

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION AT ARUSHA

MISC. LAND APPEAL NO. 4 OF 2022

(C/f Land Appeal No. 12 of 2020 at the District Land and housing Tribunal for Arusha at Arusha , Original Land Application No.5 of 2017 at Ilikiding'a Ward Tribunal)

NENGILANG'ET NGALESONI.....APPELLANT

Vs

WILLIAM EMMANUEL.....RESPONDENT

JUDGMENT

Date of last Order:27-6-2022

Date of Judgement:26-7-2022

B.K.PHILLIP,J

Aggrieved by the decision of the District Land and Housing Tribunal for Arusha at Arusha ,the appellant herein lodged this appeal on the following grounds;

- i) That the first appellate Tribunal erred both in law and fact , by its failure to properly evaluate the evidence in records which shows that the appellant have never been silent to the trespass by the respondent and his father to her land and hence reached erroneous decision.
- ii) That the first appellate Tribunal erred in law and fact, when it stated that there are no records in the Ward Tribunal which

shows that the respondent's father did trespass in the appellant's land and hence reached erroneous decision.

- iii) That the first appellate Tribunal erred in law and fact when it held that the application before the Ward Tribunal was time barred.
- iv) That the first appellate Tribunal erred in law and fact when it held that upon the death of the respondent's father there is no legal action available against the respondent's illegal ownership of the appellant's land.

The appellant was represented by the learned advocate Epifania Mushy whereas the respondent was unrepresented. I ordered the appeal to be argued by way of written submissions. The same were filed as ordered. The respondent engaged the learned Advocate Lobulu Osujaki, to prepare the written submission on his behalf.

A brief background to this appeal is that the appellant and the respondent are related. The respondent herein is the appellant's nephew. The appellant sued the respondent at Ilkidinga's Ward Tribunal claiming that the respondent trespassed into her land which was given unto her by her mother. It is the appellant's case that the respondent's father, now deceased trespassed into her land. The respondent has no legal right over that land because he got it from his father who was a trespasser. The Ward Tribunal heard the case on merit and entered judgment in favour of respondent. The appellant was aggrieved by that judgment. She appealed to the District Land and Housing Tribunal for Arusha at Arusha (

Henceforth " the Land Tribunal"). Her appeal did not sail through . It was dismissed with costs. Undaunted , the appellant lodged the instant appeal.

Starting with the 1st and 2nd grounds of appeal, Ms. Epifania submitted that the Tribunal and the Land Tribunal failed to analyze the evidence adduced properly. She contended that the appellant's testimony was supported by the testimonies of PW2 and PW3 who testified that the appellant did not condone what was done by his brother (the respondent's father). She reported the matter to the clan leaders but no action was taken against the respondent's father. There was a time the respondent told her that women have no right to inherit land. Ms. Epifania invited this Court redo the analysis and evaluation of the evidence adduced, and set aside the decision of the Land Tribunal. To cement his arguments she cited the case of **Martha Michael Wejja Vs Attorney General & 3 others (1982) T.L.R. 35.**

With regard to the 3rd ground of appeal Ms. Epifania argued that respondent's claim of ownership of the land in dispute on the ground that he has occupied it for a long time undisturbed, (adverse possession) cannot be applicable in this case because the respondent knows the owner of the land in dispute and the appellant has never been quiet on the alleged trespass over her the land in dispute. She maintained that the respondent's father was a trespasser and the respondent cannot acquire good title over the land in dispute. Continues use or occupation of land does not necessary give a party a right of ownership under the doctrine of adverse possession. She referred this Court to the case of **Yeriko Mgege Vs Joseph Amos Mhiche, Civil Appeal No.137 of 2017** and **Maigu**

E.M, Magenda Vs Arbogast Maugo Magenda , Civil Appeal No.2018 of 2017 (Both unreported).

Coming to the 4th ground of appeal, that is, the Land Tribunal erred to hold that after the death of the respondent's father no remedy is available to the appellant. Ms. Epifania submitted that the observations of the Land Tribunal is wrong since there is ample evidence that the respondent's father trespassed into the land in dispute. Thus, he had nothing to give to his son (the respondent herein).She implored this Court to quash the decision of the Ward Tribunal and Land Tribunal. Allow this appeal and declare the appellant as the rightful owner of the land in dispute.

Responding to arguments raised in respect of the 1st and 2nd grounds of appeal, Mr.Osujaki argued that both the Ward Tribunal and Land Tribunal did a proper analysis and evaluation of evidence adduced. He contended that throughout her testimony , the appellant did not state that she did take any legal action against the respondent's father. The fact that the appellant used to complain to clan leaders does not change the legal position that negotiations made out of Court do not stop from running the time within which one has to take a legal action. He cited the case of **M/s P&O International Ltd Vs The trustees of Tanzania National Parks (TANAPA) , Civil Appeal No.265/2020** , CAT at Tanga (unreported). He contended that the evidence adduced shows that the respondent has been in possession of the disputed land since 1996. The appellant did not take any legal action against him. Surprisingly, after his death the appellant lodged a case against the respondent. Mr. Osujaki was of the view that

the doctrine of adverse possession is applicable in this case with effect from 1996 when the appellant was chased from the land in dispute as she alleged in her testimony.

