

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPEAL NO. 34 OF 2022

(Originating from Land Appeal No. 57 of 2021 from District Land and Housing Tribunal for Arusha, C/F Land Complaint No. 2 of 2021 from Olturumet Ward Tribunal)

WILBART MEREYEKI.....APPELLANT

VERSUS

WILFRED MEREYEKI.....RESPONDENT

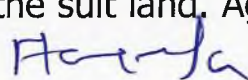
JUDGMENT

18/04/2023 & 03/05/2023

MWASEBA, J.

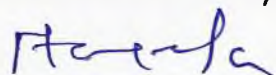
The epicenter of the dispute between the parties herein emanates from a piece of land measuring ½ acre located at Ilkiushini Village within Arusha District. The appellant lodged a suit before the Olturumet ward Tribunal in Land Case No. 2 of 2021 suing the respondent over the ownership of the land claiming that, the respondent trespassed on his land by cultivating part of it.

Having heard the parties, the Ward Tribunal allowed the application and declared the appellant as the lawful owner of the suit land. Aggrieved by



the said decision, the respondent successfully appealed to the DLHT of Arusha where the decision of Olturumet ward Tribunal was quashed and set aside for the reason that the trial ward tribunal failed to notice that the respondent had a valid customary certificate of occupancy and that the said claim was filed out of the time prescribed by the law. Distressed with the said decision of the first appellate tribunal, the appellant decided to lodge the instant appeal having six (6) grounds of appeal that constitute the heart of this complaint that:

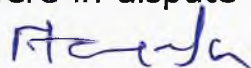
- 1. That, the Appellate tribunal erred in law and facts by holding that the matter entertained by Olturumet ward Tribunal was instituted out of time prescribed by the law to institute land matters.*
- 2. That, the Appellate tribunal erred in law and facts for holding that the trial tribunal failed to evaluate the evidence adduced by parties thereto and holding that the evidence adduced by the Respondent herein was strong compared to the evidence adduced by the appellant.*
- 3. That, the Appellate tribunal erred in law and facts for holding that the trial tribunal erred in facts and law for failure to consider the borders identified in the customary certificate of occupancy.*



- 4. That, the Appellate tribunal erred in law and facts for holding that the trial tribunal erred in law and fact for holding that the customary certificate of occupancy shows that the Appellant owns the land bordered by the Respondent on North.*
- 5. That the Appellate tribunal erred in law and facts for relying on the certificate of occupancy to declare the respondent lawful owner while the same contains contradictory boundaries.*
- 6. That, the Appellate tribunal erred in law and facts for quashing the decision of the trial tribunal without any proof of how the errors resulted in the miscarriage of justice to the Respondent herein.*

At the hearing of the appeal, the appellant was represented by Mr. Joseph M. Oleshangay, the learned counsel from the Legal and Human Rights Centre whilst the respondent enjoyed the legal service of Mr. Mwanili H. Mahimbali and Kennedy Mapima, both the learned counsels. With the consent of both parties, the appeal was disposed of by way of written submissions.

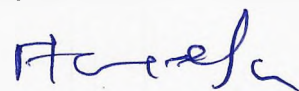
Arguing in support of the appeal on the 1st ground, Mr. Oleshangai learned counsel submitted that this appeal is not time-barred as per **Section 7 of the Law of Limitation Act**, Cap 89 R.E 2019. He submitted further that, as the parties herein were in dispute since 1998



a cause of action arose each day a claim arose, and the last time was 31/03/2021. Therefore, the application is not time-barred.

Responding to the foregoing, on the 1st ground of appeal, the respondent's counsels submitted that, at the trial tribunal the appellant alleged that the dispute arose from 1998 to 3/3/2021 and the application was filed at Olturumet ward Tribunal on 5/03/2021. He submitted further that there was no continuous breach, and that exclusion of time cannot be applied in this case.

Coming to the 2nd, 3rd, 4th, 5th, and 6th grounds of appeal, Mr. Oleshangai complained that the evidence was not properly evaluated by the 1st appellate court. He submitted further that the Customary Right of Occupancy relied on by the DLHT was not of the suit land since the land in dispute is 1/2 acre, while the Right of Occupancy shows the land measured at 6378 square meters equals to 1.5 acres. It was his further submission that, the said Right of Occupancy shows that on the North side, he is bordered by Wilbart Mereyeki Kivuyo while the illustration map shows on the North, he is bordered by Wilfred Mereyeki Kivuyo. The said contradictions proved the Right of Occupancy was not fit to be used to prove ownership. Therefore, he prayed for the appeal to be

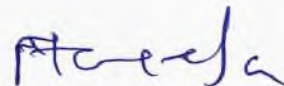


allowed and the decision of the 1st appellate tribunal be quashed and set aside.

