IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC LAND APPEAL NO.22 OF 2022

(C/f In the District Land and Housing Tribunal for Arusha, Land Appeal No. 25 of 2021; Original Mlangarini Ward Tribunal Application No.1/BR/ML/2020)

LOSERIAN SAKAYA..... APPELLANT

VERSUS

MAYASE SAKAYA..... RESPONDENT

2/5/2023 & 9/6/2023

JUDGMENT

MWASEBA, J.

The appellant herein was sued at the Mlangarini Ward Tribunal over the ownership of 3 acres land whereby it was decided that the respondent is the rightful owner of the disputed land. His appeal to the District Land and housing tribunal was not fruitful. This is his second appeal having three grounds of appeal as hereunder:

1. *That both trial ward tribunal and appellate tribunal erred in law and fact when they failed to consider the fact that the matter was hopelessly time barred.*

2. *That both the trial ward tribunal and the appellate tribunal erred in law and fact when they failed to put into consideration the fact that the respondent/complainant had no locus stand to claim for the land of the deceased's mother while he was not the administrator of the estate.*

3. *That the appellate court erred in law and fact when it failed to properly evaluate the evidence before the ward tribunal and proceeded to consider facts that were never proved by evidence in trial and thus arrived at a wrong decision.*

Briefly, the facts of the case as alleged by the respondent is as follows; in 1976/1977 during operation *vijiji* the appellant herein was given a plot measured at one acre which was the farm of the respondent's mother. The respondent's mother was given her portion too measured at three acres in the farm of Mzee Ndeese (respondent's paternal uncle). Later on, in 2008 the dispute arose between the parties herein as the appellant encroached to the respondent's land.

It was the stance of the appellant that in 1974 his late father namely Sakaya Meikosi gave him four acres and he proceeded to live therein since then. He denied to have been given land during Operation *Vijiji.*

So, he is wondering why the respondent is coming to claim for the said land.

During the hearing of this case, Ms. Sara Lawena appeared for the appellant while Mr. Lengai Nelson Merinyo represented the respondent. The appeal was disposed of by way of written submission.

In her submission in support of the appeal, Ms Lawena clarified her first ground of appeal that the matter is hopelessly time barred. She stated that the evidence of the respondent who was the applicant at the trial tribunal failed to establish that the appellant herein did trespass in the suit land in 2010. Further to that, his evidence did not negate the fact that the appellant had been in occupation of the suit land since 1974 after being given by his father. It is in record that the respondent came from Tanga in 2010 to claim for the suit land but he did not state when he became aware that the appellant herein trespassed the suit land. His opening statement does not show when the cause of action arose. However, looking at the evidence adduced by the respondent at the trial tribunal, it shows that the dispute/trespass occurred in 2007. Up to the time he instituted the suit already 12 years lapsed. He referred this court to the case of **Erizerius Rutakubwa vs Jason Angero**, (1983) TLR 365 to support her argument.

On the second ground of appeal Ms. Lawena complained that the respondent herein had no *locus stand* to sue the appellant upon the suit land. In his opening statement he said he was suing the appellant for trespassing his land. However, in his statement he did not disclose the source of ownership. It was on evidence when the respondent's witnesses stated that the disputed land was once given to the respondent's mother by their late father. None of the witnesses established as to how the respondent become the owner of the disputed land. She averred that the respondent ought to show how he became the owner of the suit land either through inheritance, gift, purchase or invitee. Failure to do that he had no locus to sue over the land that he holds no good title.

Submitting on the third ground of appeal, Ms. Lawena faulted the appellate tribunal for failing to evaluate the evidence properly hence arrived at a wrong decision. She averred that the respondent instituted the suit at the ward tribunal claiming that the appellant trespassed to his three acres of land. However, there was no proof as to how he became the owner of the suit land. The appellant on his side he told the ward tribunal that the suit land was given to him by his father in 1974 and that he has been in occupation of the suit land ever since. Thus, it was

the duty of the person who alleges to have rights upon the property to prove that he is actually the owner of the same. This was not done by the respondent.

She further complained that the evidence adduced was in contradiction with the statement of claim by the respondent herein. All his witnesses stated that the disputed land was given to the respondent's mother but none of them stated how the respondent became the owner of the same. She said, parties are bound by their pleadings and that his evidence ought to clearly support his claim. She referred this court to the case of **Yara Tanzania Limited vs Ikuwo General Enterprises Limited,** Civil Appeal No. 309 of 2019, Court of Appeal of Tanzania at Dar es Salaam (Unreported) to brace her argument.

She further concluded that had the appellate tribunal evaluated the evidence properly it would realize that the evidence so tendered before the ward tribunal did not support the pleadings. Therefore, she prayed that this honourable court allow the appeal for being meritorious.

Responding to the grounds of appeal, Mr. Lengai responded to the first ground that the appellate tribunal was correct to decide that the case was not time barred. He averred that the evidence shows that in 2007 the respondent was in occupation of the suit land. That the appellant's

unlawful acts of trespassing into the suit land prompted the respondent to abscond his activities in Tanga and came back home to fight the appellant who invaded his land in 2010. So, the respondent has been in possession of his three acres land in dispute uninterruptedly up to 2010 when pull and push started. The dispute was first referred to the *Boma* before the same being taken to Mlangarini Ward tribunal in 2020, therefore not time barred.

