IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPEAL NO. 1 OF 2022

(C/F Land Appeal No. 49 of 2020 of the District Land and Housing Tribunal at Moshi, Originating from Shauri la Madai la Kata ya Ubetu Kahe)

JAKOBU ALOISI SHAYO..... APPELLANT

VERSUS

MARIA SALEMA..... RESPONDENT

JUDGMENT

24/8/2022 & 27/9/2022

SIMFUKWE, J.

This is the second appeal. The appellant herein unsuccessfully appealed before the District Land and Housing Tribunal against the decision of the Ward Tribunal. Still aggrieved, the appellant filed the instant appeal. In his amended petition of appeal, the appellant has advanced three grounds of appeal as reproduced hereunder: -

1. *That the trial Tribunal and the Appellate Tribunal erred both in law and in fact when failed to properly evaluate and analyse evidence adduced during the trial hence ruled against the Appellant's merit.*
2. *That the Trial Tribunal erred in fact and in law when failing to discover that the Respondent had no* ***Locus Standi*** *to sue the Appellant.*

3. That the trial Tribunal erred in fact and in law when determined the matter which is time barred.

When the appeal was set for hearing, the appellant was represented by Mr. Gideon Mushi, learned counsel while the respondent was unrepresented. Hence, the court ordered the matter to be heard by way of written submissions.

From the outset, the learned advocate for the appellant prayed the court to adopt all the three grounds of appeal to form part of the appellant's submission.

On the first ground of appeal which concerns failure to evaluate evidence of the parties, it was the argument of Mr. Mushi that nowhere in the judgment of either the trial tribunal or appellate tribunal where the measurement of the suit land was shown. That, the trial tribunal entertained the suit without knowing that the suit land was never identified properly contrary to the law. That the respondent failed to properly address the trial tribunal on the measurement, location and boundaries of the suit land, thus made the trial tribunal as well as the appellate tribunal to make orders for unknown land.

Explaining more on the issue of analysing evidence, it was argued that the respondent alleged that she jointly owned the suit land with one Salema Meku Rovili, but there was no sufficient evidence to that effect. That, the fact that the respondent's son was buried on the suit land does not suffice to confer ownership of the same. The learned advocate continued to state that when the respondent was cross examined by tribunal assessors, she alleged that she left the said land to three men of the clan to take care of it since the year 1993. However, the alleged three

men were not called to testify before the trial tribunal. Reference was made to the case of **Humbalo Ferdinandi vs Marick Joseph Mugubika, Civil Appeal No 1/2002,** HC (Unreported) which held that:

> *"Once the parties who claims ownership of land should have evidence to prove so and not merely words."*

Mr. Mushi also contended that during cross examination, the respondent said that she was given the suit land by clan members and that she had documentary evidence to that effect. However, the said documentary evidence was never tendered before the trial tribunal.

On that basis, the learned counsel for the appellant submitted that once the lower court failed to properly assess the evidence then the higher court shall step into shoes of the lower court, re-assess the evidence and come up with its own findings as per the case of **Deemay Daat and 2 Others vs Republic [2005] TLR 132.**

The learned advocate continued to aver that the standard of proof as per **section 110 and 111 of the Evidence Act, Cap 6 R.E 2019** was not met by the respondent. That, the respondent's evidence was not credible to convince the Tribunal to rule on her favour. The trial tribunal had absolutely failed to assess properly the evidence adduced before making a finding on the contested facts in issue. He cemented the point by the case of **Stanslaus Rugaba Kasusura and AG vs Phares Kabuye [1982] TLR 338** which held that:

> *"The trial judge should have evaluated the evidence of each of the witness and assessed their credibility and made a finding on the contested facts in issue."*

Moreover, Mr. Mushi submitted that, the respondent had a son with one Salema Meku Rovili who died in 1993. The said son was buried to his father's land (suit land). After the completion of the burial ceremony, the respondent got married to another man and left the suit land since 1993 up to 2020 when she came to claim the land illegally. The appellants submitted further that the suit land together with other lands of Shayo's clan were under the care of the late Mary Paul Meku Rovili.

Furthermore, Mr. Mushi introduced another grievance in respect of the coram of the Ward Tribunal, that the same contravenes section **4(1)(b) of the Ward Tribunal Act Cap 206 R.E 2019** since it was not presided by the Chairman and the judgment had no signature of the Chairman.

He continued to submit that despite the fact that the names of the members were listed in the judgment, the said members were not shown on the coram on each seating when the matter was heard. That, it is doubted as to whether the members listed in the judgment are the same as the ones who participated in the hearing. Mr, Mushi was of the view that this contravenes **section 4(1)(a) of the Ward Tribunal Act** (supra) which requires a tribunal to sit with not less than four members when adjudicating the matter before it.

The learned counsel emphasized that each member should be shown on the coram on each seating so that those who participated in the hearing should be the same appearing on the judgment. Failure of which raises doubt as to whether the members appearing on the judgment participated in determination of the matter.

