

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA- LAND DIVISION

LAND APPEAL NO.59 OF 2022

(C/f Application No.14 of 2018 in the District Land and Housing Tribunal at Babati)

PAULINA BAHAAAPPELLANT

Vs

DANIEL BAHAA..... RESPONDENT

JUDGMENT

Date of last Order: 24-2-2023

Date of Judgment: 23-3-2023

B.K.PHILLIP,J

This is a first appeal arising from the District Land and Housing Tribunal at Babati (Henceforth "The Land Tribunal"), in application no. 14 of 2018. A brief background to this appeal is as follows; the appellant and respondent are siblings. The controversy between them is over ownership of a plot of land, (Henceforth "the suit land") located at Bassotu village in Hanang District. At the Land Tribunal the appellant was the applicant. She alleged that she is the lawful owner of the suit land. She bought it from the respondent in 1992 for Tshs. 96,000/ and one billy goat, and ever since she has been in peaceful possession of the suit land up to January 2018 when the respondent invaded it and started conducting agricultural activities therein.

In his defence the respondent alleged that the suit land belongs to him. He never sold it to the appellant. He was allocated the same by Bassotu Village. There was a time he leased it to the appellant's husband for two

years. After the expiry of the lease agreement the appellant's husband refused to handed over the same to the respondent. Thus, he had to file a case at the Land Tribunal against him for recovery of his land vide application no. 57 of 2010 which was decided in his favour. The Land Tribunal declared him as the lawful owner of the suit land in the judgment that was delivered on 26th day of August 2011. At the Land Tribunal, the appellant testified as (SM1) together with two witnesses namely Paschal Bahaa (SM2) and Edward John (SM3). Whereas the respondent testified as SU1 together with one witness, namely Geay Bahaa (SU2). The appellant was represented by the learned Advocate Paschal Peter whereas the respondent appeared in person, he was not represented. Upon receiving evidence from both sides, the Land Tribunal ruled out that the appellant failed to prove her case to the standard required by the law. Thus, her application was dismissed with costs.

Undaunted, the appellant lodged this appeal. The grounds of appeal are reproduced verbatim hereunder;

- (i) That, the trial tribunal erred in law and fact by not carrying the date of delivering the judgment.
- (ii) That, the trial tribunal erred in law and fact by not considering the strong evidence adduced by the appellant herein.
- (iii) That, the trial tribunal erred in law and fact by failure to consider that the appellant occupies the disputed land for more than 26 years without any disturbance.

- (iv) That, the trial tribunal erred in law and fact by failure to consider that there was different boundaries and measurement of the disputed land.
- (v) That, the trial tribunal erred in law and fact by deciding the case using the case which was different from the case at hand and the said case has no connection at all and the appellant as the owner was not part in the said case.
- (vi) That, the trial tribunal erred in law and fact by failure to visit the disputed property while there was difference in measurement.

Upon being served with the petition of appeal the respondent filed two points of preliminary objection, to wit;

- i) That the petition of appeal is time barred.
- ii) That the petition of appeal is bad in law as it does not originate from land application no. 14 of 2022 as stated by the petitioner.

This appeal was heard viva voce. Both the appellant and respondent appeared in person, they were not represented. For convenience and saving time I ordered the parties to submit on both the points of preliminary objection and the grounds of appeal.

The appellant's submission was to the effect that she is claiming her land measuring 4 ½ acres. The Land Tribunal erred to hold that the suit land is 4 acres only and to rely on the judgment of the case alleged by the respondent in his defence that it was between him and the appellant's husband since that case had nothing to do with the suit land. Further, she contended that she was not aware of the allegedly case between the respondent and her husband.

Moreover, she contended she adduced sufficient evidence before the Land Tribunal which proves that she bought the suit land from the respondent in 1992 and built a residential house therein. She explained before the Land Tribunal the consideration she paid to the respondent for buying the suit land. In addition, she pointed out that the Land Tribunal did not visit the disputed land so as to ascertain the boundaries. She requested this court to issue an order for visiting the suit land and allow this appeal.

In response, respondent started his submission by informing this court that he decided to abandon the second point of preliminary objection. Submitting for the first point of preliminary objection, the appellant argued that this appeal is time barred because the judgment of the Land Tribunal was delivered in March 2022 and this appeal was lodged in court in August 2022. He prayed this appeal to be dismissed for being time barred.

