IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT TANGA

LAND APPEAL N0. 2 OF 2020

(From the Decision of the District Land and Housing Tribunal for Korogwe at Korogwe in Land Appeal No. 60 of 2018 and Original of Ward Tribunal of Kabuku Ndani Ward in Land Case No 16 of 2018)

LUKA ELISA ..... 1ST APPELLANT

HASSAN LUGAZO ..... 2ND APPELLANT

DOUGLAS SHENYAGWA ..... 3RD APPELLANT

IDD MRISHO ..... 4TH APPELLANT

JOHNSON SWAI .....5TH APPELLANT

VERSUS

JUMA MRISHO ..... 1ST RESPONDENT

MRISHO ATHUMANI SOWA .....2ND RESPONDENT

ATHUMANI ALLY ..... 3RD RESPONDENT

GILBATI MOZES .....4TH RESPONDENT

DR NNKO .....5TH RESPONDENT

JUDGMENT

MKASIMONGWA, J

Somewhere within the geographical jurisdiction of Kabuku Ndani Ward Tribunal locates fifteen (15) acres of land. Juma Mrisho, Mrisho Athumani, Athumani Ally, Gilbert Moses and Dr. Nnko (Respondents) allege to be the owners of the respective pieces of land constituting the said

fifteen acres and that Deogras Shenyangwa, Luka Elisa, Hassani Lugazo. Johnson Swai and Iddi Mrisho (Appellants) had, respectively, trespassed into those pieces of land owned by the Juma Mrisho, Mrisho Athumani, Athumani Ally, Gilbert Moses and Dr. Nnko. The matter was successfully complained of by the Respondents before Kabuku Ndani Ward Tribunal. The Tribunal ordered the Appellants to surrender the land to the respective owners (Respondents).

The Appellants were aggrieved with the decision of the Ward Tribunal. They therefore appealed to the District Land Housing Tribunal for Korogwe, at Korogwe challenging it. The appeal was not successful as the same was dismissed mainly on ground that the Appellants had failed to prove ownership for there was no documentary evidence produced to show that they are the owners of the land whereas there was ample evidence given by the village authorities confirming that the land in dispute respectively belongs to the Respondents. This appeal is against that decision of the District Land and Housing Tribunal. In the Petition of Appeal filed the Appellants listed four grounds. They are as follows:

1. *That, both the trial tribunal erred in law and fact for failure to take into consideration the fact that the Appellants had been staying over the disputed land since 1991 undisturbed therein.*
2. *That, the trial tribunal both grossly erred in law and fact to deliver the Judgment against the Appellants without scrutinizing evidences tendered by the appellants therein particularly that the 1st Respondent also won the case together with his two colleague in the High Court of Tanga vide Land Appeal No. 13 of 2013 the judgment which was delivered on 18th May 2016.*
3. *That, both the trial tribunal grossly erred in law and fact for declaring the respondents are the lawful owners of the disputed land herein.*
4. *That, both the trial tribunal erred in law and fact when failed to schrutingly (sic) determine and finally conclude that the respondents are the lawful owners of the suit land without taken into consideration that in Land Appeal No. 13/2013 the High Court of Tanga declared both the appellants and respondents are the lawful owners of the disputed land therein.*

It was agreed hence ordered by the court that the Appeal should be disposed of by way of written submission. The parties did accordingly file the submission as it was ordered by the court. I have considered the submission and I prefer to determine those issues that can be raised from the second and fourth grounds of appeal above. The two grounds suggest that the land now in dispute is the same which was a subject matter in

Land Appeal No. 13 of 2013 of the High Court of Tanzania at Tanga. It was submitted by the Appellants that the First Respondent lied before the Ward Tribunal when he said that the piece of land a subject matter in the case at hand is different from that constituted a subject matter in Land Appeal No. 13 of 2013. The evidence on record shows that Luka Elisa, Juma Mrisho and Deoglas Shenyagwa were the appellants in Land Appeal No. 13 of 2013 - High Court Tanga which was brought against the Seventh Day Adventist Association of Tanzania. All in all the court in the appeal did not disturb the fact that the Respondent was granted right of occupancy on 167.26. Impliedly the Respondent therein was not entitled to 32.74 acres out of 200 acres she was claiming. It is the 32.74 acres which were taken to be owned by the Appellant. Contrary to what Douglas Shenyangwa told the Tribunal that the piece of land in dispute in the current matter falls within those 32.74 acres, the evidence on record shows that Juma Mrisho said that was not the case. The Tribunal found that the land the subject matter in the Appeal case was different from that in the case at hand, it said:

> *"Ushahidi wa utetezi wa eneo hilo unahusu pamoja na vielelezo kesi ya iliyohukumiwa na Mahakama Kuu na hakuna kielelezo*

chochote kilichowasilishwa barazani kuonyesha umiliki halali wa eneo la ekari 15 ambao zinalalamikiwa..."

This was confirmed by the District Land and Housing Tribunal and in my view, the decision was justified. The Appellants cannot be heard denying a point to the effect that the land under dispute in the previous Appeal case is the same in dispute in the case at hand. The second and fourth grounds of appeal then are dismissed.

As to the time limitation it is argued that the Appellants acquired the land sometime in 1991, and that by the time the matter was instituted in the Ward Tribunal sometime in 2017 the same was time barred. Therefore it was wrong when the Tribunals below successfully entertained it. Indeed the law that is Item 22 of Part I of the Scheduled to the Law of Limitation Act [Cap 89 R.E 2019] prescribes the limitation period of twelve years for instituting this like land suit. I have gone through the testimonies of Douglas Shenyangwa and Luka Elisa who testified for themselves and on behalf of the fellow Respondents in the Ward Tribunal. I am satisfied from the testimonies that there is nowhere stated as to when the Appellants came into occupation of the land in dispute. Going by the case of **Bhoke**

Kitangi'ta v. Makuru Mahemba: Civil Appeal No. 22 of 2017 CAT (Unreported), it is a settled principle of law that:

> *"a person who occupies someone's land without permission and the property owner does not exercise his right to recover it within time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession"*

In my opinion, for the principle to apply the occupier must prove the fact that he/she has been in occupation of the land for a period of time prescribed by the law and that the occupation was not disturbed by the property's owner at any time within that period. The one claiming to be an adverse possessor must show in terms of dates when occupation commenced to when the claim was instituted by the property owner failure of which the period of limitation cannot be ascertained. In the case at hand, as the Appellants did not testify as to when they came into occupation of the land. They cannot, in the circumstances, successfully allege that by the time the case was commenced in the Ward Tribunal, the Respondents were time barred. With this approach to the matter, I find no merit in the first ground of appeal. The same is therefore dismissed.

Turning to the third ground of appeal, the Appellants fault the judgment of the Tribunal below alleging that the same was reached when there was no evidence proving the size of the land owned by each respondent. I have considered the submission advanced in this regard. What is clear from the submission and the record is that it is not disputed that the whole land in dispute totals to fifteen acres. It is also clear that the land is owned by the Respondents who, respectively, own portions of the same. Similarly, it is not disputed that the ownership or occupation was not by way of grant as the land is owned under customary rites in which case size of the respective parts of land could not be an issue.

All in all, this appeal is devoid of merit. As such the same is dismissed with costs.

DATED at **TANGA** this 5th day of May 2021.

THE HIGH COURT OF TANZANIA

E. J. Mkasimongwa

JUDGE

05/05/2021