Submitting in respect of the 3rd ground that the suit was time barred, it was stated that since 1993 when the respondent's son was buried in the

suit land, the respondent was not seen on the said land because she was married to another man one Ladislaus Dominick and she currently resides at Usseri Rombo at her husband's residence. The respondent knows nothing about what transpired after she vacated from the said land until in 2020 when she returned at the suit land claiming to own the same without any legal justification. That, from 1993 to 2020 when the respondent filed the case before the trial tribunal more than 27 years had elapsed which is contrary to **Item 22 of the Schedule to the Law of Limitation Act, Cap 89 R.E 2019** which requires a person claiming ownership to file the claim within 12 years. It was the opinion of Mr. Mushi that the trial tribunal after the lapse of twelve years is tantamount and renders the whole proceedings a nullity.

Further to that, the learned advocate elaborated that after the demise of the late Salema Meku Rovili the suit land remained in the hands of his wife one Mary Paul Meku Rovili until 2005 when she died. Thereafter, the land passed to his son Aloyce Paul Meku (the appellant's father) until 2018 when he died. After the death of the said Aloyce Paul Meku in the year 2020 the respondent went to claim the suit land. The question is where was she all the time from the year 1993 until the year 2020 and after the death of the late Aloyce Paul Meku? It was Mr. Mushi's views that if the respondent had a claim, she could have submitted the same in 1993 before the clan for determination.

It was contended that according to the tradition and custom of the Shayo clan the suit land should remain in the hands of the son of Aloyce Paul Meku until further arrangements of the clan. Thus, the respondent lacks locus standi to claim the land from Shayo clan while she got married to another clan. It was suggested that the respondent could have locus if she

was an Administratrix of the estate of either Salema Meku Rovili, Mary Paul Meku Rovili or Aloyce Paul Meku respectively. That, if she owned the said suit land jointly, then she could have proved the same, but she failed to do so.

In conclusion the learned counsel for the appellant faulted the judgments of the trial and appellate tribunal for failure to adhere to the principle of evidence and the laws. He prayed the court to allow the appeal and set aside the orders of the trial and appellate tribunal. Also, the learned counsel prayed the court to direct the parties to file a fresh suit before the court/Tribunal vested with mandate to determine the same.

In reply, the respondent from the outset, challenged the appellant's grounds of appeal by stating that she was not aware of any amendment or substitution of the amended petition. Thus, since the appellant's submission based on the grounds which were not indicated in the previous pleadings, it renders the whole document inadmissible. The respondent referred to **order VII rule 7 of the Civil Procedure Code, Cap 33 R.E 2019** which provides that:

> *"No pleading shall, except by way of amendment raise any new ground of claim or contain any allegation of fact inconsistent with previous pleadings of the party pleading the same."*

On that basis, the respondent was of the view that the court should not consider the arguments and facts elaborated in the Appellant's submission as they depart from previous pleadings.

Without prejudice to what she stated, the respondent submitted that the decision of the trial tribunal as well as that of appellate tribunal were proper and no error on fact or law can be construed from the same.

Responding to the ground that the suit was filed out of time, the respondent stated that the appellant claimed to have acquired rights over the suit premises after the passing on of his father in the year 2018. Thus, to respondent said that the determining factor was the year which the dispute arose between the appellant and the respondent. That, the matter was instituted in 2020 two years after the appellant trespassed on the suit land. Thus, the Ward Tribunal filed the dispute within time.

It was also submitted that in any civil claim as the matter at hand, the standard of proof is on balance of probabilities. That, the balance of probabilities when the matter is adjudged as whole is reference to the likelihood of one party's version of events being more probable to have occurred than not. It was submitted that in the instant matter evidence was adduced by both parties and was analysed by the trial tribunal and facts were weighed up and determination was made as to whether the party who bears the onus of proof (respondent) had proved her case therefore delivered judgment in her favour.

The respondent cited the case of **Daniel Apae Urio vs Exim (T) Bank Civil Appeal No. 185 of 2019 [2020] TZCA 163** in which the Court of Appeal cemented the principle of balance of probabilities by stating that:

> *"The yardstick of proof in civil cases is the evidence available on record on whether it tilts the balance one way or the other. Departing from this yard stick by requiring*

corroboration as the trial court did is going beyond the standard of proof in civil cases."

From the above cited case, the respondent formed an opinion that facts of the cases are similar since in the instant case the appellant relied on the fact that he inherited the suit land from his father but no proof of his rightful ownership of the land through probate was provided. Rather, he expected the trial tribunal to depart from the yardstick proof by requiring corroboration of evidence that the respondent had ownership of the land even before the Appellant was born.

Also, the respondent argued that the appellant's evidence based on proof that he acquired the land through probate and no such evidence was submitted during trial. Thus, all other grounds have no use, and this appeal has no legs to stand.

Lastly, the respondent commented that the appeal has no merit rather the appellant intends to use this court to cause inconvenience by preventing her from having peaceful enjoyment of her lawful land. She prayed the court to dismiss this appeal with costs.

