

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)

LAND APPEAL NO. 35 OF 2023

*(Arising from Land Application No. 21 of 2020, in the District Land and Housing
Tribunal for Morogoro, at Morogoro)*

BETWEEN

TAUSI HASSAN.....1ST APPELLANT

MAULID SAID..... 2ND APPELLANT

VERSUS

MWAJUMA OMARY..... RESPONDENT

JUDGEMENT

20th Oct, & 15th Dec, 2023

M.J. CHABA, J:

This is the first appeal arising from the judgment and decree of the District Land and Housing Tribunal for Morogoro, at Morogoro (the Tribunal) delivered on 31/01/2023 in favour of the respondent. At first, the respondent sued the appellants for declaratory orders of ownership, that the appellants are trespassers, eviction of appellants from the disputed house and costs. The dispute involves ownership of landed Plot No. 233, Block "K/A" located at Kichangani Ward within Morogoro Municipality in which the respondent is claiming that, she is the lawful owner of the premises.

For better appreciation of this matter, I find it apt to state the facts giving rise to this appeal at the outset. The Plot in dispute was originally



owned by the Late Omary Hassan, the respondent's father who died in 1996. Following his death, one Salum Hassan was recommended by the deceased's clan members and afterwards was legally appointed by the Primary Court to stand as the administrator of the Estate of the Late Omary Hassan. In distributing the properties as shares to the beneficiaries, the appellants herein were given a sewing machine (Cherehani in Swahili language), while the Plot in dispute was given to the respondent herein as her share taking into account that, she was the sole child to the deceased. But her share was retained and kept in possession of one Salum Hassan, an administrator of the Estates of the Late Omary Hassan, who appeared and featured as AW2 before the trial Tribunal, as at that time the appellant, Mwajuma Omary Hassan was below 18 years old. Upon attaining the age of majority, respondent claimed to be given the possession and ownership of the house in dispute, and accordingly, Plot No. 233, Block "1/A" situated at Kichangani area within Morogoro Municipality was handed over to the respondent.

However, despite of the fact that the house was placed into the possession of the respondent, but until the appellants lodged the present petition of appeal on 27th day of February, 2023, the 2nd appellant, Maulid Said was occupying and he is still living in the house, renting the same and the worst thing is that, he has refused to vacate the premises. Further, it is worth noting that, the 1st appellant is a sister of the deceased, Omary Hassan and the 2nd respondent is the son to the 1st appellant and uncle to the deceased.



It is on the basis of the above facts, the respondent rushed before the trial Tribunal and prayed for declaratory orders that she be declared as the lawful owner of the Plot/House in dispute, that the appellants be declared trespassers of the Plot No. 233, Block "K/A" situated at Kichangani area within Morogoro Municipality, eviction of appellants from the premises and costs be borne by the appellants/respondents at trial.

At the culmination of full trial, the trial Tribunal decided in favour of the respondent/applicant at trial. Aggrieved by the judgment, decree and orders of the trial Tribunal, the appellants preferred the instant appeal premised on the following grounds of appeal:

- 1) That, the trial Chairperson of the District Land and Housing Tribunal, erred in law and fact by failing to consider time limitation of filing the suit of the deceased property.
- 2) That, the trial Chairperson of the District Land and Housing Tribunal, erred in law and fact by failing to make good evaluation of the evidence that was adduced during the hearing of the case.
- 3) That, the trial Chairperson of the District Land and Housing Tribunal, erred in law and fact by failing to consider testimony and evidence of the 1st appellant consigning her interest in the disputed property.
- 4) That, the Trial Chairperson of the District Land and Housing Tribunal failed totally adjudicate justice in this case.



Based on the above grounds of appeal, the appellants are asking this Court to allow the appeal and set aside the whole decision of the trial Tribunal and the orders emanated therefrom, costs to follow the event and an order granting any other reliefs that this Honorable Court sees just and proper to grant in their favour.

When the appeal was called on for hearing, the appellants enjoyed the legal services of Mr. Derick Vicent, learned advocate while the respondent appeared in person, and unrepresented. With the parties' consensus, this appeal was disposed of by way of written submissions.

