IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO. 17 OF 2022

(C/F Land Case Application No. 177 of 2018 before the District Land and Housing Tribunal for Dodoma at Dodoma)

FRANSIC SAYANGO ..... APPELLANT

VERSUS

RISSASY A.M RISSASY..... RESPONDENT

JUDGMENT

Last order 09/10/2023
Judgment: 07/11/2023

MASABO, J.:-

The appellant was the respondent in Land Application No. 177 of 2018 before the District Land and Housing Tribunal for Dodoma at Dodoma (the trial tribunal). He is aggrieved that the outcome of the application was in his disfavor. His appeal is based on eight grounds of appeal which I summarise as follows: **One,** the trial tribunal erred by not addressing the parties on the change of the presiding chairman and did not ask them whether or not they were willing to proceed with the case under the new chairman. **Two,** the assessors were not given an opportunity to give their opinion before the parties. **Three,** the application was time barred. **Four,** the respondent's evidence was untenable, weak and contradictory. **Five,** the appellant's evidence was not accorded deserving weight. The tribunal relied on slight discrepancies to disregard the whole evidence. **Six,** by proceeding with the hearing, the chairman offended the law. **Seven,** the decision was

erroneously based on documentary evidence which were not tendered or were illegally admitted. **Eight,** the decision was delivered against the law.

Hearing of the appeal proceeded by way of written submissions. All the parties have representation. Submissions by the appellant were drawn and filed by Mr. Elias Machibya, learned counsel whereas those of the respondent were drawn and filed by Mr. Mohamed Chondo, learned counsel.

In support of the grounds of appeal Mr. Machibya started by abandoning the first and second grounds of appeal. He then proceeded to the third ground and submitted that the application before the trial tribunal was time barred because, although the respondent pleaded that the dispute arose on 2018, in his evidence he testified that the appellant invaded the suit land four years before 2018. He also said that the respondent was not certain as to when he started to occupy the land in dispute. On the other hand, it was his submission that the appellant came to occupy the land in dispute for more than thirty years without interruption. Thus, the cause of action arose in 1990 and since the respondent did not sue from that time he cannot sue now. He referred the court to item 22 of the schedule to the law of Limitation Act, Cap. 89 R.E 2019 which provides a time limit of 12 years for a suit for recovery of land. He argued that the trial tribunal ought to dismiss the suit for want of jurisdiction.

Submitting jointly on the fourth and fifth grounds of appeal, he argued that the respondent did not prove his case to the required standards as provided

under section 110, 111 and 112 of the Evidence Act Cap. 6 R.E 2019 because, first he did not mention the years he was allocated the suit land by Dodoma Municipality in his pleadings. Second, in his evidence he testified that he was allocated the suit land by Capital Development Authority (CDA) in 1986 but this fact was not pleaded. Third, although he said he attached the letter of offer of the right of occupancy the same was nowhere to be found as attachment. And lastly, while testifying, the respondent stated that while he was at Mwanza, it was his children who were using the suit land. However, he did not mention the names of the children who were allegedly using land and bothered not to call them to testify. Inversely, the appellant proved his ownership of the suit land as he clearly demonstrated that he acquired the suit land in 1980s and started to use the same in 1990s and much as there were slight discrepancies on the years the appellant acquired the land and its size, there was no dispute that the appellant has been there all the years.

In support of the sixth ground of appeal, he argued that the proceedings contravened regulation 12(1) (2) and (3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 which requires that, at the commencement of the hearing, the trial Chairman should read and explain the contents of the application to the respondent. It was his argument that the omission is fatal bearing in mind that the appellant was unrepresented.