Before scrutinizing these grounds of appeal, I hasten to make it clear that this being the second appeal, the court should not interfere with concurrent findings of the lower courts unless there is misapprehension of evidence, miscarriage of justice or violation of principles of law. See the case of **Amratlal D.M.Zanzibar Silk Stores vs A.H Jariwale Zanzibar Hotel [1980] TLR.**

Looking at the grounds of appeal, I have noted that the 2nd and 3rd grounds concern issues of law. I will thus start dealing with these matters of law.

On the 2nd ground of appeal, there are allegations that the respondent herein had no *locus standi* to sue the appellant herein since she was married to another clan and she was neither administratrix of either the late Salema Meku Rovili, the late Mary Paul Meku Rovili or Aloyce Paul Meku.

I am aware that locus standi is the first determinant factor before instituting the case since the claim could not be established by the respondent herein who is not entitled to such claim. It is a legal principle that the one bringing a claim before the court must have a right to do so (*locus standi)*. This was well elaborated in the case of **Lujuna Shubi Ballonzi v. The Registered Trustees of CCM** [1996] TLR 203. The principle has been further developed in various cases of the Court of Appeal like **Peter Mpalanzi vs Christina Mbaruka, Civil Appeal No. 153 of 2019 (CAT);** and the case of **Omary Yusuph (Legal Representative of the late Yusuph Haji) vs Albert Munuo, Civil Appeal No. 12 of 2018**. (Unreported)

At page 2 of the appellate tribunal's judgment, while deciding the issue of locus standi, the Chairman had this to say:

> *"sababu ya pili inayohusu mamlaka ya mjibu Rufaa kushitaki pia haina msingi kwani mjibu Rufaa alikuwa mmiliki mwenza wa eneo na mumewe, Salema Meku Rovuli."*

In determining whether the respondent had locus standi or not, I had to revisit the evidence before the tribunal to see under which capacity did the respondent institute the case. Looking at the proceedings of the trial tribunal, I join hands with the appellate Tribunal that the respondent had

locus standi since her evidence was heavier than that of the appellant. As rightly found by the first appellate tribunal, the respondent managed to prove how she owned the suit land jointly with her late husband and that their son was buried at the suit land in 1993. That is to say, the respondent herein did not institute the case under the capacity of administratrix and she did not claim that the disputed land was owned by the deceased so as to require her to be administratrix as claimed by the appellant herein. Thus, the ground of *locus standi* has no merit.

On the third ground, the appellant claimed that the tribunal erred in law when determined the matter which was time barred. That, from 1993 when the respondent left the land to 2020 when she instituted the matter it is 27 years. On the other hand, the respondent argued that she instituted the case within time on the reason that, she instituted the case two years after the appellant had trespassed on the suit land.

The appellate Tribunal while dealing with this ground had this to say:

> *"Nikianza na hoja ya kwanza, nakubaliana na Uamuzi wa Baraza la Kata kwamba madai haya yalikuwa halali na sio nje ya muda. Ushahidi upo wa kutosha kwamba mjibu Rufaa na mtoto wake ambaye sasa ni Marehemu na amezikwa kwenye shamba hilo walikuwa wanatumia hili eneo kwa muda wote."*

As rightly submitted by the learned advocate for the appellant, the time limit within which to institute land disputes is 12 years as **per item 22 of the Schedule to the Law of Limitation Act** (supra). In the instant matter, I support the findings of the two tribunals below as well as the respondent's submission. That, the appellant stated that he owned the

land from 2018 after the death of his father. Thus, time start to run from 2018 as the cause of action arose in 2018.

On the 1st ground which concerns evaluation of evidence; the first appellate tribunal while scrutinizing this ground had this to say:

> *"Mwisho nakubaliana na Uamuzi wa Baraza la Kata kwamba Ushahidi wa upande wa mwombaji ulikuwa mzito. Aliweza kuthibitisha namna alivyomiliki shamba hilo na mumewe na mtoto wao ambaye amezikwa hapo kwenye shamba mwaka 1993..."*

I support the findings of the first appellate tribunal. That evidence of the respondent was heavier than that of the appellant. That, the respondent left the land to the clan after she buried her son and later, she returned to the same clan which handed over to her the said suit land. The appellant claimed that the said land passed from his grandfather to his father and later to him. However, there was no evidence to support such allegation. Also, he claimed that the land should remain in his hands until further arrangement of the clan. He had no evidence to support that allegation. Therefore, I am of considered view that evidence was evaluated properly by the trial tribunal. Basing on the available evidence, I find no reason for disturbing the concurrent findings of the two lower Tribunals.

The appellant also challenged the findings of the trial tribunal in respect of the coram. However, the said issue was not raised in the grounds of appeal. Thus, I will not toil to discuss the same.

Having said that and done, I find no reason to disturb the concurrent findings of the lower Tribunals. In the upshot, I dismiss this appeal.

However, considering the relationship of the parties, I give no order as to costs.

Ordered accordingly.

Dated and delivered at Moshi this 27th day of September, 2022

S. H. SIMFUKWE

JUDGE