

IN THE HIGH COURT OF TANZANIA
AT MBEYA
MISC. LAND CASE APPEAL NO. 32 OF 2014

*(From the Decision of the District Land and Housing Tribunal of Rungwe District at
Rungwe in Land Case Appeal No. 147 of 2013 and Original Ward Tribunal of Ndobo
Ward in Application No. 31 of 2013)*

BERNARD MWAITELE APPELLANT
VERSUS
EMMANUEL D. MWAIKALI RESPONDENT

JUDGMENT

*Date of last Order: 07/10/2015
Date of Judgment: 18/03/2016*

A.F. NGWALA, J.

The Appellant who filed this appeal on 24/09/2014 is challenging the dismissal order dated 23/05/2015 by the District Land and Housing Tribunal for Rungwe raised preliminary point of objection by the advocate of the Respondent Mr. Mwakolo, the learned Counsel.

In his petition of appeal, the appellants advanced four grounds of appeal which are:-

- “1. That the District Land Housing Tribunal erred in law in reaching a wrong decision of upholding a preliminary objection instead of hearing the case.

2. That the chairman of District Land and Housing Tribunal erred in law when he directed himself in his Ruling that the case was filed in the Ward Tribunal on 28/08/2013 a thing which is not true. In fact the case was filed with No. 44/2012 and after that it was appealed to the District Land and Housing Tribunal (Appeal No. 110/2012, which ordered the parties to go to Primary Court to seek letters for administration. Copies of the relevant documents are attached.
3. That the chairman of the District Land and Housing Tribunal erred in Law when he did not hear the case on merit.
4. That the District Land and Housing Tribunal did not consider that the respondent has no any evidence to show how he got the disputed land.”

At the hearing of the Appeal, the Appellant prayed the court to adopt the said four grounds of appeal. He argued that the Respondent had failed to produce the documents or exhibits to show that he had bought the disputed farm. The respondent did not have a title deed on the same. The respondent did not have the letters of administration of the estate of his late father, but he had the letters of administration of the late Kibika Mwaitele.

The Respondent through Mr. Mwakolo, the learned Counsel, did not support the appeal. Mr. Mwakolo submitted that it seemed the appellant brought the appeal without knowing

what he was appealing against. He contended that what was before the Tribunal was Appeal No. 147/2013. The decision of the Ward Tribunal was No. 31/2013. It is not in the court record that they had a case in 2012 in Ndobho Ward Tribunal as it did not form part of the proceedings.

Mr. Mwakolo went on to submit that the appellant claimed that he was the Administrator of the estate of his father who died in 1972. After being appointed on 21/8/2013. The Appellant's brother Jackson Mwaitele inherited their father's farm in 1973 and died in 2000. The Appellant instituted the case after the fourteen (14) years had elapsed since the death of his father. For this reason Mr. Mwakolo insisted that the District tribunal was right to do so. He therefore prayed for the dismissal of the appeal with costs.

The question for determination is whether the Rungwe District Land and Housing Tribunal was right to dismiss the appellant's appeal?

It is a trite Law that a preliminary point of objection is raised where there is a pure point of law that ought to be considered by the Court during institution of the suit. In **Shahida Abdulhassanal Kasam vs. Mahmed Mohamed Gulamali Kanji, Civil Application No. 42 of 1999 (unreported)**.

The Court of Appeal of Tanzania expressed its view on the point in similar terms when it said:-

“The aim of preliminary point of objection is to save the time of the court and of the parties by not going into the merit of the application, because there is a point of law that will dispose the matter summarily”.

In the instant suit on a landed matter, the time limit for instituting proceedings is 12 years. The Appellant did not observe the limitation period at the time of institution of the suit in the Ward Tribunal with number 31/2013.

The records show that the appellant inherited the farms in 2000. The Respondent had purchased the disputed land before the appellant inherited the farms. The Respondent is therefore protected by the principal of adverse possession. The Appellant is barred from claiming it. There are, other authorities which bar a person to claim land used by another person for more than 12 years. The customary law (Limitation of Proceedings) Rules 1964, Rule 2 which is applicable to the proceedings in the Ward Tribunal in the exercise of its compulsive jurisdiction and the law of Limitations Act (Supra) in column two paragraph 22 of part I of the schedule, under Section 52 (1) and (2) of the Land Disputes Court Act No. 2 of 2002.

