

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT ARUSHA**

**LAND APPEAL NO. 18 OF 2020**

**(C/F District Land and Housing Tribunal for Arusha at Arusha Application No.  
249 of 2018)**

**LAURENT BARNABA MBUKI .....APPELLANT**

**VERSUS**

**EVELIN GIDEON JOHN ..... RESPONDENT**

**JUDGMENT**

**8<sup>th</sup> Sept.2020 & 13<sup>th</sup> Nov. 2020**

**GWAE, J:**

The appellant herein sued the respondent at the District Land and Housing Tribunal for Arusha at Arusha (trial tribunal), in **Land Application No. 249 of 2018** seeking for declaration of ownership of piece of land measuring 17 x 13 meters, located at Lemara Kati, Lemara ward within Arusha City Council in Arusha (the suit land). He also prayed that the respondent be ordered to give vacant possession of the same and be restrained permanently from trespassing into the suit land. He alleged that in the year 1972, the respondent's husband (the late Gideon John) made a request to Boma la Wazee to be given the suit land following the death of his father (the late Barnaba Mbuki). He further alleged the same was done



without them as a family of the late Barnabas Mbuki being involved thus, in the year 1978 he started claiming ownership of the suit land but all efforts proved futile.

After the suit was filed at the trial tribunal, the Chairperson *suo motto* raised an issue as to whether the suit was barred by time limitation or not. Both parties were given right to address the trial tribunal on the same and in the end the tribunal decided that the suit was time barred and dismissed it. Aggrieved, the appellant preferred this appeal raising a total of five grounds as follows;

1. That, the trial chairperson erred in law and fact in applying the doctrine of recent possession *suo moto*, which wrongly caused miscarriage of justice.
2. That, the trial chairperson erred in law and fact in contending that, the respondent was in undisturbed possession of the land in dispute for all the period she was in occupation thereof.
3. That, the trial chairperson erred in law and fact in failing to apprehend that customary law is applicable in Tanzania and that the meeting held between the parties to solve the land dispute was

customarily method which warranted the appellant's step towards claiming the suit land.

4. That, the trial chairperson erred in law and fact in raising the concern about time limitation *suo motto* something which was not in appellant's pleadings and denied by the respondent hence awaited proof by way of hearing.
5. That, the act of trial chairperson to raise a concern which resulted to dismissal of the whole application was premature and the same disturbed the whole process of administration of justice at the trial tribunal.

During hearing of this appeal the appellant was represented by Mr. Mbise, learned counsel, whereas the respondent was represented by Mr. Gospel Sanava, also learned advocate.

Submitting in support of the appeal, Mr. Mbise argued the 1<sup>st</sup> and 2<sup>nd</sup> grounds jointly that, the trial tribunal erred in law by relying on the principle of adverse possession whereby a person acquires a parcel of land by occupying and use it without permission for a period of 12 years as provided by Cap 89 R.E. 2002. He further argued that, in order for the adverse possession to apply the following principle must be proved;

- a. Abandonment by the owner



- b. That, the adverse possessor had been in actual possession.
- c. That, the adverse possessor has no colour of right other than entry and possession
- d. Without the consent of the true owner
- e. Sufficient animus
- f. Non interruption (**See Bhoke Kitangita v. Makuru Mahemba** Civil appeal No. 22/2017 – CAT)

He added that, in the appeal at hand the trial tribunal erroneously invoked the doctrine of adverse possession *suo motto* while in the application filed at the trial tribunal no adverse possession was reflected but the chairperson in her ruling raised a concern on limitation of time. Mr. Mbise further contended that, the respondent came into possession of the suit land by virtue consent of Wazee wa Boma which implies that the suit land was therefore not abandoned by the appellant's late father hence there was total misdirection on the part of trial tribunal's chairperson.

As to the 3<sup>rd</sup> ground, the learned counsel argued that, it was wrong for the trial tribunal to disregard the customary law particularly, amicable settlements efforts that were made by local leaders which focused on efforts to resolve the dispute. That, such efforts ought to have been respected. Therefore, the trial tribunal's act of raising issue on adverse possession was nothing but misconception of the law

as the respondent was invited by Wazee wa Boma, hence the respondent was a mere invitee. To support his contention, he cited the case of **Ramadhani v. Mshuza** Misc. Land Appeal No. 3 of 2018. For those reasons he prayed that the appeal be allowed.