To kick the ball rolling, Mr. Vicent commenced to argue the appeal with the first ground. He submitted that, the trial Chairperson erred in law and fact by failing to consider time limitation for filing the suit in respect of the deceased's property. He averred that, any issue that may arise and touches the interest of the deceased, in law, should be filed in the competent court after the death of the owner of the alleged property as stated by the Law of Limitation Act [CAP. 89 R. E. 2019], in particular section 9 (1) which states that: -

"Where a person institutes a suit to recover land of a deceased person, whether under a will or intestacy and the deceased person was, on the date of his death, in possession of the land and was the last person entitled to the land or be in possession of the land, the right of action shall be deemed to have accrued on the date of death".



He argues that, in this case, the issue arose in 2006 but the respondent filed the case in 2020 after lapse of 15 years. He added that, the law is clear that all matters concerning the issues of land should be filed in the court of law within twelve (12) years, citing the case of **Abel Rweshogora Vs. Raphael Mukaja (1970) HCD 100** to fortify his argument. He further cited the case **Fredrick Rwemanyira (Administrator of the Estate of the Late Wenceslaus Ndyamukama) Vs. Joseph Rwegoshora, Land Case No. 13 of 2021, HCT at Bukoba**, where this Court on page 13 of the typed judgment observed that: -

"... it is the principle of the law that a suit that is the time bared statute must be rejected by the court because in such suit, this court is barred by from granting any remedy or relief..."

He went on submitting that, respondent file her case out of time and it was wrong for the trial Tribunal to grant all prayers in the application as the remedy was to dismiss the application as per Section 3 (1) of the Law of Limitation Act.

On the 2nd ground, the Counsel argues that trial Chairperson erred in law and fact by failing to make good evaluation of the evidence adduced before the trial Tribunal. To substantiate his argument, the Counsel highlighted that, during the hearing of the respondent's Application at the trial Tribunal, the Chairperson was duty bound to consider the evidence tendered



by the parties before making her decision as it was emphasized in the case of **Abel Masikiti Vs. Republic**, Criminal Appeal No. 24 of 2015 (CAT) on page 6 when referring to the case of **Leonard Mwanashoka Vs. R**, Criminal Appeal No. 226 of 2014 (unreported).

He argues that, the trial Tribunal was supposed to evaluation the evidence tendered before it and consider the same in its entirety and see if truly there was crucial evidence indicating that the respondent adduced heavier evidence than the appellants before embarked on its verdict. He averred that, Salum Hassan (AW2), an administrator of the Estate of the deceased, Omary Hassan confirmed that he held the post and he managed to distribute the house in dispute to respondent, but he did not tender any document to back up his statement. He asserted that, had the trial Tribunal taken a critical review of the whole evidence tendered before it, would have noticed that, similarly, the respondent failed to attach any document to back up and support her claims. To fortify his contention, Mr. Derick referred the Court to the case of **Isack 8 Sons Ltd Vs. North Mara Goldmine Ltd**, **Commercial Case No. 3 of 2019 HCT**, where it was held that: -

".... any application should be read together with the attachments thereto and attachments relied upon should be related with the application and claims that filed in the court of law...."



In view of the above submission, it was the argument of the appellants' Counsel that, neither the respondent presented in Court documentary proof nor tendered any document indicating that the said Plot No. 233, Block "K/A" was the property of the deceased, and further that the procedures to transfer the deceased's property was adhered. Under the circumstances, all these factors were supposed to be carefully considered by the trial Tribunal so as to get away from any doubt.

As to the 3rd ground, the Counsel submitted that, the Hon. Chairperson erred in law and fact by failing to consider the testimony and evidence of the 1st appellant regarding her interest in the disputed property. He substantiated that, when the rights and duties of any person(s) are being determined by the court or any other agency, that person shall be entitled to a fair hearing but the Tribunal ignored this point and denied the 1st appellant his rights to defend her interest over the house in dispute. He cited the case of **Highland Estate Vs. Kampuni ya Uchukuzi Dodoma Ltd & Another**, Civil Application No. 183 of 2004.

On the above submission, Mr. Vicent prayed the court to allow the appellant's appeal for the interest of justice on both sides.