Responding to the second ground of appeal Mr. Lengai briefly stated that it is on record that the respondent has been in possession of the suit land since 1976 uninterruptedly. It is also clear that the appellant's 70x70 land has no dispute. He further stated that the respondent was claiming his land and not his mother's land. So, it was his submission that the respondent had locus stand when sued the appellant at the trial tribunal on a claim of 3 acres land. He said civil claim are established by evidence on a balance of probability and the respondent fulfilled this duty and proved that the land was his and not of his mother.

Regarding the third ground of appeal the learned counsel for the respondent stated that there were no differences between the pleaded facts and the evidence adduced by the respondent. He said the evidence of AW3, Simel Sakaya and PW4, Julius Sakaya correlate the complaint

lodged. That the cited case of **Yara LTD vs Ikuwo General Enterprises LTD** (Supra) is in favour of the respondent so this appeal should be dismissed.

In her rejoinder, Ms. Lawena reiterated what she submitted in her submission in chief.

Having gone through the submissions from both parties and the records, the pertinent issue that calls for my determination is whether this appeal has merit or not.

Starting with the first ground of appeal that the matter was time barred, Ms. Lawena reminded this court that the time limit for redeeming land is 12 years. She said the evidence shows that the dispute arose in 2007 and not 2010 and the matter was instituted in 2020. That means the respondent was time barred to claim the disputed land. Mr. Lengai said the evidence shows the appellant invaded the disputed land in 2010. I have gone through the proceedings and found that on 18/02/2020 the respondent testified at the tribunal that their father died in 2007. Thereafter the dispute arose over the disputed land then he came back from Tanga in 2010 to handle the matter. When he was cross examined by the appellant, he clarified that he was claiming the land that the appellant encroached in 2008. He replied as hereunder:

"JIBU: Nadai eneo ulilovamia 2008 siyo eneo la operation Vijiji 1976/1977."

Counting from 2008 to 2020 when the suit was instituted at the ward tribunal it is almost 12 years. In the cited case of **Erizeus Rutakubwa vs Jason Angero** (supra) it was held that,

"The period of limitation for redeeming a shamba is 12 years as governed by the Law of Limitation Act, 1971."

Being guided by the above decision, and considering that the respondent instituted the matter within 12 years I find that this ground has no merit.

Coming to the second ground, the appellant complained that the respondent had no locus stand to sue over the disputed land. That in his opening statement he said he is suing the appellant for trespassing into his land. However, he did not state the source of ownership as to whether he inherited, given as a gift or purchased the said land. With due respect to the learned counsel for the appellant, this reasoning can not stand to establish whether a person has locus stand or not. The respondent's claim was straight forward that he was suing the appellant for trespassing his own land. He did not sue on behalf of any person. Thus, this ground has no merit too.

The third ground, the counsel for the appellant stated that the appellate court failed to evaluate the evidence properly hence it ended to erroneous decision. She said the appellant stated clearly that he was given the land by his late father in 1974. But the respondent failed to establish how he came to own the suit land. She further stated that the evidence adduced was in contradiction with the respondent's statement of claim. While the respondent said he was the owner of the disputed land, his witnesses said the land was given to the respondent's mother. The counsel for the respondent argued that there was no contradiction between the respondent's statement of claim and testimonies. He referred this court to the testimony of AW3 Simel Sakaya and PW4 Julius Sakaya to correlate the complaint lodged.

I have keenly revisited the record including the judgment which is subject for this appeal. The same ground was raised at the appellate tribunal and the hon Chairperson evaluated the evidence properly. She concluded that the respondent's evidence was stronger as the appellant's evidence was weak. She further concurred with the trial tribunal to have well evaluated the evidence before it after visiting the *locus in quo*. Indeed, I agree with the hon Chairperson that the evidence brought by the respondent was stronger than the evidence of the

appellant herein. The respondent's witnesses testified that the appellant has one acre given during operation *Vijiji* but he is extending to Mayase's land. The evidence is clear that the three acres was given to Mayase's Mother and they have been staying there. The witnesses said Mayase had a right to own the disputed land as it belongs to his mother. Their neighbour, one Maglan Simon clarified that the appellant had one acre but the disputed land belongs to the respondent

The appellant's evidence was weak as he said he was given the land by his father which is four acres. His witnesses particularly Ephrahim Sakaya said the appellant had been living there however he does not know the size of the disputed land. Emmanuel Sakaya said he did not know what was their dispute. Due to this evidence, I concur with the appellate tribunal that the appellant's evidence was weak.

Due to the evidence adduced at the trial tribunal I don't see any justification to interfere with the concurrent findings of the two lower tribunal. This could be done if there could be a serious misdirection, non-direction or misapprehension of the evidence leading to miscarriage of justice which is not the case in this matter. See the case of **Edwin Isdori Elias vs Serikali ya Mapinduzi Zanzibar** [2004] T.R.L. 297,

Rashid Ramadhani Hamis Mwenda vs Republic, Criminal Appeal No. 116 of 2008 (unreported). Thus, this ground has no merit too.

Having forestated, this court finds that the appeal has no merit and thus it is dismissed forthwith. The decision of the tribunal is upheld save for the costs of the case. The record shows that the parties herein are relatives (siblings). Therefore, it is wise each party to bear own costs.

It is so ordered.

DATED at **ARUSHA** this 9th day of June, 2021

N.R. MWASEBA

JUDGE