He prayed for the Court to allow his appeal.

Mr. Lawena learned counsel for the respondent countered the submissions by the appellant in two fronts. In the first place he raised the issue of limitation arguing that the appeal was time barred when it was filed by the appellant. Secondly he contended that the claim that the Tribunal did not consider the appellant's evidence has no merits because the Tribunal revisited the evidence of the Ward Tribunal and was satisfied that the respondent bought the suit land after paying Tshs. 2,300,000/= and that it was the respondent who developed the suit land. On ground two the learned counsel contended that there was sufficient evidence that it was the respondent who bought the suit land. He prayed for the Court to dismiss the appeal with costs.

As the respondent has raised the issue of limitation, I would wish to address it first. Mr. Lawena contended that the judgment of the District Land and Housing Tribunal was delivered on 23rd day of October, 2012. The appellant filed his appeal on 15th day of March, 2013. According to section 38 (1) of the Land Disputes Courts Act Cap 216 R.E. 2002 the period for preferring an appeal is within sixty days. A quick calculation shows that the appellant filed the appeal four months and twenty one days from the date of judgment. The appeal has been delayed for a period of about two months and twenty one days as the appellant was supposed to have filed his appeal at least by 23rd December, 2012. On the circumstances I agree with the respondent that the appeal is hopelessly time barred in terms of the

provisions of section 3 of the Law of Limitation Act Cap. 89 R.E. 2002 which provides:

“(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefor opposite thereto in the second column, ***shall be dismissed whether or not limitation has been set up as a defence.***”

This position of the law is also imputed in this appeal and the Court has no other option but to dismiss it. As the ground on limitation has resolved the appeal I will not consider the grounds of appeal. No order as to costs is made. It is so ordered.

SGD: M.P.M. Mwaimu

JUDGE

10/02/2014

Judgment delivered on this 10th day of February, 2014 in the presence of the parties.

SGD: M.P.M. Mwaimu

JUDGE

10/02/2014