Regarding the seventh ground of appeal, he argued that the application referred to an offer of the right of occupancy but the same was not attached to the application. The irregularly tendered them and were admitted and marked exhibit P1 collectively but the same were not identified by PW2 who is the land officer. They were similarly not referred in the judgment. It was his further submission that this contravened regulation 10(1) (2) and (3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003. He added further that there were irregularities in the admission of the said exhibits as they were not endorsed by the presiding chairman hence did not form part of the court proceedings. In fortification, he cited the case of **SGS Societe Generale De Surveillance SA and Another vs. VIP Engineering and Marketing Ltd**, Civil Appeal No. 124 of 2017 (Unreported). Moreover, he argued that further to the above, the documents were not read out in court after their admission contrary to the requirement in **Selemani Selemani Mkwavila (Administrator of the estate of the late Jaffari Juma Budu vs. Agatha Athumani and Another**, Land Appeal No. 5 of 2022(Unreported). Having submitted on the above grounds, Mr. Machibya refrained from submitting on the eight ground of appeal which he considered to have been already covered by the submission made in support of the grounds above.

In reply, Mr. Chondo, counsel for the respondent, submitted that the suit was not time barred as the respondent filed his claim within the time provided by the law. As per section 4 of the Law of Limitation Act, Cap. 89 R.E 2019 and the case of **Issac Sina and Eight Others vs. Attorney**

General and Three Others, Land Case No. 25 of 2016 (unreported), the duration of the 12 years should be counted from the date when the dispute/cause of action accrued. He proceeded that the appellant did not remain silent after the accrual of the right. Immediately after discovering that the appellant's action was inconsistent with his ownership of land, he filed a law suit to reclaim his land. Thus, there is no point in arguing that the suit was time barred.

Responding on the fourth, fifth and seventh ground, the learned counsel argued that the respondent fully discharged his obligation as regards the burden of proof. He rendered his evidence and proved on the preponderance of probability that he is the rightful owner of the suit land. He presented oral and documentary evidence. As regards the documentary evidence and the argument that it was not part of the pleadings, he argued that the point has been wrongly belatedly raised hence irrelevant. The appellant had an opportunity to raise this objection at the admission stage but he forfeited it. Hence, the documents were admitted with no objection. He proceeded that, it is a well-established principle of law that, failure to object the admission of an exhibit is equivalent to an admission of the facts.

On the irregularities in the documentary evidence, he argued that the admission of the document was fully compliant with regulation 10(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003 which allows production of documents before the conclusion of hearing. Moreover, he argued that as per section 53(1) of the

Interpretation of Laws Act, Cap. 1 R.E 2019, the use of the word "may" in the respective provision imply that the tribunal has the option to exercise this power or not. On the sixth ground of appeal, he replied that the proceedings were conducted in accordance with the law. The trial was characterized by fairness towards both litigants and each of them had an opportunity to prove his case. The trial chairman fully complied with the provisions of section 12(1), (2) and (3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003. In conclusion he prayed that the appeal to be found with no merit and be dismissed with costs. In rejoinder, the appellant's counsel reiterated his submission in chief.

I have considered the submissions alongside the trial tribunal's record whose summary is as follows. The respondent instituted an application before the trial tribunal on 15th October 2018 asserting that he owns a suit identified as Plot No. 77 Mpamaa, Miyuji within Dodoma Municipality (the suit land) which he acquired it by being allocated by Dodoma Municipality. Later on in 2018, the appellant, with no any colour of right or consent of the respondent, trespassed into the suit land and started to erect a house. The respondent reported the matter before the Ward Executive Officer in order to settle the dispute amicably but the effort ended with no fruitition hence, he decided to institute the case before the trial tribunal. On his part, the appellant refuted the claims and averred that, the disputed land is an un-surveyed land and has no plot number. He annexed a copy of customary right of occupancy to

his written statement of defence evidencing that he owns the suit land customarily.

When the trial commenced, the respondent had only two witnesses who are, the respondent himself (PW1) and one William Mvendi Njia, a land officer who testified as PW2. The evidence of these two witnesses was to the effect that the suit land was allocated to the respondent on 28th January 1986 by the CDA and was measuring 3.87 acres. A letter of offer was issued to the respondent on 20th February 1986 and was never revoked. PW1 tendered letter of offer, plan deed and receipts of land rent which were all admitted as exhibit P1 collectively.

