IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL No. 31 OF 2020

(Originating from Land Case Number 116 of 2012 of the District Land and Housing Tribunal of Arusha)

JACKSON NREWA.....APPELLANT

VERSUS

ELIA NREWA AYO.....RESPONDENT

JUDGMENT

27th June & 21th July 2022

TIGANGA, J

In this judgment, Elia Nrewa Ayo hereinafter referred to as the respondent, sued Jackson Nrewa hereinafter referred to as the appellant before the District Land and Housing Tribunal of Arusha, herein after referred to as the trial tribunal, in Land Application No. 116 of 2012 claiming 6.5 acres of land located at Kikatiti within Arumeru District. According to the plaint and the evidence, the land is allegedly allocated to him from the estate of his late father by the Administrator of the Estate in Pobate Cause No. 03 of 1988 of the Primary Court of Usa River in Arumeru District and its subsequent Probate Appeal No. 32 of 1989 before Arusha District Court.

That land herein after referred to as the suit land, has the estimated value of Tsh. 45,000,000/= (Forty-five million).

Before the trial tribunal, he sought for the following reliefs;

(a) A declaration that he is a lawful owner of the suit land,

(b) Permanent injunction restraining the then respondent, now the appellant, his agent, or family members from interfering with the applicant peaceful enjoyment of the suit land.

(c) Payment of cost of the application by the respondent, now the appellant.

(d) Any other relief which the honourable tribunal may deem just to grant.

The claim was opposed by the respondent who is the current appellant by filing the written Statement of defence in which he denied the claim.

After full trial, the trial tribunal entered the judgment in favour of the applicant, who is the respondent in this appeal, by declaring him to be the lawful owner of the suit land and permanently restrained the appellant, his agents or family members from interfering with the applicant's peaceful enjoyment and use of the suit land.

Aggrieved by the decision of the trial tribunal, the appellant filed this appeal but before doing so he realized that, he was late, he therefore filed application No. 28 of 2019 asking for extension of time which was granted by this court Hon. Masara, J on 26th June 2020. After such leave, the appellant filed five grounds of appeal, challenging the entire decision as follows;

i. That, the trial Tribunal erred in law and in fact when it declared the respondent the lawful owner of the suit land without putting into consideration the fact that the appellant had been in occupation of the suit land for more than 20 years

ii. That, the trial Tribunal erred in law and in fact when it failed to properly evaluate the evidence tendered before it and thus reached to the wrong conclusion of the matter.

iii. That, the trial Tribunal erred in law and in fact when it failed to visit the locus in quo in order to ascertain whether the suit land was the same that was claimed in 1994 or another land altogether.

iv. That, the trial Tribunal erred in law and in fact in basing its decision on the evidence of one Japhet Nrewa who was the Administrator of the Estates of the late Nrewa. That Japhet Nrewa failed to tender to the Tribunal the inventory he used to distribute the deceased

estates to prove his allegations that the suit land was distributed to the respondent herein and not otherwise

v. That, the trial Tribunal erred in law and in fact when it failed to involve the assessors in its decision as it did not read the opinion of the assessors to the parties before composing its judgment.

With leave of the court this appeal was argued by way of written submission. The submissions were filed as scheduled. Parties enjoyed the services of the learned Advocates in drawing their submissions, while the appellant enjoyed the service of Mr. Severine J. Lawena, the respondent enjoyed drawing in gratis by Joseph Moses Oleshangay of Legal and Human Right Centre Arusha Legal Aid Clinic.

In the submission in chief, the appellant submitted with regard to the first ground of appeal that, the trial Tribunal erred in law and in fact when it declared that the respondent is the lawful owner of the suit land without taking into consideration the fact that, the appellant has been in occupation of the suit land for over 20 years. According to him, this is true in the evidence given by DW1 before the trial tribunal that the appellant herein has occupied the suit land and used the same uninterrupted till 1999 when the respondent and his fellow invaded the same.

The Counsel for the appellant continued to submit in support of the first ground of appeal that, the appellant used the land for about 20 years uninterrupted that the appellant and DW2 who is the daughter in law have been cultivating the suit land for long time since 1989. He further submitted that, the claim by the respondent was truly time barred and thus he had no justification of his claim, the respondent had no evidence as to how he came into occupation of the suit land.

With regards to the second and fourth grounds of appeal, the learned Counsel submitted on them jointly that, the trial tribunal failed to make proper evaluation of the evidence tendered before it, it even failed to require the proof from PW2 of the letters of Administration or inventory and accounts to substantiate his claim and thus arrived into a wrong conclusion. According to the counsel, the evidence of PW2 and the respondent does not show letters of administration proving that the respondent was the Administrator of the deceased father's estate, there is no proof also that the piece of land given to the respondent is part of the deceased estate.

