

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 11 OF 2018

*(From the decision of the District Land and Housing Tribunal of Karatu District at Karatu
in Land Case No. 95 of 2017)*

CAPTOLINA MALKORY AQWESO.....APPELLANT

VERSUS

PETRO META.....RESPONDENT

JUDGMENT

Date of Last Order: 12/06/2018

Date of Ruling: 10/08/2018

BEFORE: S. C. MOSHI, J

This appeal emanates from the ruling of the District Land and Housing Tribunal for Karatu at Karatu in Application No. 95 of 2017 whereby the trial Chairman dismissed the application based on a preliminary objection raised by the respondent's counsel to the effect that the applicant's application is time barred. Being aggrieved by the decision of the trial tribunal, the appellant appeals before this court basing on the following grounds; o

1. That the trial tribunal erred on-point of law and fact in dismissing Appellant's application on ground of limitation.

2. That the trial tribunal erred on point of law and fact in that it completely failed to comprehend that appellant's claim is not time barred as the Applicant clearly stated in paragraph 6 (a) of the Application that the cause of action arose on 24th September, 2016.

Before this court, the appellant was represented by Mr. Siay learned Advocate while the respondent appeared in person and unrepresented. The appellant's counsel prayed this appeal be argued by way of written submission and this court granted the prayer.

In his submission, the applicant's counsel started by giving a brief background of this matter, that on 10th October, 2017 the applicant filed a claim of land measuring 5 meters by 43 meters against the respondent at Karatu District Land and Housing Tribunal. In paragraph 6 (a) of the Application the applicant clearly stated that the respondent trespassed and occupied the described portion of land on 24th September, 2016 for the first time. On 3rd January, 2018 before the hearing of the matter began, the respondent raised a preliminary objection on point of law that the Application filed by the Applicant is time barred as almost twenty nine (29) years passed. On 12th February, 2018 the trial Chairman upheld the said preliminary objection on point of law and dismissed the Application with costs.

Proceeding with the submission on the first ground of appeal, he stated that the cause of action in that application arose in the year 2016 and the Application in question was filed in the year 2017. He contended that, the Chairman's statement that Daudi Andulile has been in use and occupation

of the land from 1988 is ridiculous as the said Daudi Andulile was not a party to the action before him nor was the notion of none joinder of parties raised before the tribunal. He further stated that, Daudi Andulile was a good neighbor of the Applicant before he sold the said land to the respondent and he never overstepped his boundaries. The respondent after buying that portion of land from Daudi Andulile in 2014; he trespassed on the Applicant's land for the first time on 24th September, 2016. The applicant being poor and old of over 80 years of age by then she sought refuge to her son by donating him power of attorney on 21st December, 2017 and the same was properly registered and incorporated in the records of the tribunal. That being the fact, he stated that if the land came into possession of the respondent in 2014 and the Application was filed in 2017; then the law of limitation cannot come into play because the respondent had been in occupation of that land for hardly two years. Therefore, he stated that this ground of appeal has merit and prayed the same be allowed.

On the second ground of appeal, he stated that the time limit in relation to any civil action brought before any competent forum ought to be derived from the statement as contained in the relevant claim. He said it is wrong for the trial forum to hypothetically introduce what is not embodied in the plaint or Application. He further submitted that in paragraph 6 (a) of the Application filed by the appellant at the trial tribunal on 10th October, 2017 the Applicant clearly stated that the cause of action arose on 24th September, 2016. He said, counting from 10th October, 2017 when cause of action arose to 24th September, 2016 when the Application was filed in

the tribunal is only one year and seventeen (17) days hence the application was not time barred. Hence, he said that the second ground of appeal has merit and prayed this appeal be allowed with costs and an order for trial *de novo* before another Chairman be made.

Opposing the appeal, the respondent submitted that the ruling of the District Land and Housing Tribunal is correct considering the decision of the High Court in the case of **Juma B. Kadala vs. Laurent Mnakande** (1983) TLR 103 where it was stated that;

"In suit for the recovery of the land sold to the third party the buyer should be joined with the seller as necessary party defendant, non joinder will be fatal to the proceedings."

He further submitted that, the respondent bought a piece of land from Daudi Andulile measuring 35 x 35 square meters whereas Daudi Andulile had been re – allocated by the Mbulu District Council in 1998 Plot No. 64 Block 11 which has 1225 square meters. He stated that, Daudi has been in use and occupied it for twenty nine (29) years without any dispute from her neighbor Magrita Malkiory and he has been paying the land rent without any dispute for those 29 years up to the time when the appellant lodged this complaint over ownership of the suit land. He further stated that, the respondent is the buyer and Daudi Andulile is the seller who has been in use and occupation of it from 1988, he planted trees and fence. The appellant was present and he did not take any action against Daudi Andulile. The dispute arose on 10th day of October, 2017 after lapse of three (3) years from the date when Daudi Andulile sold the land to the

respondent. He thus stated that, the application instituted by the appellant before the trial tribunal was time barred because twenty nine (29) years have passed since 1988; hence this appeal has no merit.

I have considered the submission of both parties and I have gone through the records of the trial tribunal. I will determine both grounds of appeal jointly because they both fall on one issue whether the application filed before the trial tribunal was time barred. The records of the trial tribunal show that the appellant herein filed an Application against the respondent for trespass. Under paragraph 6 (a) of the Application the Appellant stated that the claim for trespassed based on actions committed by the respondent on 24/9/2016, 8/4/2017, 27/6/2017 and 3/10/2017. Based on the Application filed before the trial tribunal, the cause of action against the respondent arose in 24/9/2016 when the respondent started to trespass to that land. Further the appellant in his submission stated that, although Daudi Andulile who sold that land to the respondent had been in use and occupation of it from 1988; all the time which Daudi Andulile had been in use and occupation of the land, he stayed within his boundaries and no dispute arose over that land. Therefore it is evident that the cause of action against the respondent arose in 24/9/2016 when the respondent started to trespass into the appellant's land and not in 1988 when Daudi Andulile was allocated the said land. Since the trespass claimed by the appellant started when the respondent was in use and occupation of that land; and since during the time when Daudi Andulile was in possession of that land he never crossed the borders of his land, I find there is no need of joining Daudi Andulile in this claim. Hence the case of **Juma B. Kadala**

vs. Laurent Mnakande (supra) does not apply to the circumstances of this case.

Computing from 24/9/2016 when the cause of action for trespass started to 10/10/2017 when the Application was filed before the trial tribunal only one year had elapsed. Hence the Application filed before the trial tribunal was well within time. Based on the above, I therefore allow this appeal; I reverse the ruling of the trial tribunal and order the hearing of the Application to proceed from where it ended before another Chairman.

Orders accordingly.


S. C. MOSHI

JUDGE

10/08/2018