On the appellant's side, there were three witnesses. The appellant testified as DW1. DW2 was one Yohana Makali and DW3 was Kabubule Mazengo. The evidence on this side was to the effect that the appellant acquired the suit land after being allocated the same in 1979. The land was measuring 12 acres. After being allocated, he started to cultivate the same in 1990 and used it without any interruption until in 2018 when the respondent emerged and claimed ownership of four acres. In further proof, he tendered the customary right of occupancy, bank pay slip and recognition letter which were admitted as D1 collectively. DW2 told the court that the appellant got the suit land by clearing a virgin land in 1988 and the same was measuring 2 ½ acres. DW3 on his part stated that the respondent got the land in 1967. From this evidence the trial tribunal held in favour of the respondent stating that the appellant's evidence was contradictory as to when and how he

acquired the suit land and there also contradictions as regards its size. It is this finding which has angered the appellant.

With this background, I will now move to the grounds of appeal. Before I do that, I find it apt to state, at the outset, the principle governing proof of civil suits. The law is settled that, a person who alleges a certain fact bears the burden to prove its existence. Section 110 and 111 of the Law of Evidence Act, Cap. 6 re 2022, states that:-

> 110. Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist.
> 111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side.

The principle has been applied in several authorities including in **Godfrey Sayi vs. Anna Siame Mary Mndolwa**, Civil Appeal No. 114 of 2012 [2017] TZCA 213 TanzLII. It is similarly settled that the party with legal burden also bears the evidential burden and the standard of proof required is proof on the balance of probabilities (see **Antony M. Masangya vs. Penina (Mama Ngesi) and Another,** Civil Appeal No. 118 of 2014 [2015] TZCA 556 TanzLII).

Back to the grounds of appeal, since the first two grounds of appeal were abandoned, I will start with the third ground of appeal. The appellant's counsel has passionately argued that, the suit was time barred as at the time of its institution in the trial tribunal the period of 12 years has already lapsed. Indeed, as argued by Mr. Machibya and conceded by Mr. Chondo, Item 22

of Part I of the Schedule to the Law of Limitation Act, Cap. 89 prescribe a time limitation of twelve years for suits for recovery of land. A suit seeking recovery of land such as the one at hand, must therefore be instituted within 12 years from the date of accrual of right. Section 5 of the same Act deals with the period of accrual of right and states that, *the right of action in respect of any proceeding shall accrue on the date on which the cause of action arises*. Therefore, since the claims in the present case relate to trespass/ dispossession of land, the accrual date for purposes of reckoning the limitation period is the date on which the respondent was dispossessed of the same, that is, the date when the appellant trespassed into the land. Further, section 9(2) of the same Act states that:

> 9(2) where the person who institutes suit to recover land or some person through whom he claims has been in possession of and has, while entitled to the land, been disposed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinue.

Needless to overstate, in any court action, the issue of time limitation is of greater essence and its consequences are dire. It has an important bearing to the jurisdiction of the court/tribunal to entertain the matter before it. And, according to section 3 of the Law of Limitation Act, the only remedy for a time barred matter is dismissal. It is therefore, important for the plaintiff to demonstrate that his claim is not time barred. The respondent herein being the complainant in the trial court was, in the foregoing of the above, duty

bound to demonstrate when the cause of action accrued and consequently, whether the matter before the tribunal was competent. In other words, it was incumbent for him to state, both in the pleadings and the evidence the time on which the cause of action accrued. It is in this context, the respondent stated in paragraph 6(a)(iii) of his application that the appellant trespassed into his land in 2018 and erected a house into it. Testifying as PW1 on 25/3/2019, he stated that the appellant invaded his land almost four years ago which suggests that the course of action accrued in 2015. Much a contradiction is exhibited, the same does not lead to the conclusion that the duration of 12 years had lapsed when the respondent instituted the suit before the trial tribunal on 16th October 2018. Accordingly, I find no materials upon which to draw a conclusion that the suit was time bared. Under the premise, the appellant's contention that suit was time barred has no merits.

