IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC LAND CASE APPEAL No. 44 OF 2020

(C/F District Land and Housing Tribunal for Manyara at Babati Appeal No.79 of 2016 originated from Bassotu Ward Tribunal Application No.2 of 2016)

PETRO WATEGHE.....APPELLANT

VERSUS

NICODEMU MEDARD.....RESPONDENT

JUDGMENT

14th February & 25th March 2022

MZUNA, J.:

In this appeal, Petro Wateghe, the appellant herein is challenging the decision of the District Land and Housing Tribunal (DLHT) for Manyara which adjudged in favour of Nicodemu Medard, the respondent herein.

Briefly stated, the dispute centered on sale agreement of eight (8) acres farm which the appellant said bought from Medard Ama, the respondent's father (who is also his brother), sometimes in 1998. As opposed to that view, the said Medard Ama as well as the respondent said that only four acres were sold to him (three acres in 1998 and one acre in 1999). Both the Ward Tribunal as well as the DLHT agreed with the version of the respondent prompting this appeal.

The appellant preferred four grounds of appeal but in due course of hearing, he opted to argue on ground No.2 and abandoned grounds No.1,3 and 4. The said ground reads:-

> *"THAT, both the trial Tribunal and the Appellate Tribunal erred in law and fact when it decided that the Respondent herein is the lawful owner of the disputed land and failed to consider on how the Appellant herein who proved to have used and occupied the quo land over 12 years without disturbance."*

During hearing of this appeal which proceeded orally, both parties appeared in person and unrepresented.

The main issue is *whether the award of the suit land to the respondent was justified both in law and the available evidence?*

Arguing this appeal, the appellant said that he bought nine (9) acres from Mr. Medard Ama and there are sale agreements evidencing same for 1989 and 1989 (being 8 and I acres respectively). That sale/purchase documents are genuine not forged one as alleged. That the complainant ought to have been Medard not Nicodemu (his son), the respondent. He prayed for the appeal to be allowed.

On his part, the respondent said that his father sold three acres and then one acre making a total of four acres not eight acres as alleged. That

he forged figure '3' to read '8' for Tshs 750,000/- not 90,000/ as alleged as the figure '75' was cancelled. He urged the court to dismiss this appeal.

In his rejoinder submission, the appellant reiterated his submissions in chief and said that Medard Ama who testified at the Ward Tribunal colluded with his son the respondent. He insisted that his evidence is heavier than that of the respondent.

I have keenly followed the submissions of both parties in this appeal and have also combed the record of the Ward Tribunal as well as that of the DLHT. Reading the record, SU 2 Petro Wateghe alleged that he bought the suit land in 1998 for Tshs 90000/- and another one acre in 1999. This evidence was strongly challenged by SM2 Medard Ama who said sold three acres for Tshs 75,000/- and then one acre in 1999 for Tshs 25,000/- making a total of Tshs 100,000/-.

The respondent's case was also given weight by the Hamlet Chairperson "Kitongoji" SM.3 Mathayo Tluway who confirmed that the appellant bought 3 acres for Tshs 75,000/- and he was also a witness to the sale agreement.

Such evidence adds weight to the respondent's case as opposed to that of the appellant which was shaking. The DLHT rightly found could not rely on the copy of the alleged sale deed. That, even if the same was to be acted upon it was forged by inserting some numbers "3" to read '8" to mention but few. The Tribunal believed, and I have no reason to doubt, that in 1998 the appellant purchased 3 acres only. Another one acre was purchased in 1999, which was not in dispute. That is the position.

It was held in the case of **Samwel Kimaro v. Hidaya Didas,** Civil Appeal No. 271 of 2018, CAT (unreported) citing with approval the case of **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores v. A.H Jariwalla t/a Zanzibar Hotel** [1980] TLR 31 that:-

> *"Where there are concurrent findings of facts by two courts, the Court..., as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure..."*

It is therefore the findings of this court based on the above cited case law that this court cannot interfere with the evaluation of the evidence by the Ward tribunal as well as the DLHT mainly because there is no *"misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure".*

The appellant never said anything on the allegation that the suit was filed after 12 years. All the same, since it features in the second ground of appeal, I find it proper to say though briefly. This point was well tackled in the respondent's evidence when (SM. 2) Medard Ama said that the appellant trespassed two years "mwaka juzi' before the institution of the suit. That being the case, the alleged limitation period is without any supporting evidence as prior to the trespass part of the land (two acres) was cultivated by his late mother (the respondent's grand-mother). It is only when he started to encroach close to the house of the respondent that prompted institution of the suit.

So, the allegation that the suit was instituted after 12 years' limitation period to redeem a clan land is without merit. It is bound to fail.

For the reasons above stated, this appeal fails. It is hereby dismissed with usual consequences as to costs.

M. G. MZUNA,

JUDGE.

25/03/2022