IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT TANGA

LAND APPEAL NO. 07 OF 2021

(From the Decision of Lushoto District Land and Housing Tribunal in Land Appeal No. 19 of 2020)

HUSENI SALEHE SHEMWETA ..... APPELLANT

VERSUS

SEFU HOZA CHONGE ..... RESPONDENT

JUDGMENT

MKASIMONGWA, J.

In the Ward Tribunal of Mnazi in Lushoto District, Sefu Hoza Chonge (Respondent) sued Husein Salehe Shemweta (Appellant) claiming for a piece of land of about two acres. The suit was successful. The Appellant was dissatisfied by the decision of the Ward Tribunal. He therefore challenged it by appeal preferred to the District Land and Housing Tribunal for Lushoto (DLHT) on ground **One:** that the suit was time barred; **Two:** that the Respondent had no locus stand and **Three:** that the Trial Tribunal had failed to properly analyze the evidence adduced by the Respondent. Similarly the appeal was not successful. In deciding the appeal the DLHT found that the Appellant was an invitee to the land in which case the law of

limitation could not apply in his favour. The first Appellate Tribunal also found the Respondent had locus stand to sue.

This is a second appeal brought by the Appellant against the decision of the DLHT. The Appeal is based on the following five grounds:

1. *That the trial Tribunal and appellate Tribunal's Chairperson grossly erred in law and facts by determine the suit instituted out of time.*
2. *That the Tribunal Chairperson grossly erred in law and fact by misinterpreting the testimony and documentary evidence adduced and holding that appellant was a mere licensee.*
3. *That the appellate Tribunal Chairperson grossly erred in law and fact after holding that disputed land is clan land contrary to respondent testimony and document thereon.*
4. *That the appellate Tribunal's Chairperson grossly erred in law and fact after failure to determine that Respondents herein has no locus stand to initiate the legal proceedings at trial tribunal.*
5. *That the trial Tribunal Chairperson erred in law and fact after proceed to here and determine an appeal against the person contrary to Respondent herein.*

The Appeal was contested by the Respondent. On the date of hearing of the Appeal, the Appellant appeared in person whereas Mr. Ally Kimweri (Advocate) appeared on behalf of the Respondent. When was requested to argue the appeal the appellant stated that sometime in 1995 one Musa

Hoza Chonge gave the land now in dispute to him. The Transaction was reduced in writing and was witnessed by the Primary Court Magistrate of Mnazi Primary Court. Since then, he has been in occupation of the land and that by the time the Respondent instituted the suit claiming for it he had been on the land for twenty four (24) years the fact which rendered the matter time barred and both the Ward Tribunal and the DLHT erred in law when they failed to find the matter as being time barred.

The Appellant stated further that initially the land in dispute belonged to the Respondent's father. The father then gave it to the Respondent as he did the same to other children in respect of other pieces of land. The father again gave the land to the Appellant. In that premise, it cannot be said the land to be the property of the clan nor can it be held that he (Appellant) was a licensee of the land as the DLHT held.

Based on the above submission, the Appellant prayed the Court that it allows the appealed and the contested decision should therefore be quashed and subsequent orders set aside.

On the other hand Mr. Kimweri submitted to the effect that it is clear from the challenged judgment that Musa Athumani Hoza Chonge gave the land now in dispute to the Appellant for the later to take care of it and not

to own the same. As such the Appellant could not claim ownership of the land on ground of adverse possession. Mr. Kimweri cemented his argument by citing the case of **Mussa Hassan v. Barnabas Yohana Shedafa:** Civil Appeal No. 111 of 2018, CAT (unreported); **Mwambene v. Edson James Mwanjigile** (2001) TLR 1. He submitted that he allegation that the matter was time barred therefore is devoid of merit.

Mr. Kimweri submitted further that in the appeal to the DLHT the Appellant relied on an exhibit which was not first tendered before the Trial Tribunal during trial of the matter. As the exhibit was not tendered to the trial Tribunal, the same could not be relied upon in the appeal. Mr. Kimweri cited a case of **Bushangila Nganga v. Mwanyandu Maige** (2002) TLR 335 to support the argument.

In respect of the fourth ground of appeal, Mr. Kimweri referred the Court to the case of **Lujuna Shubi Balonzi v. Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203 where locus stand was defined. He contended that in the suit the Respondent claimed the land is his property in which case, he could not be held to have no locust stand in the matter. Mr. Kimweri prayed the Court that it finds no merit in the appeal and it should therefore be dismissed with costs.