All those laws limits the period to claim land to 12 years, Also in the case of **Nassor Uhadi vs. Musa Karunge (1982) T.L.R. 302** this court stated that the period to recover land is 12 years. In **Balikulije Mpunagi vs. Nzuili Mashengu (1968) HCD No. 20**, it was held that:-

"The respondent have 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 the principles of equity to deprive the respondent of his rights over the land which he acquired over his long period of occupation".

In view of the quoted authorities, the appellant is estopped to claim the disputed land from the respondent who had used the same for more than 12 years. Thus the District Land and Housing Tribunal had properly upheld the preliminary objection on point of law that was raised by the Respondent Counsel. As the aim of preliminary objection on point of law is basically to save the time of the court and the parties therefore, there was no need for the Chairman of the Tribunal to proceed to determine the suit on merit while the suit itself was premature and incompetent in the eyes of the law.

More so, it should be noted that, the suit land which is allegedly claimed by the Appellant to have been owned by his late father and later on by his late brother, both deceased, the right of action shall be deemed to have accrued on the date of the death. This is provided for under Section 9 (1) of the law of Limitation Act (Supra). The section reads.

"Where a person institutes a suit to recover a land of a Deceased person, whether under a will or intestacy and the deceased person was on the date of his death, in possession of the land and was the last person entitled to the land, the land to be in possession of the land, right of action shall be deemed to have accrued on the date of death."

The Appellant complains that the said farms belonged to his father, then to his brother, and after the death of his brother the same were transferred to him by the clan members. In simple words he inherited those farms.

The Appellant is arguing in the 4th ground of Appeal that the District Land and Housing Tribunal did not consider that the respondent has no any evidence to show how he got the disputed land. On this particular issue, the record reveals that the respondent had been using the suit land from 1968 – 2012. For the purpose of this appeal I quote part of the judgment from the Ndobbo Ward Land Tribunal which reads:-

“.....Mdaiwa anadai mashamba hayo kwa mdai ambaye ndiye anayetumia mashamba hayo toka mwaka 1968 – 2012 na mashamba hayo yaliuzwa na baba yake mzazi wa mdaiwa na baada ya vifo vya wazazi wao mdaiwa anayataka mashamba hayo kwa kuyagomboa na hayo ameyathibitisha mbela ya baraza....”

With this quoted piece of evidence, I am of the considered view that the Respondent exhibited enough evidence that he had been in possession of the suit land for a very long period. Here the prescriptive rule or the doctrine of adverse possession is applicable where the following rules are met:-

- (i) The possession of the land must be real, that is to say physical possession of the land by the adverse possessor.*
- (ii) It must be a single and exclusive possession; under this the adverse possessor and the true owner may not possess the land at the same time.*
- (iii) Possession of land must not be as result of consent by the land owner.*
- (iv) Animus possidendi, the intention to possess the land permanently by affecting permanent improvements and using the same land for a long period of time.*
- (v) The adverse possessor must not acknowledge the paper owner/true owner.*

On the second ground of appeal that the District Land and Housing Tribunal chairman for Rungwe erred in law when he directed himself in his Ruling that the case was filed in the Ward Tribunal on 28th/08/2013 it is clear from the records that the case was originally filed with No. 44/2012. Thereafter, it was Appeal No. 110/2012 which ordered the parties to go to Primary Court to seek for their respective letters for administration. More so as rightly submitted by Mr. Mwakolo, the appellant does not exactly know what he is appealing against. I hold so because the case which was brought by him before the Tribunal was appeal No. 147/2013, and the same arose from the decision of the Ward Tribunal numbered 31/2013. The proceedings of the Ward Tribunal had been attached by himself.

For the foregoing reasons this appeal is devoid of merit. Consequently it is dismissed with costs.



A. F. Ngwala
A.F. NGWALA
JUDGE
18/03/2016

Date: 18/03/2016

Coram: A.F. Ngwala, J.

Appellant: Present

For Appellant: Unrepresented

Respondent: Present

For Respondent: Mr. Mwakolo (Advocate)

Court: Judgment delivered in court in the presence of the parties.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.


A.F. NGWALA
JUDGE
18/03/2016