

**IN THE HIGH COURT OF TANZANIA**  
**DISTRIC REGISTRY OF DAR ES SALAAM**  
**AT DAR ES SALAAM.**

**CIVIL APPEAL NO. 186 OF 2016**

*(Originating from Civil Case No 2 of 2001 of Bagamoyo District Court)*

**ZAINABU BAKARI.....APPLICANT**

**VERSUS**

**JOSEPH L. A. KINGWALA.....RESPONDENT**

*Date of Last Order: 29/05/2018.*

*Date of Judgment: 27/07/2018.*

**JUDGMENT.**

**I. ARUFANI, J.**

This appeal originated from Civil Case No. 2 of 2001 of the District Court of Bagamoyo (Hereinafter referred to as the trial court). The dispute between the parties was on piece of land titled Plot No. 315 Block A located at Chalinze town within Bagamoyo District in Coast Region. The appellant, Zainabu Bakari who testified alone before the trial court as PW1 said to have acquired the land in dispute in 1970 and in 1994 she was issued with offer of a Right of Occupancy of 33 years. She said in 2000 the respondent invaded the land in dispute and started to erect a

building on the portion of the land he invaded. She said that, thereafter the Bagamoyo District Land Officers subdivided the land in dispute and give its part to the respondent.

On his side the respondent, Joseph L. K. Kingwala who was represented in the trial court by his son, Deo Joseph Kingwala (DW1) told the trial court that, the respondent is the owner of the plot in dispute and he built a house by using mud and poles thereon in 1974. He said as the respondent and the appellant had lived on the plot in dispute for long time, the District Land Officers subdivided the plot into Plots No. 315 "A" and 315 A/A. DW1 said that, while the appellant was given plot No. 315 "A" the respondent was given Plot No. 315 A/A. He said in 2002 the respondent demolished the mud house he had built on the plot with a view of building a modern house but he received a complaint letter from Primary Court stating he had trespassed the land of the appellant. He said the respondent disagreed with the decision and he has never been paid any compensation for the house.

Maria Leonard (DW2) said the respondent is her brother and said she know the house of the respondent which was on plot in dispute as she rented the same from 1994 up to 2000. She said the respondent built the said house while working at that area and later

on the respondent went to live at Mabibo Dar es Salaam. Diaz Leo Kirungu (DW3) told the trial court he was the Land Officer for Bagamoyo District Council. He said that, after receiving a complaint from the respondent he wrote a letter on 21<sup>st</sup> day of February, 2001 calling both the appellant and the respondent and instructed them how they should live in their houses they had built on the land in dispute which had been divided to them.

DW3 said both the appellant and the respondent had deemed right of occupancy over the land in dispute and said though the land has been surveyed but to date the Director of Survey has not approved the survey so that the Right of Occupancy can be issued to the parties. He said the parties are still owing the land under deemed Right of Occupancy. After hearing the above evidence the trial court decided the appellant should get one piece of the land in disputed and the respondent should get the other piece as divided by the District Land Officer. The appellant was dissatisfied by the decision of the trial court and decided to appeal to this court on the following grounds:-

1. That the trial Magistrate erred in law and in fact for failure to recognize that, the appellant has been in occupation of the

said land since 1970 without any interruption and obtained an offer of the said land since 1994.

2. That the trial Magistrate erred in law and fact by ignoring the fact that, the Land Officer had no jurisdiction or powers to order sub division of the land in dispute without any prior consultation with the appellant.

As the appellant was appearing in court in person but under the service of legal aid from Legal and Human Rights Center and the respondent was using the service of Mr. Steven Kosi Madulu, learned advocate the parties prayed and allowed to argue the appeal by way of written submissions. The appellant stated in relation to the first ground of appeal that, she had been in occupation of the land from 1970 and after 24 years she was granted offer of right of occupancy. She said the respondent was granted offer of Right of Occupancy over the land in dispute which had been in her occupation for thirty years.

She argued that is contrary to paragraph 22 of Part I of the Schedule to the **Law of Limitation Act**, Cap 89, R.E 2002 as it sets a period of limitation for claims of land to be 12 years. She

referred the court to the case of **Shabani V. Rajabu Simba** (1967) HCD n. 233 where it was stated the court is reluctant to disturb persons who have been in occupation of the land for long time. She referred the court to Sakar on evidence 14<sup>th</sup> Edition Vol. II 1993 at page 1455 which states where there is a dispute between two people as to who is in possession of a piece of land the one with the title is the one in actual possession and the other is a trespasser. He submitted that, the trial Magistrate ought to consider the time limit as provided under the Law of Limitation Act before approving the act done by the Land Officer of dividing the land without following the lawful procedure to acquire the land from the appellant as provided under the Land Acquisition Act, Cap 118 R.E 2002.

The appellant argued in relation to the second ground of appeal that, the acquisition and division of the land in dispute was done contrary to section 6 of the Land Acquisition Act as no notice was issued by the land officer to the appellant for that purpose. She supported her argument by referring the court to the case of **Mulbadaw Village Council and 67 Others V. NAFCO** [1984] TLR 15 where it was stated where someone is in lawful occupation of land no valid right of occupancy can be offered to anyone else

over the same land unless the provisions of the land Acquisition Act have been complied with. He submitted that, the trial Magistrate was influenced by sympathy and decided the case without considering the basis of the law and arrived to a decision which denied the appellant her right over the land in dispute.

In reply the counsel for the respondent stated that, they are not in dispute that the appellant is the lawful owner of the Plot No. 315 Block A [or 315/A] as indicated in the letter of the Land Officer for Bagamoyo District Council Land dated 21<sup>st</sup> day of February, 2001. He said the aforementioned letter shows the land in dispute was divided to the parties under the **Town and Country Planning, Cap 378, RE 2002**. He said the appellant was given Plot No. 315/A and the respondent was given Plot No. 315/A/A for residential purpose. The respondent's counsel stated that the sub division and reallocation of the land in dispute might have been under 27, 28 and 48 of the aforementioned Act.

