IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISCELLANEOUS LAND CASE APPEAL NO. 27 OF 2011

(From the decision of the District Land and Housing Tribunal of Rungwe District at Rungwe in Land Case Appeal No. 48 of 2010 and Original Ward Tribunal Kisegese Ward in Application No. 9 of 2010

JAMES MWANGOLOMBE ..... APPELLANT

VERSUS

HADSON MWAITEBELE ..... RESPONDENT

JUDGMENT

Date of last Order: 24/8/2015
Date of Judgment: 08/09/2015

HON. A. F. NGWALA, J.

This Appeal originates from Kisegese Ward Tribunal, Land Case No. 9/2010. The Appellant, James Mwangolombe, was dissatisfied with the decision of Rungwe District Land and Housing Tribunal in Land Appeal No. 48/2010. The Appellant has preferred an Appeal before this court, on the following grounds, namely:-

> "1. That the District Land and Housing Tribunal erred in its Judgment for not taking into consideration the occupation of the Appellant's aunt who passed away in 2007.

2. That the District Land and Housing Tribunal erred in its Judgment for reaching its Judgment for reaching its Judgment basing on the purchase agreement which was very doubtful and post dated.

3. That the District Land and Housing Tribunal erred in its Judgment for ignoring the strong evidence of the Appellant."

The Appellant was represented by Ms. Atupakisye Mwakolo, learned Counsel. The Respondent was represented by Ms. Kasebwa, learned Counsel. When the Appeal was called up for hearing, Ms. Kasebwa, learned Counsel for the Respondent, raised three grounds of Preliminary Objections.

In her submission, Ms. Kasebwa prayed to submit on two grounds only and abandoned the third ground.

Concerning the 1st ground of Preliminary Objection Ms. Kasebwa argued that, the appeal is hopelessly time barred under the Law of Limitation Act, CAP. 89 R. E. 2002, contrary to column 2 paragraph 22 of part I of the schedule, which stipulates that, the limitation time to bring a suit for recovery of land is twelve (12) years. She argued that the Appellant delayed for more than 17 years. Logically, no person can tolerate interference on the property he legally owns for such a long time. In fortifying her argument, she cited the case of **NASSORO UHADI v. MUSSA KALONGE [1982] T.L.R. 302** where the High Court held that, the Application to recover land is 12 years and not otherwise. She also cited the case of **SHABANI**

NASSORO v. RAJABU SIMBA (HCD) 1968 at page 233. The court inter alia stated that:-

> *"The court has been reluctant to disturb persons who have been occupying land and developed it over a long period of time. It would be unfair to disturb their occupation."*

Again, she cited the case of **BALIKUJILE MPUNAGI v. NZWILI MASHENGO [1968] High Court of Tanzania – Dar Es Salaam** at **page 20**, where Cross J, as he then was, decided inter alia that:-

> *"The Respondent has been in possession of the disputed land for 27 years, cultivating and developing it, while the appellant did nothing to stop them. Whatever the appellant's original claim over the land, it would be completely contrary to principles of equity to deprive the respondent of his rights over the land which he acquired over his long period of occupation."*

Ms. Kasebwa was of the view that, the delay of about 17 years by the Appellant is abuse of court process. For this reason, she prayed this honourable court to dismiss the Appeal in its entirety for being hopelessly time barred.

Coming to the 2nd ground of objection, which concerns the *locus standi* of the Appellant, Ms. Kasebwa stated that, the Appellant *lacks locus standi to sue*, for reason that, the disputed land belongs to his late father, one Gwandumi Mwasifika, who died way back 1993. From the proceedings of the appellate tribunal, the Appellants stated at page 2 of the proceedings that the land in dispute belongs to my father Gwandumi Mwasifika, and he was

given by Chief. His father died in 1993. From the date of his father's death in 1993, it is 17 years from the death of his father to the year; he decided to institute the case.

She went on to submit that his witness DW1 Abel Mwabupunde who stated that, the land in dispute belonged to the late father of the Appellant, on that situation, the Appellant *lacks locus standi* to institute a case, as he was not the Administrator of the estate of his late father. In this particular, she referred this court in the case of **LUJUNA SHUBI BALLONZI, SENIOR v. REGISTERED TRUSTEE OF CHAMA CHA MAPINDUZI [1996] T.L.R. at page 203**, together with the case of **GODBLESS LEMA vs. MUSA HAMIS MKANGA AND TWO OTHERS, CIVIL APPEAL NO. 47/2012** (Unreported).

The said court held that, since the Appellant *lacks locus standi* to institute the suit, the appeal is incompetent and it should be dismissed on it's entirety with costs. She also, cited the case of **YUSUF SAME AND ANOTHER vs. HADUA YUSUF [1996] T.L.R.** at page 348 and the same case of **JOB MWANGESI VS. EDWARD MOMBA AND TWO OTHERS LAND APPEAL NO. 18/2008** (unreported). Where, Lukelelwa J, as he then was High Court of Tanzania at Mbeya, held at page 3 of the Judgment that:-

> *"Where the case was filed 13 years after the death of the deceased the period of 12 years, runs from the death of the deceased, irrespective of when the letters of administration was granted."*

In reply, Ms. Atupakisye, prayed to depart, on the two points of law submitted by Ms. Kasebwa. On the limitation period, she referred this court, to the records of the previous courts, that, it is true that the land in dispute belonged to the late father of the Appellant.