I have attentively considered the submissions as well as the evidence on record. It is clear from the records that in the case at the trial Tribunal whereas the Respondent had called two witnesses namely; Athumani Sefu and Amina Ramadhani, the Appellant was the only witness on his part. It is again clear from the record that contrary to what was submitted by the learned counsel for the Respondent; in his testimony before the Ward Tribunal, the Appellant did tender document to show that the land in dispute was given to him by Musa Athumani which transaction was reduced in writing and that it witnessed by the Mnazi Primary Court Magistrate. In its decision the DLHT was of a firm view that going by the document; the Appellant was left with the land just to take care of it by that Musa Athumani. This in my view got support of the evidence given by the Respondent. Part of the evidence reads as follows:

> *"Baaada ya muda mshitakiwa alikuja akaniambia kwamba nipo tayari kukupa sehemu yako lakini kuna mtu niliwahi kumpa eneo kujenga nyumba yake ilibomoka anataka kuuza kiwanja hivyo akaniambia niwe mvumilibu mpaka atakapomtoa..."*

That evidence was not challenged by the Appellant when he was invited to cross examine the witness for in cross examination, the Appellant did not have any question against the testimony of the Respondent. It is an

established principle that failure to cross-examine a witness on an important matter ordinary implies the acceptance of the truth of the witness evidence see – **George Maili Kemboge v. R** (supra). It is true from the testimony of the Respondent, therefore, that the later was recognized by the Appellant to be the owner of the land in dispute and that the Appellant promised to leave it back to the Respondent. Where therefore the Tribunals below found the evidence on record tilted in favour of the Respondent, they were justified and an allegation that the evidence was not properly analyzed, therefore, is devoid of merit.

In the matter, the Appellant alleged that he has been on the land undisturbed for about 24 years. He therefore contended that the matter was time barred. Indeed the evidence shows that the land was left to the Appellant by Mussa Athumani in 1995. The law is to effect that an adverse possessor of the land who has peaceful occupied it for twelve years is entitled to ownership of the land. The period of twelve (12) years is counted from the date when the right to sue commences. It is when the cause of action crises as it is provided for by Section 5 of the Law of Limitation Act [89 R.E 2019]. The Respondent's evidence in the matter, party of which is quoted above, clearly shows the Appellant acknowledging

the title of the Respondent to land. The acknowledgment, by virtue of Section 27 (1) (a) and (b) (i) of the Law of Limitation Act [Cap 89 R.E 2019], constituted a fresh accrual of right of action. The section reads as follows.

"27 (1) Where:

a) A right of action (including a foreclosure action) to recover land or

b) A right of mortgage of immovable property to bring a foreclosure action in respect of the property, has accrued and:

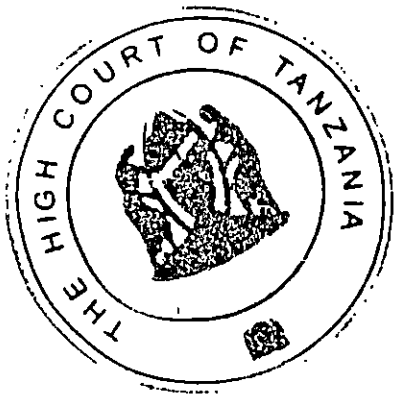
(i) A person in possession of the land or immovable property acknowledges the title of the person to whom the right of action has accrued,

the right of action shall be deemed to have accrued on and not before the date of the acknowledgement or payment as the case may be"

Since, the Appellant had acknowledge tittle of the Respondent to the land at a later date, he cannot successfully be heard relying on eitherthe available evidence or even the limitation of period by counting the period from 1995 but from the date he acknowledged the Respondent's tittle to the land.

In the light of the above discussion, I find no merit in this appeal. The same is therefore dismissed with costs.

DATED at **TANGA** this 16th day of November, 2021.



E. J. Mkasimongwa

JUDGE

16/11/2021

Dated: 16/11/2021

Coram: E. J. Mkasimongwa, J.

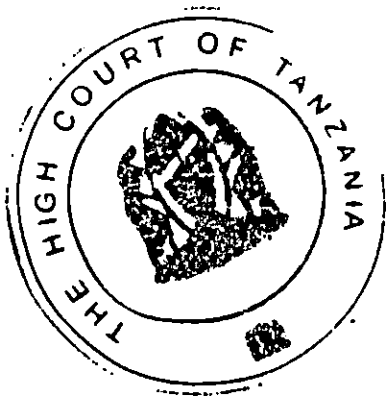
For the Appellant: Present in person

For the Respondent: Present in person

C/C: Alex Kamwaya

Court: Judgment delivered in Chambers this 16th day of November, 2021 in the presence of all parties in person.

Right of Appeal is explained.



E. J. Mkasimongwa

JUDGE

16/11/2021