With regard to the 3rd ground of appeal, Mr. Osujaki argued that the findings made by the Land Tribunal that the appellant's case was time barred is correct because the evidence shows that the dispute over the suit land started in 1996. The appellant lodged her case before the Ward Tribunal in 2019. Thus, the case was filed after the expiry of 13 years from the date the cause of action arose, that is 1996.

Further, Mr. Osujaki, contended that the case of **Yeriko Mege** (supra) and **Maigu** (supra) cited by Ms Epifania are distinguishable from this case because the respondent's father did not come into occupation of the suit land as an invitee and effected a lot of development in the suit land without any interference.

Responding to arguments in respect of the 4th ground of appeal, Mr. Osujaki contended that Ms. Epifania misconstrued the judgment of the Land Tribunal. What the Land Tribunal meant in its judgment is that the appellant sat on her rights for a long time and cannot be heard now complaining that the respondent's father trespassed into her land.

In rejoinder Ms. Epifania submitted that the dispute over the ownership of the suit land arose after the death of the respondent's father when she wanted her land back and stopped by from repossessing it by the respondent. She refuted the arguments raised by Mr. Osujaki that the appellant wasted her time making negotiation. She contended that there

is nothing in the evidence adduced which supports that assertion. What the appellant did was making a follow up of her land. She insisted that the view held by Mr.Osujaki that the appellant was supposed to sue the respondent's father is irrelevant.

Moreover, Ms. Epifania submitted that the issue of adverse possession does not only depend on staying on the land for more than 12 years, but depends on the circumstances under which one came into occupation of the land in dispute. She cited the case of **Maria Nyarukinga Vs Mwita Machuche, Misc Land Appeal No.51 of 2021**, (unreported).He insisted that the respondent's father had no good title to pass to the respondent.

I have taken into consideration the submissions made by the learned advocate.The same are much appreciated. Starting with the first and seconds ground of appeal which are on the analysis and evaluation of the evidence adduced, upon perusing the records of the Ward Tribunal and Land Tribunal , I am satisfied that the evidence adduced was properly analyzed and evaluated. The evidence adduced reveal that the basis of the appellant's claim is that the land in dispute was given unto her by her mother. The dispute over the suit land started quite a long time ago. Sometimes in 1996 the appellant lodged her complaints to clan elders but in vain. It is undisputed fact that the appellant herein lodged her case at the Ward Tribunal in 2019. Therefore, it is true that prior to 2019 , the appellant did not take any legal action against the either the respondent's father or the respondent herein.The case of **M/s P&O International Ltd** (supra) cited by Mr.Osujaki is very relevant here since the complaints

lodged at the clan leaders cannot be equated to legal action under the law.

With regard to the third ground of appeal, as per the evidence adduced the appellant did not take any action until the respondent's father passed on. The land in dispute have been in the possession respondent for more than 12 years. He effected a lot of development on the land in dispute including building a house therein and planting coffee trees. The appellant did not take any legal step to stop him. Under the circumstances, I am inclined to agree with the Ms. Osujaki, that the doctrine of adverse possession is applicable in this case and pursuant to item 22 in the schedule to the law of Limitation Act, the appellant's case before the Ward Tribunal was time barred because the appellant's case was filed more than twelve years from the date the cause of action arose. Sound reasoning leads to only one answer that is, the appellant's decision to claim for the land in dispute is a pure afterthought which came in after the death of the respondent's father.

With due respect to Ms. Epifania ,the case of **Maria Nyarukinga** (supra) is distinguishable from the facts of this case because in that case the land in dispute was sold to the respondent illegally. That is why the first issue that the Court dealt with was whether the sale of the land in dispute was lawful. The days spent by the appellant making follow up of the land in dispute lodging her complaints before the clan leaders cannot be exempted from the computation of the time limit for filing her suit before the Ward Tribunal.[See the case of M/S P&O International Ltd (supra)]

With regard to the last ground of appeal , I agree with Mr. Osujaki that Ms.Epifania misconstrued the judgment of the Land Tribunal.What the land Tribunal said is that the appellant did not take trouble to claim the land in dispute timely when the respondent's father was alive. Now she is time barred.

From the foregoing it is the finding of this Court that this appeal has no merit. The same is hereby dismissed in its entirety with costs.

Dated this 26th day of July 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over a circular stamp.

B.K.PHILLIP

JUDGE