

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 28 OF 2020

NYAMTONDO MANINGOAPPELLANT

VERSUS

GHATI CHACHA.....RESPONDENT

*(Arising from the Decision of the District land and Housing Tribunal of Tarime at Tarime
in Land Appeal No 184/2017, original Land Case No. 28/2017 of Baraki Ward Tribunal)*

JUDGMENT

3rd & 18th August, 2020

Kahyoza, J.

Nyamtondo Maningo (Maningo) sued **Ghati Chacha ()** in the ward tribunal for trespass. It is **Maningo's** evidence that in 1990's the village authorities' allocated land to him. The village authority issued him the village right of occupancy. The dispute ensued between him and **Ghati**, which was referred to the ward tribunal. The Ward Land Committee resolved the dispute by distributing the disputed land between **Nyamtondo Maningo** and **Ghati Chacha**.

Maningo complained that the ward land committee allocated part of his land, the disputed land to **Chacha** on the ground that he failed to prove ownership by producing the original right of occupancy. Now, that he had obtained it he prayed **Ghati Chacha** to be declared a trespasser and the land allocated to him be returned to him.

Maningo adduced another ground support his claim that the ward land committee which distributed land was impartial. He stated that one of the members of the Committee was Ghati Chacha's brother. He mentioned Ghati Chacha's brother as **Sylvester Wambura**.

Ghati Chacha's contention was that originally the land disputed land was part of the land that belonged to **Chacha** and **Kizito**. In 1995 **Chacha** and **Kizito** left to one of the islands in the Lake Victoria. After **Chacha** and **Kizito** left, Maningo manipulated the village authorities, which issued him with the right occupancy. Chacha got the information of Maningo's invasion. He sent the Ghati Chacha to complain to the village authorities. The village authorities summoned Maningo. On receipt of the summons, Maningo instituted a complaint to the Ward executive officer. The ward Land Committee was established. The ward Land Committee in 1996 resolved the dispute by allocating the disputed land between **Maningo** and **Ghati Chacha**.

The contention, that the disputed land was allocated between the parties in 1996, was strongly supported by the evidence of **Nyamhanga Kisima**. **Nyamhanga Kisima** was one of the members of the ward land committee which decided the disputed between Maningo and Ghati CHacha in 1996. **Nyamhanga Kisima** deposed that ward land committee found that Maningo possessed a defective right of occupancy which was issued to him by the village authorities. The Committee confiscated Maningo's forged right occupancy, and distributed the disputed land between Maningo and **Ghati Chacha**. It also issued them letters showing ownership.

Maningo and Ghati Chacha occupied the disputed land peacefully for 21yrs from 1996 to 2017 when the current conflict ensued. In 2017 Maningo instituted a land case before the ward tribunal. The ward tribunal decided in favour of the Ghati Chacha. It stated-

"Hivyo kwa maelezo hayo baraza limezingatiao kuwa mipaka iliyowekwa na kamati ya kata iendeleo kuheshimiwa, ukizingatia sheria namba 5 ya mwaka 1999 fungu la 57(a) had (c) an fungu la 14 kipengele cha 1(1) vyote kwa pamaoja vinampatia haki ya kumiliki na kutumia eneo lenye mgogoro kuwa hali ya mdaiwa. Hivyo baraza limetoa eneo hilo kuwa haki ya mdaiwa".

Aggrieved, Maningo appealed to the District Land and Housing Tribunal (**the DLHT**). He lost the appeal. Undaunted, **Nyamtongo Maningo** lodged the instant appeal raising five grounds of appeal. **Nyamtongo Maningo** engaged the services of Mr. Kurwa Sanya, leaned advocate.

The grounds of appeal raised the following issues:-

1. Did the parties have standing to sue and be sued?
2. Is the claim time barred?
3. Did the tribunals consider the evidence on record?

The appellant's advocate Mr. Kurwa contended that parties cannot sue in their own names as they are wives of their respective husbands. He contended their late husbands are the ones who owned the disputed land.

Ghati Chacha replied that the appellant's husband is alive and he is her neighbour.

As the record bears testimony, the respondent is in actual possession of suit premises. If there is any trespasser, that trespasser is the respondent and not her late husband. She was properly sued. For that reason, she had a right to defend the suit. The appellant instituted a suit in her own name and there is evidence that her husband is alive. She cannot sue as an administrator of the estate while the owner of the estate is alive.

The appellant is the one who instituted a suit or an application before the ward tribunal, and lost. She appealed for the **DLHT** raising one of the grounds of appeal that the respondent had no *locus standi* to defend the suit. One wonders if the appellant knew that the respondent had no *locus standi* to defend the suit, why did she sue her. Further, if the appellant knew that she had no right to sue why did she institute a suit.

It is absurd for one to institute a suit against another person and pray that person to be declared that that person has no right defend. It is also more absurd for a person who instituted a suit after losing before two courts or tribunals to pray to be declared that he instituted the suit without standing. The appellant is trying to become wise after the event. I will dismiss the first ground of appeal as meritless.

Is the suit time barred?

The appellant's advocate contended that the cause of action arose in 1996. Thus, at the time of the claim was instituted in **2017, 21yrs** had

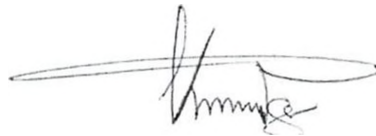
passed. This was the decision of the ward tribunal. The ward tribunal referred to section 57 of the **Village Land Act**, [Cap 114 R.E. 2019] without specifying the subsection. The ward tribunal must have referred to section 57(1) (a), which states that-

" 57.-(1) In preparing the provisional adjudication record, a village adjudication committee, or as the case may be, an adjudication officer, if it or he is satisfied that –

(a) A person is and has been or his predecessor in title was in peaceable, open and uninterrupted occupation of village land under customary law for not less than twelve years, shall determine that person to be entitled to a customary right of occupancy."

In the upshot, I uphold the contention that the claim was instituted out of time by the appellant. I uphold the decision of both tribunals especially that of the ward tribunal that boundaries between the parties marked in 1996 ought to be respected. I see no ground to consider the rest of the grounds of appeal. I dismiss the appeal with costs.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

18/8/2020

Court: Judgment delivered in the presence of the parties in person. B/C
Ms. Tenga present.



J. R. Kahyoza

JUDGE

18/8/2020