In reply, the respondent drew the attention of this court that, the appellants though fronted four grounds of appeal, but they managed to submit and/or address the court on grounds 1, 2, and 3 only, while nothing has been argued in respect of ground 4. She therefore, urged the court to



rule out that, the appellants have failed to prosecute on such ground of appeal and the same should be dismissed.

He stated that, in confronting the appellants' grounds of appeal, she proposed to consolidate grounds 2 and 3 and argue them jointly, whereas the ground 1 will be argued separately.

As to the first ground, respondent submitted that the counsel for the appellants tried to mislead himself and this court because he fails to understand that, at the time when the respondent lodged **Land Application No. 21 of 2020** before the trial Tribunal, the landed property was no longer a part of the Estate of the Late Omary Hassan because it was already inherited and duly distributed to the deceased's lawful heir (respondent), after the probate and administration cause being closed on 2nd day of August, 2006. He argues that, it is the principle of the law that, once the property of the deceased is already inherited and duly distributed to the deceased's lawful heir(s) such property is no longer part of the Estate of the deceased. He cited the decision of this Court (Hon. F. Twaib, J., As he then was) when he dealt with the matter that involved the 1st appellant herein and the then administrator of the Estate of the deceased's property (the Plot/House in dispute), who featured at trial as AW2 (Salum Hassan) in the case between **Tausi Hassani & Another Vs. Salum Hassani**, PC Civil Appeal No. 15 of 2011 (unreported), where on page 6 of its judgment, it was held *inter-alia* that: -



"In any case, the property is no longer part of the estate. It was inherited and dully distributed to the deceased's only daughter, Mwajuma Omary Hassani".

The Court went on stating that:

"If she has already sold the property, as appears to be the case, then she was perfectly entitled to do so, and the buyer would have acquired good title".

Placing reliance on the above authority, respondent argues that, since the property of the deceased, Omary Hassan has been inherited and dully distributed to the lawful heir(s) such property can no longer treated as part of the deceased's estate. She concluded that, the law cited the Counsel for the appellant, i.e., section 9 (1) of the Law of Limitation Act (supra), is distinguished, hence is good as nothing in this appeal.

Concerning the time limits for claiming possession of a parcel of land, that is twelve (12) years, respondent highlighted that the position is well known. But soon after the said Plot No. 233, Block "K/A" was distributed to her as the sole beneficiary, it prompted to arose another dispute between the Salum Hassani (An administrator of the Estate of the Late Omary Hassan) and his relatives namely; Tausi Hassani & Maulidi Saidi Pango as they were dissatisfied by the decision of the District Court of Morogoro, at Morogoro via Civil Application No. 18 of 2010 which stemmed from the decision of the Urban Primary Court of Morogoro, at Morogoro in Probate and Administration



Cause No. 185 of 1996. So, when were displeased by the decision of the District Court, they appealed to the High Court and the decision was delivered on 26/2/2014. She accentuated that, under the circumstances, it is correct to say that, the cause of action between the respondent and appellants could have accrued from 2014 and because the dispute was lodged in Court in 2020, only six (6) years had lapsed, hence the matter was file within the statutory time prescribed by the law. Again, she was of the opinion that, this ground of appeal is baseless.

As regards to the consolidated grounds of appeal, that is 2nd and 3rd grounds, respondent submitted that the trial Tribunal properly evaluated and considered in full the evidence tendered by the parties herein and that, the standard of proof in civil matters was well adhered to, but the 1st appellant failed to prove how she became the lawful owner of the landed property in dispute. On allegation that, the 1st appellant was not afforded with an opportunity to defend her interest in respect of the Plot/House in dispute, she lamented that, such an allegation is unfounded in law and frivolous, as the trial Tribunal was fairly afforded her rights to fend for herself and the Tribunal complied with the governing principle.

In light of the above arguments, respondent prayed the court to dismiss the appeal with costs for deficiency of merits. She stressed that, the appellants have filed the present appeal with intent to delay the due process of the law.



By way of rejoinder, Mr. Vicent reiterates what he submitted in chief and added that, respondent has never disputed the fact that during trial she didn't tender any document indicating that she is the legal owner of the disputed house and that, any application has to be read together with the attachment thereto. Before the trial Tribunal, the respondent's witness (AW2) recounted that, he was still an administrator of the estate of the deceased, Omary Hassan. Such piece of evidence, unveil that automatically, the respondent had no legal capacity to file any case before the Tribunal.