The fourth, fifth, seventh and eighth grounds of appeal will be determined jointly as one as they all revolve around the evidence adduced by the parties. Starting with the allegation that the evidence adduced by the respondent was weak and contradictory, the records shows that the respondent was allotted the suit land by the defunct CDA in 1986 and this was subscribed to by PW2 who is the land officer. The record shows that the respondent tendered documents to support his assertion the same were admitted as exhibit P1 collectively. On his part, the appellant said he was allocated the land in the year 1979. However, he did not mention an authority/person who allocated the same to him whereas DW2 stated that the appellant got the

suit land by clearing the virgin land in 1988 and DW3 stated that the appellant acquired the suit land in 1967 by clearing a bush.

Mr. Machibya has argued that, I should give no weight to exhibit P1 collectively due to the following reasons. One, that it was wrongly admitted as it was not appended to the pleadings. Much as his argument appears logical and consistent with the law, I will accord it no weight as it has been belatedly raised. As argued by the respondent's counsel, the objection ought to have been raised at the admission stage but it was not. When tendered for admission, they were admitted with no objection. The second point is that, the documents were not read out after their admission. Indeed, it is a requirement of the law that once a document is admitted in evidence, it must be read over in court (see the case of **Bulungu Nzugu vs. The Republic,** Criminal Appeal No. 39 of 2018 [2022] TZCA 454). Inversely, in the present case, all exhibit admitted tendered by both parties were not read out after their admission hence non-compliant with the law. Interestingly, however, and as correctly argued by Mr. Machibya, the trial tribunal did not consider Exhibit P1 in its judgment and made no reference to it implying that, it disregarded it as I hereby do. The same apply to all the documentary evidence tendered by the appellant as they were equally not read out after admission.

Having disregarded the documentary evidence, I am left with the oral evidence summarized above as the sole evidence for both parties. Having weighed it I have found the respondent to have proved his ownership as

contrasted to the appellant whose evidence appears to have been weak and contradictory on how he acquired the land. As stated earlier on, the appellant's evidence was highly contradictory as to how he obtained the suit land and its measurement as each of the three witnesses had his own account. PW1 stated that he was allocated the land in the year 1979 and it was 12 acres. However, he did not mention an authority/person who allocated the same to him. DW2 stated that the appellant got the suit land by clearing the virgin land in 1988 and the same was 2 ½ acres and DW3 stated that PW1 got the suit land in 1967. These are material contradictions. They cast serious doubts to the appellant's claim. Save to what has been states as regards the admission of documents, the appellants complaints are overruled for being devoid of merit.

The complaint in the sixth ground of appeal is that the proceedings offended the provision of regulation 12(2) and (3) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 which requires the trial chairman at the commencement of the hearing to read and explain the contents of the application to the respondent. Indeed, this was not done. However, I have wondered if the appellant was anyhow prejudiced by the non-compliance. Since he has alluded to no prejudice in the course of his submission, I am made to presume, as I hereby do, that he understood his case and was not anyhow prejudiced. Had he been prejudiced he would have stated so. I take this position mindful also that, upon being served with the application, the appellant drew and filed a written statement of defence and when the trial commenced, he followed it and

cross examined the respondent and all his witnesses. Also, after the respondent's case (then the applicant's case) closed, the appellant herein opened his case by personally adducing oral evidence and paraded two more witnesses in support of his case and produced documentary evidence in proof of his ownership of the suit land and how he acquired it. All this demonstrates that he credibly understood the case and sufficiently exercised his right to be heard. This ground, is therefore with no merit.

That said and done, I find the appeal to have no merits. Accordingly, I hereby dismiss it with costs.

DATED and **DELIVERED** at Dodoma this 7th day of November 2023

J. L. MASABO

JUDGE