

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

MISC. LAND APPEAL NO. 30 OF 2022

(Originating from the District Land and Housing Tribunal for Dodoma at Dodoma in Land Appeal No. 162 of 2021 originated from Matumbulu Ward Tribunal in Land Application No. 47 of 2021)

RICHARD MNYAMBWA KUSIGANIKA.....APPELLANT

VERSUS

BENO.....RESPONDENT

JUDGEMENT

Date of Last Order: 20/10/2022

Date of Judgment: 15/12/2022

Mambi, J.

This judgment emanates from the appeal filed by the appellant **RICHARD MNYAMBWA KUSIGANIKA**. Earlier on, the appellant herein unsuccessfully sued the respondent at Matumbulu Ward Tribunal ("the trial Tribunal"). At the trial Tribunal the appellant prayed for an eviction order to the respondent claiming their family land.

Having lost his case at the trial Tribunal, the appellant appealed against the decision of the trial tribunal to the District Land and Housing Tribunal ("the DLHT) for Dodoma. The DLHT uphold the decision of the trial Tribunal.

Dissatisfied once again the appellant is now before the corridors of this Court in search for justice. The appellant in this appeal is relying on two grounds of appeal as follows;;

1. That failure to properly evaluate the evidence before it hence resulting into a wrong finding.
2. That failure to find that the quorum or the trial Tribunal was not properly constituted as its proceedings do not indicate the names of the members who heard the case.

During the hearing both laymen (the appellant and the respondent) appeared in person.

Submitting in support of his appeal, the appellant sought this Court to rely on his petition of appeal. The appellant briefly contended that the suit land belongs to him as the evidence of the respondent before the trial Tribunal was contradictory.

Responding to the submission made by the appellant, the respondent contended that his evidence at the trial Tribunal was clear that the suit land belongs to him as he was given as a gift by one Mzee Jonas. The respondent further submitted that having been given the said property he then constructed a house which has now been there for a long time. The respondent added that after having been divorced by his wife who is the appellant's uncle the appellant immediately sued him over the said property.

I have considerably gone through the grounds of appeal, and reply by the respondent. I have also considered submissions by both parties

and perused the records from both the tribunals. In my considered view, there are two main issues that need to be determined. The first is whether the trial Tribunal was properly constituted and the other issue is whether the DLHT in its decision evaluated properly the evidence on records. In other words the issue is whether the appellant adduced sufficient evidence or proved satisfactorily his allegations before the trial Tribunal as he claims.

I will first start to address the first issue on the composition of the ward tribunal. It should be noted that prior to the amendment of section 13(2) of the Land Disputes Courts Act, Cap. 216 [R: E 2019] by section 45(a) of the Written Laws (Misc. Amendments) (No. 3), Act No. 5 of 2021 which barred the Ward Tribunals from entertaining and determining land disputes, the Ward Tribunal in entertaining land disputes was supposed to be composed with not less than four nor more than eight members of whom three was supposed to be women.

More specifically, section 11 of the Land Disputes Courts Act, Cap. 216 [R: E 2019] provided thus: -

*"Each Tribunal **shall** consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."*

Courts have several times interpreted the above provision to mean that it is only when the Ward Tribunal is sitting with eight members then the number of women shall be three out of the eight members. This means that if the number of the members is lower than eight (which must not be below four) then the number of women can be lower as well. In other words, the provision of the law mandatorily requires that

the Tribunal shall at least be composed of three women out of eight members.

Reference can also be made to section 14 of the Land Disputes Courts Act, 2002 [R.E.2019]. That section which deals with consideration of gender at the Ward Tribunal provides that:

*"(1) The Tribunal **shall** in all matters of mediation consists of three members at least one of whom shall be a **woman**"*

Reading between the lines under the above provisions of Cap 216 it is clear that for the Ward Tribunal to be fully constituted it must be composed of both men and women. The records from the trial tribunal show that the Ward Tribunal was duly composed of seven members out of who two were women. The claim by the appellant that the names of the members were not indicated has no merit since the records such as the handwritten proceeding of the trial tribunal dated 06/07/2021 show that the names of the members determined the matter are listed. For instance in our common practice the names of Sara and Jeniva in most cases indicate female.

The appellant in his submission did not submit on his second ground of appeal to show this Court how the trial Tribunal was not properly composed. However, looking into the records, it is clear that on both days which the trial Tribunal was hearing this dispute was composed with seven members where two out of seven were women. That being the case then this Court finds that trial Tribunal was properly composed and the claim by the appellant that the composition of the trial tribunal was improper is devoid of merit. Indeed the records show

that among seven members of the tribunal there were two members of women as required by the law.

Coming to the second issue, it is trite law that he who alleges must prove. The appellant in his evidence at the trial Tribunal stated that the respondent is occupying their family land without their permission. However, his witnesses one Elika and another Talitha who seem to be the appellant's family members testified that the suit land was given to the respondent who by then was their son in law having married their daughter one Lineth. They stated that having given the suit land, the respondent and his wife constructed two houses out of three which the respondent found it there. The appellant witnesses further testified that since their daughter had divorced the respondent then the respondent should return back to them the suit land. It is also in evidence that the respondent and his divorcee had stayed in their houses for about 37 years. These testimonies by the appellant's witnesses were not contradicted by the respondent.

