IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 74 OF 2021

(Arising from the decision of the District Land and Housing Tribunal for Tarime at Tarime in Land Appeal No. 93 of 2020)

BETWEEN

CHACHA WAINANI RYOBA ..... APPELLANT

VERSUS

IGAI MARWA IGAI ..... RESPONDENT

JUDGMENT

A.A. MBAGWA, J.

This is the second appeal emanating from the decision of the District Land and Housing Tribunal for Tarime (the DLHT) in Land Appeal No. 93 of 2020. The decision of the DLHT upheld the decision of Nyanungu Ward Tribunal (trial Tribunal) in Land Case No. 9 of 2020 (the original case) which declared the respondent, Igai Marwa Igai a lawful owner of the disputed land located at Nyanungu in Tarime District.

The factual background of the case goes as follows; the respondent, Igai Marwa Igai filed a land suit against the appellant before the Ward Tribunal

of Nyanungu. He claimed the appellant to have trespassed into his piece of land which he allegedly inherited from his father. In his testimony before the trial Tribunal, the respondent stated that before his father came into possession of the suit land, it was owned by his grandfather Igai Marwa Magige and that he died and got buried in the disputed land. His testimony was supported by other three witnesses namely, Charles Mwita @ Mokono, Peter Chacha @ Mwera and Haruni Kehongo @ Mwera.

In contrast, the appellant testified before the trial Tribunal that the land in dispute belongs to his family and he acts as the guardian of the particular land. He stated that the land was first owned by his grandfather one Ryoba Nyamakambi. The appellant brought other four witnesses to support his case before the trial Ward Tribunal. The appellant's witnesses were Jones Mariba @ Rahoya, Zacharia Mugini @ Obogo, Wangwe Makubo and Range Wanthahe @ Mugoiwa.

Upon a full trial, the trial Tribunal declared the respondent a lawful owner of the disputed land and allocate the appellant with a piece of land measured 70 x 170 paces on the ground that it was a reward for keeping the land all the time during the absence of the respondent. Dissatisfied with the decision of the Ward Tribunal, the appellant unsuccessfully appealed to the DLHT.

Still determined to pursue his right, the appellant has now appealed to this Court. He advanced three grounds of appeal which read:

1. That the trial and appellate Tribunals grossly misdirected itself in hearing and determining a land dispute without considering the value of the disputed land which is over ten million shillings.
2. That the appellate Chairman erred both in law and in fact in neglecting the time frame limit for claiming land.
3. That the trial Chairman misdirected himself in openly basing his findings on the respondent's side.

During the hearing of the appeal, the appellant was represented by Mr. Thomas Makongo whilst the respondent had the services of Emmanuel Gervas. In the course of hearing, the appellant's counsel prayed and was granted the leave to add on three additional grounds.

While arguing the appeal, the appellant's counsel dropped the 3rd ground and submitted on the rest. Regarding the 1st ground, he submitted that the first appellate Tribunal grossly erred to hear the matter which it had no pecuniary jurisdiction. He proceeded that throughout the trial record, there is nowhere the value of the land in dispute is mentioned. He added that, the pecuniary jurisdiction of the Ward Tribunal was three million and

that it has to be reflected at the very beginning of the case before the ward Tribunal.

On the 2nd ground, the appellant's counsel submitted that the appellate Chairman grossly erred to neglect the time limitation. He elaborated that, taking into account the time when the respondent allegedly vacated land and when he returned, it is more than 12 years which is allowed by the law to file a suit. The counsel expounded that the respondent left 1974 and returned in 2020.

Regarding the 1st additional ground, the appellant's counsel submitted that the boundaries and size of the disputed land were not spelt out. Citing the case of **Hashimu Mohamed Mnyalima (Administrator of the estates of the Late Mwantumu Shehe Mashi) vs Mohamed Nzai and 4 Others,** Land Appeal No. 18 of 2020, HC Tanga at page 11, the counsel was of the views that the respondent was supposed to spell out the size of boundaries of the disputed land, a thing which he did not do.

Submitting on the 3rd additional ground, the appellant's counsel argued that the appellate Tribunal failed to consider the appellant's evidence. He contended that, the appellant said that he was born in 1969 in the very disputed land and he has been using the land since he attained the age of majority to date. The said allegations were never challenged by the

respondent, the counsel lamented. As such, he submitted that the appellant is the rightful owner of the suit land.

The counsel further argued that since the respondent vacated the land in 1974, he had never returned until 2020. He told the court that this connotes that they abandoned the land. In conclusion, the counsel prayed that the appeal to be allowed with costs and the proceedings of the lower Tribunals be quashed and order for trial de novo be issued.

Responding, on the 1st ground the respondent's counsel submitted that there are two ways of determining pecuniary jurisdiction namely, by looking at the contents of complaint form and size of the land. However, the respondent's counsel admitted that that after going through the record, there is no complaint form. He thus argued that the court can still determine the value by considering the size of the suit land namely, 70 x 170 paces.