Responding to the 2nd, 3rd, 4th, 5th, and 6th grounds of appeal, Mr. Mahimbali submitted that, when the respondent tendered "hati miliki ya kimila" the appellant did not question it. Further to that, the land in dispute is part of the land in the certificate. So long as the appellant failed to question the legality of the certificate when it was produced the same cannot be challenged at this stage. This proves that the respondent is the lawful owner of the disputed land. He supported his arguments with several cases including the case of **Amina Maulid Ambali & Others vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (CAT at Mwanza reported at Tanzlii). He prayed for the appeal to be dismissed with costs and for the decision of 1st appellate tribunal to be confirmed.

I have given a keen eye to the submissions for and against the instant appeal. The issue for determination is whether the appeal has merit or not.

In determining the herein above framed issue, I will start with the first ground of appeal which is all about time limit as raised by the parties.



Part I, Item 22 of the schedule of the Law of Limitation Act, Cap

89 R.E 2019 provides for the time limit to file a suit to recover land that:

"Suit to recover land twelve years."

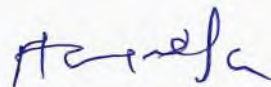
Further to that, **Section 7 of the Law of Limitation Act**, stipulates that:

"Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

In our present appeal, the appellant submitted that his claim was not time barred since there was a continuous breach and a cause of action arose each day. His argument was strongly disputed by the respondent who submitted that a cause of action arose in 1998.

Having revisited the records of the trial ward tribunal, I have noted that at the ward tribunal, the appellant stated that:

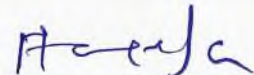
"Mnamo tarehe 26/01/1998 ndugu Wilfred Mereyeki tumekuwa na mgogoro muda mrefu zaidi ya miaka 21 na uliendelea hadi tarehe 3/3/2021...."



The cited paragraph shows that the dispute between the parties herein arose in 1998 and persisted up to 2021. When the trial tribunal went to the *locus in quo* they found that the appellant is the one who was still using the disputed land. So, the issue of time barred can not stand here. Therefore, this ground has merit.

Coming to the 2nd, 3rd, 4th, 5th and 6th grounds of appeal, the records speak by itself that the parties herein are relatives, and they acquired their lands from the "Boma". The witnesses stated that every person had his own portion of land. However, the respondent had customary right of occupancy which he acquired in 2007. It has been a decision in several cases that when two persons are competing over the interest in landed property, the person with certificate thereof will always be taken to be a lawful owner unless it has been proved that the certificate was not lawfully obtained. See the case of **Amina Maulid Ambali and 2 Others vs Ramadhani Juma** (supra).

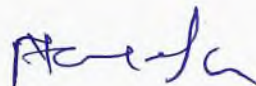
In our case the respondent tendered a certificate of right of occupancy before the trial tribunal which proved his ownership over the disputed land while the appellant did not even file any counter claim or joining any relevant authority to challenge the alleged customary right of occupancy. As excerpt from the book titled **Conveyancing and**



Disposition of Land in Tanzania by Dr. R.W Tenga and Dr. S.J Mramba, law Africa, Dar Es salaam 2017 at page 330 cited with approval in the case of **Amina Maulid Ambali and 2 Others vs Ramadhani Juma**, (supra) that:

"The appellants have argued that registration in the name of the respondent was done fraudulently. That is an allegation which ought to have been proved through cogent evidence at the trial and it ought to have involved the filling of counter claim and joining of the relevant authority which was responsible for registration of the plot in the name of the respondent. As it stands however, the available evidence on the records supports the finding of the learned trial Judge that the respondent is the lawful owner of the suit property."

Thus, being guided by the cited authority as the respondent presented his customary right of occupancy at the ward tribunal, the 1st appellate court was correct to declare him as the lawful owner of the disputed property. More to that, if the appellant is challenging the said customary right of occupancy, he ought to have filed another suit or file a counter



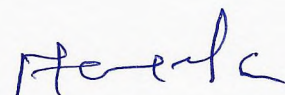
claim challenging the same. Thus the 2nd, 3rd, 4th, 5th and 6th grounds of appeal lacks merit.

Having forestated, I find that this appeal has no merit and is hereby dismissed in its entirety. Keeping in mind that the parties herein are relatives, I give no order as to costs.

It is so ordered.

DATED at **ARUSHA** this 3rd day of May, 2023.




N.R. MWASEBA

JUDGE