Basing on the evidence of both parties the trial tribunal rightly decided in favour of the respondent and the DLHT uphold the decision of the trial Court in appeal. The question which comes in my mind is, was trial Tribunal and the DLHT justified in their decisions? .In my view, the answer is yes. This is due to the fact that it was the appellant and his family who unconditionally gave the respondent and his wife (their daughter) the suit land for them to use in their happy marriage days. Indeed, the respondent and his wife developed and lived on the suit land for long time (thirty seven years) and no one had in mind that their marriage could one day come to an end. However, the respondent's wife after long time of union which resulted into seven issues of the marriage divorced the respondent. This Court is of the considered view that since

the appellant's family gave the suit land to the respondent and his divorcee without any condition, then they cannot legally claim back upon their divorce.

My perusal from the records and analysis of evidence show that the appellant had no locus standi as he claimed the land that was different from the land in dispute. This was also confirmed by the ward tribunal which had a locus visit where they drafted a sketch map that is attached under the file. For easy reference I wish to highlight the doctrine or principle of *locus standi*. It should be noted that locus standi is the matter of jurisdiction issue and it is the rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In other words, *locus standi* is the right or capacity to bring an action or to appear in a court. This means that, it is a person with locus standi who can only appear to be heard in court, or to address the Court on a matter before it. In other words, it is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Reference can be made to Lord Justice James, a distinguished English Judge, who laid the principle down in 1880 in the **Ex P. Sidebotham case(1880) 14 Ch D 458, [1874-80] All ER 588]**. In this Case (persuasive decision) the court observed that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights. Reference can also be made to another persuasive decision by Lord Denning in ***R v Paddington, Valuation***

Officer, ex-parte Peachey Property Corp Ltd [1966] 1QB 380
at 400-1 where he observed that:

"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."

There is no doubt that the appellant at the trial Tribunal failed to explain if he was the owner of the land why he left the appellant to undisturbedly stay for 37 years without claiming that land. Indeed even at the trial Tribunal the appellant never adduced clear evidence to show that he is the legal owner. This means that the appellant at the DLHT had no locus standi and cause of action since he was not the owner of the land.

It is clear from the evidence they testified at the tribunal the appellant failed to show that the land belonged to him. It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities. This simply means that he who alleges must prove as indicated under section 112 of the Law of Evidence Act, Cap 6 [R.E 2019], which provides that:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person".

The court in **NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZAIA & 4 OTHERS, Comm. CASE NO 59 OF 2003() HC DSM**, observed that:-

"The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side".

In this regard, I find that all grounds of appeal have no merit. My perusal from the records from the District Land and Housing Tribunal

reveals that the District Land and Housing Tribunal was right in its decision as there was no clear evidence adduced by the appellant at the Tribunal and the appellant neither showed any exhibit nor even called his reliable witnesses to show the land belonged to him.

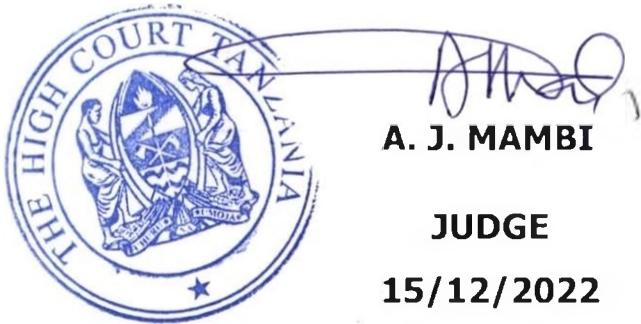
It is also on the records that the respondent stayed in the suit land for a long time more than twelve years that is thirty seven years without any encumbrance. It is trite law that where a person occupies unclaimed land for more than twelve years without any claim that person is deemed to be the legal owner of that land. Similarly in another persuasive decision the court underscored the same position. This was laid down by Lord Justice James, a distinguished English Judge, laid the principle down in 1880 in the ***Ex P. Sidebotham case [1880] 14 Ch D 458, [1874-80] All ER 588*** who observed that:

"to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights".

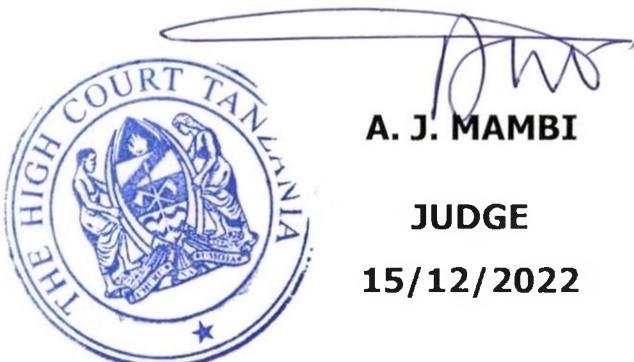
In this regard, this Court finds that the appellant failed to prove his claims over the suit land and the DLHT properly assessed the evidence of the parties and rightly made its decision. Having stated so, this Court finds that the trial Tribunal and the DLHT was right in their decisions.

From my analysis and observations, I find the appellant grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by both the trial tribunal and the District Land and Housing Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed.

The decisions of both the trial tribunal and the District Land and Housing Tribunal is upheld and it is hereby declared as done by the decision of the District Land and Housing Tribunal that the respondent is the lawful owner of the suit land. In the event I make no orders as to costs. Each party to bear his own costs.



Judgment delivered in Chambers this 15th day of December, 2022 in presence of all parties.



Right of appeal explained.