With regard to the time limitation, the respondent's counsel submitted that the suit was instituted within the time. He elucidated that according to the evidence of Igai Marwa Igai, the dispute arose in 2020 when the appellant trespassed into the respondent's land. He added that according to Ward Tribunal decision at page 2, it appears there was once a dispute

over the suit premises but the same were resolved by the Mangucha village council.

On the ground that the appellant was born in the suit premises, Mr. Gervas submitted that it is the factual issue which was not raised before the first appellate Tribunal. As such, it cannot be raised at this stage.

The counsel further submitted that, the land was not abandoned as it is the land of the respondent's parents and he inherited it. He added that the issue also was not raised before the first appellate Tribunal. The respondent's counsel prayed the appeal be dismissed for want of merits with costs.

In rejoinder, the appellant's counsel insisted that the size and demarcations were not spelt out by the parties. He submitted further that, there was no dispute prior which was raised and settled between the parties. He contended that the dispute referred at paragraph 5 of the Ward Tribunal's decision was not between the parties in this appeal.

Having heard the submissions of both parties and upon scanning the appeal record, the issue which I am called upon to determine is whether the appeal is meritorious.

As to the 1st ground of appeal, it is the contention of the appellant's counsel that the trial Tribunal heard the matter which it did not have pecuniary jurisdiction. He was of the views that the issue of pecuniary jurisdiction had to be reflected at the beginning of the case since the jurisdiction of the Ward Tribunal is limited to three million shillings.

But looking at the proceedings of the trial Tribunal, no one asked or disclosed the value of the disputed land. It is my opinion that, the duty to disclose the value of the disputed land lies upon the shoulders of the parties. And that it is the first court or Tribunal which are in good position to determine whether it has jurisdiction or not upon the parties having disclosed the value of the disputed land. It could follow that the trial Tribunal would not have entertained the matter if it were brought to its attention that the subject matter was above its jurisdiction. I am of the opinion that only the trial Tribunal was in the better position to deal with the said issue. In the case of **Maigu E.M Magenda vs Arbogast Maugo Magenda,** Civil Appeal No. 218 of 2017 CAT. It was held that: -

> "*.... If anything, since it [is] the Appellant who is alleging that the value of the property exceeded TZS 3,000,000/= it is on him the burden of proving it lies and not the Respondent. This court being a second appeal court, even if the appellant was to bring such evidence, unfortunately this court would not have been in a better*

position than the trial Tribunal to receive such evidence more so because such issue did not form a disputed fact at the trial stage."

Furthermore, in the case of **Sospeter Kahindi vs Mbeshi Mashini,** Civil Appeal No. 56 of 2017 CAT at Mwanza it was held that non-disclosure of the land value in the Ward Tribunal is not fatal unless there is clear evidence from either party that the value is above the pecuniary jurisdiction of the Ward Tribunal.

Since the value of the disputed land was not disclosed at the trial Tribunal and the respondent did not challenge it, it follows that this Court cannot receive more evidence concerning such matter nor can this court, in absence of clear evidence, rule that the land value was above the pecuniary jurisdiction of the Ward Tribunal.

Regarding the issue of time limitation, the appellant's counsel contended that the appellate Chairman grossly erred to neglect it. He argued that when the respondent vacated the disputed land and returned, it was more than twelve years i.e., he left 1974 and returned in 2020.

In the proceedings of the trial Tribunal there is no complaint form which was formally lodged to initiate the proceedings which could indicate the time when the dispute arose. However, in his testimony before the trial Tribunal, the respondent testified that his father showed him the disputed land in 1994. He stated that there was once a dispute between his father

and one Ryoki Nyamakambi and the same was resolved by dividing the land between the two.

When the respondent was examined by the members of the trial Tribunal, he stated Ryoki Nyamakambi was the one who using the disputed land in 1994 when he was showed the land by his father. He also stated that they did not return to use the disputed land since 1974 because the piece of land which his grandfather was given by his father in-law was enough for him. He further stated that their clan did not use the disputed land for sometimes because they had enough land.

On the other hand, the appellant testified that he has been living and using the disputed land since 1969 when he was born until 2020 when the dispute between him and the respondent arose.

Therefore, from the above testimony adduced by the parties before the trial Tribunal it is proved that the respondent had abandoned the disputed land over 12 years required by law to institute the claim over piece of land. As the respondent stayed quite for the period over 12 years, it renders the respondent's claim over the same land to be time barred by the limitation period prescribed under item 22 in the First Schedule to the Law of Limitation Act which gives a limitation period of twelve (12) years.

It would be unreasonable and unfair to allow the respondent to disturb the appellant at this time who, according to the evidence which was not challenged, he has been using the land throughout. If the respondent had really required the disputed land, he could not have kept quiet for more than 12 years. See **Deemay Sikay vs Neema Magoni,** Civil Appeal No. 3 of 2021, CAT at Arusha.

As for this ground is sufficient to dispose of this appeal, I see no reasons to dwell into determining the other grounds.

In the event, I allow the appeal, quash the proceedings and set aside the judgment of the two lower Tribunals. The appellant is entitled to costs of this appeal.

It is so ordered.

Right of appeal is fully explained.

THE HIGH COURT OF TANZANIA
MUSOMA

A. A Mbagwa
JUDGE
27/04/2023