He argued further that though the Land Officer was not joined as a defendant in the suit but he was summoned as a witness and the appellant had a chance to cross examined him. The learned council for the respondent submitted that, the appellant has not disputed Cap 378 is empowering the Land Officer to subdivide the

land and reallocate it to other owner and said the appellant is now the rightful owner of Plot No. 315/A and the respondent Plot No. 315/A/A.

After carefully considered the submission from both sides and going through the evidence adduced before the trial court, the court has found in relation to the first ground of appeal that, despite the fact that the appellant stated she was living in the land in dispute from 1970 but she stated in her evidence and submission filed in this court that, the respondent was her neighbour. The court also find DW1 stated in his testimony that, the respondent purchased the land the appellant is alleging has been trespassed by the respondent from Yusufu Seleman from 1974 and built a mud and pole house on the said plot on the same year. In addition to that the court also find the appellant stated in her testimony that, when their area was surveyed in 1994 and allocated Plot No. 315 "A" the respondent was her neighbour and the big part of the respondent's land was taken as a street road.

From the above undisputed facts it is the finding of this court that, the issue of limitation of time provided under paragraph 22 of Part I of the Schedule to the **Law of Limitation Act**, is not applicable in the matter because both parties were living on the

land in dispute from 1970s hence no one can be favoured by limitation of time. As for the position of the law stated in the cases of **Shabani V. Rajabu Simba** and **Mulbadaw Village Council** cited in the submission of the appellant the court has found the same is distinguishable from the appellant case because what happened to the parties land is not acquisition of their land or granting of the right of occupancy to a land which another person has already been granted right of occupancy but as stated by the District Land Officer (DW3) the land was redistributed to parties in this matter after being found they have lived in the land in dispute for long time and they have built their houses thereon.

As testified by (DW3) and rightly stated by the learned trial Magistrate in the judgment of the trial court up to when the Chalinze town was surveyed in 1994 both the appellant and the respondent were living in the disputed land as neighbours under the deemed right of occupancy for about 20 years. The evidence and the argument by the appellant that, after the land being surveyed the respondent demolished his house and is until 2000 when he returned and started building on the land has been found by this court is not supported by any other evidence. As stated by Deo Joseph Kingwala (DW1) and the sister of the respondent,



Maria Leonard (DW2) the house of the respondent on the plot in dispute was not demolished as DW2 said to have lived in the said house from 1994 up 2000. DW1 said that, after the respondent decided to demolish the mud house so that he can build a permanent house is when the appellant went to court.

From the above evidence it is the finding of this court that, there is no sufficient evidence to establish the respondent invaded the land of the appellant as alleged by the appellant. To the contrary the court has found as stated by DW3 after the Bagamoyo District Council saw the appellant and the respondent had lived in the land for long time they decided to subdivide the land and put a boundaries on the plot of land in dispute for the purpose of settling the dispute between the appellant and the respondent. Now the issue as to whether the District Land Officer had power or jurisdiction to subdivide the land in dispute as stated to have been done will be answered in the second ground of appeal.

The court has gone through the letter written to the parties by the District Director of the Bagamoyo District Council dated 21<sup>st</sup> day of February, 2001 and admitted in the case as exhibit P1 which shows the land was subdivided under Cap 378 of 1961 and come

to the finding that, the said law which pursuant to the Revised Edition of 2002 it is now Cap 355 its section 27 when read together with the Third Schedule of the referred law shows the land can be subdivided or redistributed for the purposes of facilitating the plan of the town or scheme which is taking place.

Since the parties' witnesses said the source of the parties' dispute is the survey conducted in their area in 1994 which caused the appellant to be allocated Plot No. 315 Block "A" but later on after being found there was a land dispute between the appellant and the respondent the land was redistributed into Plot No. 315/A which was allocated to the appellant and Plot No. 315/A/A which was allocated to the respondent then it is the finding of this court that, the redistribution or subdivision done to the land in dispute between the appellant and the respondent was lawful and proper for the purpose of settling the dispute between the parties.

The court has considered the argument by the appellant that the subdivision was done without any prior notice to her and find the same has no any legal force because it has not been stated that argument is based on which legal requirement. The court has also found even if it is a legal requirement but the appellant stated

somewhere in the pleadings he filed in the trial court that, she was given a notice requiring her to be at the land in dispute on 27<sup>th</sup> day of February, 2001 for the purpose of settling their dispute though she said the Officers from the District Council did not arrive to the land in dispute on the mentioned date.

Since there is sufficient and undisputed evidence to establish both the appellant and the respondent have been living in the land in dispute for long time and they have built their houses on the land in dispute the court has found the trial Court Magistrate did not error in holding the redistribution of the land in dispute done by the District Land Officer to the parties was proper and justifiable as it would have not been fair for either of them to lose his right on the land at the expense of another. In the premises the appeal has been found is not meritorious and consequently it is hereby dismissed in its entirety with costs. It is so ordered.

Dated at Dar es Salaam this 27<sup>th</sup> day of July, 2018.



*I. Arufani*  
**I. ARUFANI**  
**JUDGE**  
**27/07/2018**

**COURT.**

Judgment delivered in chamber today 27<sup>th</sup> day of July, 2018 in the presence of the appellant in person and in the presence of Mr. Steven Kosi Madulu, learned advocate. Right of appeal is fully explained to the parties.



*I. Arufani*  
**I. ARUFANI**  
**JUDGE**  
**27/07/2018**