After his death, the land was left to be used by the Appellant's auntie who also died in 2007. It is unfortunate that we all missed the Proceedings and Judgment of the Ward Tribunal, but the Appellant said, he was given that land by his father, before his death, but he was not in a position to cultivate that land, because he was residing at Itete near by village. After the death of his father, he left the land to be used by his auntie who was residing near the disputed land.

Further, she submitted that, when the Appellant went to look for his land, he found the Respondent using the land. He instituted the case in Kisegese Ward Tribunal. He won the case. She went on to submit that, when they were at the District Land and Housing Tribunal, the Respondent stated that, he bought the land in 1997 from one, Angolile Mwakasitu, in their Agreement to buy the land that was reduced in writing in 2006. There is therefore, no record to show that the land was bought in 1997 and not 2006. If the land was bought in 2006, to the time, he instituted the case Ward Tribunal it is obvious that the suit is not time barred.

Submitting on ground No. 2, the learned Counsel argued that, it was therefore, right for the Appellant to institute a case to recover the landed property without having the Letters of Administration.

For this reason, she submitted that, the Appellant had *locus standi* to institute the case.

In rejoinder, Ms. Kasebwa, submitted that, the land in dispute belonged to the Appellant's father. The Appellant *lacked locus standi* to institute the case. In the proceedings, there is nowhere he stated that, he was given such land by his late father; rather he stated that, he was given the land by the late Gwandumi Mwasifika Mwangoke, who died in 1993. This signifies that he *lacks locus standi* to institute the suit.

On the point of time limitation, Ms. Kasebwa argued that, the Appellant stated to be given the land by his uncle or young father before his death. Thus the matter was time barred, as he was given before the death of his late father. Ms. Kasebwa, submitted further that, the Appellant was residing at Itete nearby to the land in dispute, and he failed to stop the Respondent from developing such land until 2010, after the death of the seller, this shows that, the Appellant has no room to claim that land.

From the records of the court, it appears that the Respondent, bought the piece of land in dispute from Angolile Mwakasitu in 1997, at purchase price of Tshs.230,000/=. The Respondent started to use that land by planting some crops therein. Later on 29/11/2006, the Sale Agreement was put into writing. It was done in the presence of the Vendor, purchaser, their relatives, Village Executive Officer of Kisegese and Ward Chairman.

It is evident therefore, from the record that, the Respondent cultivated that land, since 1997 up to 2010, when the Appellant, discovered that the land was sold to the Respondent. Thereafter, he instituted the case before the Ward Tribunal, to challenge the Respondent's possession of the disputed land.

It is the finding of this court that, if there were any adverse claim of the land in dispute, then the Appellant, should have not allowed the Respondent to use and enjoy the land for some 13 years and to grow permanents crops there in. the Judgment of the Chairman of Rungwe District Land and Housing Tribunal show this:-

> *"From above party's submissions and their witness's evidence, it is self evident that the Respondent was absent when the sale of disputed land took places he testified himself that he was at Itete as from 1993 to 2007 and as per his additional witness testimony that he was absent for long period. The Respondent stated that he discovered that the land was sold to Appellant in 2010 when he instituted the case before the ward tribunal."*

As already observed. It is obvious that, the principle of adverse possession, applies where the person claiming has been in adverse possession for 12 years. This court is of the view that, the issue of limitation under the Magistrates Courts (Limitation of Proceedings under Customary Law) Rules G. N. No. 311 of 1964 should be applicable. Item No. 6 in the schedule provides that any proceedings to recover possession of land should be filed within 12 years from the day the right accrues.

That being the position of the law I cannot disprove the findings and holding of the appellate tribunal. This position is elaborated well the case of **RUPIANA TUNGU AND 3 OTHERS vs. ABDUL BUDDY AND HALIK ABDUL, CIVIL APP. NO. 115 OF 2004 (HIGH COURT REGISTRY) (UNREPORTED)**. My brother, Mlay, J. inter alia held that:-

> *"The common law principle of adverse possession applies where the person claiming has been in adverse possession for twelve years".*

It is quite clear that, the Appellant has no legal claim against the Respondent, given the fact that the land had been lawfully sold to the Respondent by late Angolile Mwakasitu, 13 years ago. I hold so because the provision of Section 52 (2) as the Courts (Land Dispute Settlement) Act, Cap. 216 reads:-

> *"The law of Limitation Act 1971 shall apply to proceeding in the District Land and Housing Tribunal and the High Court in exercise of their respective of original jurisdiction."*

The above quoted Section, settles the legal limitation period upon which the suits can not be brought in court. The purpose of the Legislature, relating to suits for recovery of land, is to make sure that there must be an end to litigation and to the suit, specially in cases of this nature.

For the foregoing reasons, this appeal is dismissed with the usual consequence as to costs.

A.F. NGWALA
JUDGE
08/09/2015

Date: 08/09/2015

Coram: Hon. A. F. Ngwala, J.

Appellant: Absent

For Appellant: Absent

Respondent: Present

For Respondent: Ms. Kasebwa

Court: Judgment delivered in court in the presence the Respondent.

Court: Right of Appeal to the Court of Appeal of Tanzania explained. Ms. Mwakolo should be notified.

THE HIGH COURT OF TANZANIA

A.F. NGWALA
JUDGE
08/09/2015