In reply, Mr. Sanava for the respondent argued that the suit land was given to the respondent's late husband in 1972 by Wazee wa Boma. After his death, the respondent was allowed to keep on living in the suit land where she had erected her local hut and buried her deceased husband therein. That, the dispute arose in the year 1978 as depicted in para 6 (a) (iii) of the appellant's plaint. Further that, according to S. 3 (1) of the Law of Limitation Act, Cap 89 and part 1, item 21 of the 1<sup>st</sup> schedule; 12 years set therein as maximum period within which one can file a land dispute.

It was Mr. Savana's further assertion that, negotiations out of the court cannot defeat the piece of legislation, thus, the trial tribunal administered justice accordingly since the doctrine of adverse possession is applicable. He prayed that the appeal lacks merit and the same should be dismissed with costs.

In his brief rejoinder, Mr. Mbise submitted that, the doctrine of adverse possession cannot be applied as the suit land was not abandoned and the respondent's late husband was not buried in the suit land. More so the respondent was a mere invitee.

After I have gone through trial tribunal's proceedings, decision and rival arguments from both parties, it is undisputed that the trial the chairperson dealt with the issue of time limitation alone and dismissed the application. In this appeal therefore I will deal with the 4<sup>th</sup> and the 5<sup>th</sup> grounds only and jointly as they are the ones in line with the decision subject to this appeal. The main issue for determination is therefore; whether the matter at hand is time barred.

It is trite principle that, certain matters of law may be so fundamental that they go to the root of the case and they can be brought up at any time during trial. Among them are matters of jurisdiction and time limitation and in appropriate cases, the court is even bound to raise such issues *suo mottu*. The rationale behind considering those issues first, is to ascertain as to whether the court, or tribunal for this matter only entertain matters that it has requisite mandate to determine, second, save time as well as costs and third, avoid an eventual nullity of the proceedings and decision which will emanate therefrom.

According to the **1<sup>st</sup> Schedule** (made under section 3) **Part I Item 22** of **the Law of Limitation Act** Cap 89 R.E. 2019, the suit to recover land is 12 years. In the instances where the suit land involves deceased, time starts to count when death occurred as it was observed in the case of **Yusufu Same and Another V Hadija Yusuph** 1996 TLR 347 where it was held that;

"...where a person institutes a suit to recover land of a deceased person whether under 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 to be in possession of the land, the right action shall be deemed to have accrued on the date of death"

However, the law applies differently when there is an element a person being an invitee to the suit land. In the case of **Musa Hassani v. Barnabas Yohanna Shedafa & Another** Civil Appeal No. 101 of 2018 (unreported) the Court of Appeal held, inter alia at page 5 that;

"As far as we are aware no invitee can exclude his host whatever the length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited"

In a simple interpretation, it does not matter how long a person has stayed in the disputed land, as long as s/he is an invitee and refused to vacate the disputed land when so demanded by the host then the host can claim it and time limitation does not work on circumstance of host-invitee relationship.

In the appeal at hand, I have carefully examined the cause of action on the application, the appellant contends that, his late father invited the respondent's late husband into the suit land before Wazee wa Boma formally gave him the





same. Since it is undisputed that the suit land once belonged to the appellant's father, which is the center of the whole dispute, I am of the considered view that establishing such ownership needed more prudent scrutiny and the same should have been heard on merit rather than being finalized on the ground of time limitation.

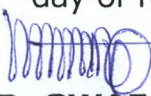
Without prejudicing the final decision of the main case, it is my considered view that in respect of the cited authorities above and without going deep as to whether the respondent was indeed invited or not, this matter needed more proof. In the circumstances, the trial chairperson erred in dismissing it on the ground of time limitation.

Consequently, the matter should be remitted back to the trial tribunal before a different chairman with different set of assessors to proceed with hearing of the main application.

It is so ordered.

Dated and delivered at Arusha this 13<sup>th</sup> day of November, 2020



  
**M. R. GWAE**  
**JUDGE**  
**13/11/2020**