He continued to submit in support of the ground of appeal that, the trial tribunal erred in law and in fact when it failed to visit the locus in quo in order to ascertain whether the suit land was the same that was claimed

in 1994 or another land altogether. He further submitted that, there were several disputes between the parties on various pieces of land, hence visiting the locus in quo could help in ascertaining the suit land to clear the doubts of its existence and the particularity of its boundaries.

Submitting in support of the fifth ground of appeal, the Counsel stated that the Tribunal arrived at its decision without involvement of Assessors. It has not shown the opinions of the Assessors. He further stated that, the trial tribunal when closed the defense, it ought to have given the assessors chance to give their opinion as required by law.

In his reply submission, the counsel for the respondent submitted that, the respondent invaded the said land in dispute in the year 1999 as an appellant has submitted, the appellant's claim of ownership has been and would have been waived by way of adverse possession.

He further submitted that, with regards to the second and fourth grounds of appeal which have been merged by the appellant, it is the respondent's humble submission that, the trial tribunal rightly evaluated the evidence submitted by the parties and the decision subject to this appeal squarely reflected the testimonies of the witness who appeared before it. He further submitted that, the appellant's claim is not meritorious and should be disregarded.

With regards to the third ground of appeal which raises the complaint of failure of the trial tribunal to visit the locus in quo, the respondent submitted that, visiting the locus in quo by judicial bodies and for that purpose, the trial tribunal is not a mandatory requirement of the law. The respondent further submits that; it is the role of the parties to the case to describe the nature of the suit land for avoidance of making the court an interested party in the findings of the dispute. He further submitted that, visiting the locus in quo occurs in exceptional circumstances which did not exist in this case.

With regards to the fifth ground of appeal, the Counsel for the respondent submitted that, the opinions of the assessors were given and are reflected in the last paragraph of page three of the decision of the trial tribunal, therefore this ground lacks merit, it should be dismissed.

Having summarized the whole matter as contained in the record of the trial tribunal and the submissions of both sides, I think I am now in a position to deliberate on it. From the foregoing, I find one main issue calling for determination is whether looking at the grounds of appeal and submissions by parties, this appeal has merit.

With regards to the first ground of appeal, the law is very clear that claim over ownership of land should be within 12 years from when the

cause of action arose. In this case, the appellant told the court that he was in occupation of land since the year 1989 up to 2011 when the suit land was trespassed into by the appellant. That, evidence was supported by the evidence of PW2 and PW3. Over the same land, the respondent testified that, he has been in occupation and use of the said land for 20 years and that he has been using it uninterrupted for 20 years, therefore by the doctrine of adverse possession he should be declared the owner, and the respondent was bared by the law of limitation.

In this case each party claims to be the owner of the suit land, having occupied the same from various dates as indicated above. In law, acquisition of land in Tanzania may be by way of government allocation, purchase, or inheritance. Whoever claim to have possessed the land must in first place give evidence on how he acquired it. in this case while the applicant gave no evidence as to how he acquired the land in the years 1970s, the respondent said the land was given to him by the Administrator of the estate of his late father, as part of his inheritance from the estate of his father. Giving evidence on how ones acquired the land is done in line with the legal requirement, under section 110 and 112 of the Evidence Act, [Cap 6 R.E 2019]. In this case both parties claim s to be the owner of the land, it was the duty of all of them to prove the way or mode

through which they came into possession and they are supposed to prove the same to the standard of the balance probabilities as required under section 3(2)(b) of the same Act. In the circumstances the High Court of Tanzania in the case of **Hemed Said vs Mohamed Mbilu** (1984) TLR 113 held inter alia that,

> *"According to law, both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win. In measuring the weight of evidence it is not the number of witnesses that counts most but the quality of the evidence."*

As earlier on pointed out, the issue at stake is the ownership, therefore, it was important that, every party claiming to own the land have to state on how he came into that land. And even if we assume that, the appellant was on the land in question, the only evidence to show that he was on the suit land is the evidence of DW2 her daughter in law who said to be on the land for 20 years definitely under the permission of the appellant. But when he was asked he said the land he was using was 4 acres as opposed to 6.5 acres which was claimed in this case.

This also creates doubt that probably the land she was talking about was different from the one which the respondent was suing for. Hence the ground that the matter is time bad hereby fails. Since the contention

was ownership of land and from the evidence the appellant has not established by his evidence how he came into ownership of the suit land. I find the evidence of ownership from the respondent to be heavier than that of the appellant. That being the case, I find discussing the rest of the grounds of appeal to be of no value as it is going to change nothing, since the merit of this case lies on the proof of ownership which the Respondent's evidence is heavier than that of the appellant, the appeal fails and stands to be dismissed for want of merits. Due to consanguinity nature of parties, no order of costs is given.

It is accordingly ordered

DATED at **ARUSHA** on 21st day of July 2022.

J.C. TIGANGA

JUDGE