With regard to merit of the appeal, the respondent contended that this appeal has no merit. He went on arguing that the suit land is 4 acres only and the same was allocated to him by the Bassotu village, thus it belongs to him. He had previously leased the suit land to the appellant's husband for period of two years. After the expiry of the lease agreement the appellant's husband refused to hand over the suit land to the respondent. Thus, he was compelled to institute a case against the appellant's husband vide application no.57 of 2010. The same was decided in his favour and he was declared the lawful owner of the suit land. Execution of the aforesaid judgment was done and the suit land was handed over to him. He tendered in court the judgment in respect

of the said Application No.57 of 2010, the decree and a letter evidencing execution of order of the Land Tribunal which were all admitted as exhibit D1 collectively. Moreover, the respondent submitted that after execution of the judgment of the Land Tribunal in Application No.57 of 2010, the applicant's husband moved out of Bassotu village and left the appellant living alone. After sometimes the appellant start claiming that the suit land belongs to her.

With regard to the appellant's concern that the Land Tribunal did not visit the disputed land, the respondent claimed that the appellant did not move the Land Tribunal to do so. She did not make any prayer for visiting the suit land, thus the Land Tribunal cannot be faulted for not visiting the suit land. In conclusion he prayed for the dismissal of this appeal with costs.

In rejoinder, the appellant submitted that the decision of the Land Tribunal was delivered on 25th May 2022 and she filed this appeal on 1st July 2022. She insisted that her appeal is not time barred. With regard to the merit of the appeal she reiterated her submission in chief and maintained that she was not involved in the case between the respondent and her husband.

Having analyzed the submissions made by the parties, let me start with the determination of the point of preliminary objection. The governing law in determination of the time limit for lodging an appeal to this court for suits originated from Land Tribunal is section 41 of the Land Courts Dispute Act, the same reads as follows;

Section 41 (1) "Subject to the provisions of any law for time being in force all appeals, revisions and similar proceeding from or in respect of

any proceedings in the District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by High Court.

(2) an appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order. Provided that, the High Court may for the good cause extend the time from filing an appeal either before or after the expiration of such period of forty-five days.

Court's records reveal that the judgment of the Land Tribunal was delivered in the presence of both parties on 25th May 2022 and this appeal was filed on 1st July 2022. Counting from 25th May 2022 to 1st July 2022 there are only 37 days which are within the time limit for lodging the appeal. Thus, the respondent's point of preliminary objection has no merit. The same is hereby dismissed.

Coming to the merits of the appeal, in her application before the Land Tribunal the appellant alleged that she bought the suit land for one billy goat and Tshs 96,000/= cash. Thus, going by the appellant's assertion, it is not in dispute that she had a burden of proving that the suit land was sold to him by the respondent for the consideration stated in her application lodged before the Land Tribunal. However, as correctly observed by the chairman of the Land Tribunal in the impugned judgment, the appellant's testimony is contradictory to what she stated in her application and her witnesses' testimony. It is on record that appellant testified that she bought the suit land for a consideration of two billy goats and Tshs 96,000/= whereas her witnesses (SM2 and SM 3) testified that the appellant bought the suit land for consideration of one billy goat and Tshs 96,000/= .I agree with legal position stated by the chairman of the Land Tribunal in the impugned judgment that

parties are bound by their pleadings and the contradictions in the appellant's evidence is detrimental to her case.

Besides my observations herein above, the contents of exhibit D1 collectively were not challenged in any way. The same together with the testimony of the respondent's witnesses reveal that the suit land is the one which was the subject of the said Application No. 57 of 2010. According to the contents of Exhibit D1 collectively, the suit land is four acres only not four and half acres as alleged by the appellant. Thus, I cannot fault the findings of the Chairman of the Land Tribunal that the suit land is 4 acres only. In addition, I agree with the findings of the chairman of the Land Tribunal that since there is evidence that the suit land is the one that was once leased to the appellant's husband, the appellant's assertion that she was in possession of the suit land since 1992 to 2018 is not true because after the execution of the judgment of the Land Tribunal in the case between the respondent and the appellant's husband the suit land was handed over to the respondent.

Moreover, the court's record reveal that the appellant's advocate, Mr. Paschal Peter did not move the Land Tribunal to visit the suit land. Consequently, the Land Tribunal did not visit the suit land. Under the circumstances I am of the view that the appellant cannot be heard now arguing that the failure to visit the suit land is fatal and has occasioned miscarriage of justice. All in all, the evidence adduced by the respondent was enough to enable the Land Tribunal to make the determination of the case fairly.

In fine, this appeal has no merit. The same is hereby dismissed. Since this matter involves close family members I give no order as to costs to avoid perpetuation of endless litigations. It is so ordered.

Dated this 23rd day of March 2023


B.K.PHILLIP

JUDGE