Having summarized the parties' rival submissions and carefully considered both parties' submissions, the records of the trial Tribunal and this court in line with the grounds of appeal premised by the appellants, now the duty of this court is to determine the merits or demerits of the appeal.

It is apparent that, the appellants raised four grounds of appeal but silently, dropped the fourth ground and so failed to argue. I will dismiss the same for obvious reason. In this regard, determination of the matter hand will only be focused on grounds 1, 2 and 3 respectively. It is also very crucial to note that, there is no dispute that Salum Hassan (AW2), was appointed as an administrator of the estate of the Late Omary Hassan and accordingly performed his duty in line with the governing law and when the sole beneficiary attained the age of majority, he handed over the Plot/House in dispute to the respondent before the administrator, Salum Hassan and his close relatives and the respondent herein knocked the door of the Lower



Court, Tribunal and this Court fighting for obtaining ownership of the Plot/House in dispute.

I will open my determination with the first ground of appeal. It is alleged that, the trial Chairperson erred in law and fact by failing to consider time limitation for filing the suit of the deceased property. On overviewing the records of the trial Tribunal, it is clear that Plot No. 233, Block "K/A" situated at Kichangani Ward, within Morogoro Municipality was formerly belonged to the deceased, Omary Hassan. Following his demise, one Salum Hassan (the deceased's close relative), his names was indorsed by the clan members to be appointed to administer the deceased's estates and so was appointed by the Urban Primary Court of Morogoro to be an administrator of the estates of the Late Omary Hassan via Probate Cause No. 185 of 1996. That, among the properties of the deceased was a sewing machine (Cherehani) and the Plot/House in dispute that was given or distributed to the respondent herein.

Regarding the complaint registered by the appellants that, the trial Tribunal failed to consider the issue of time limitation for filing the suit as the same was filed out of the statutory time prescribed by the law, in my considered view, that is a misconception on the side of the appellant because, the evidence of Salum Hassa (AW2) shows that, he distributed the deceased's properties to the heirs and afterwards closed the Probate Cause. This means that, he acted in full compliance with the governing law and accordingly, filed the inventory which was accepted in court. From there he automatically ceased to assume his post and the property became into the possession of



the respondent, the sole beneficiary who inherited the property of her Late father. The case cited by the respondent, **Tausi Hassani & Another Vs. Salum Hassani**, (PC) Civil Appeal No. 15 of 2011 (supra) is relevant in the circumstance of this matter as the same cast lights of what actually transpired in Court after Salum Hassan (AW2) was appointed to administer the estates of the Late Omary Hassan.

As to the question of time limits for filing a land matter, twelve (12) years, I would say, as correctly submitted by the respondent, the dispute over land between the parties and Salum Hassan (AW2) began way back in the Urban Primary Court of Morogoro and ended in the High Court (Twaib, J.,) where the decision was entered on 26/2/2014. Thus, it was until the end of the dispute before this Court, time started to run against the respondent and from 2014 to 2020 is almost six years. Therefore, in the circumstances, there is no doubt that the respondent was not caught by the web of time limits as she timely lodged the matter within the time prescribed in law of limitation.

Coming to the 2nd and 3rd grounds of appeal, the same revolves around the issue of failure by the trial Tribunal to evaluation the evidence tendered before it. I am mindful that this is the first appellate court. Its duty is to re-hear and re-evaluate the whole evidence tendered at trial and come up with its findings. See the cases of **Salum Mhando Vs. R [1993] TLR 170**; **Siza Patrice Vs. R**, Criminal Appeal No. 19 of 2010 (unreported); **Bonifas Fidelis @ Abel Vs. R, [2015] TLR 156**; and **Alex Kapinga & Others Vs. R**,



Criminal Appeal No. 252 of 2005 (unreported). For instance, in **Siza Patrice Vs. R, (supra)**, it was held *inter-alia* that: -

"We understand that a first appeal is in the form of a rehearing. The first appellate court has a duty to reevaluate the entire evidence in an objective manner and arrive at its own findings of fact if necessary".

On the allegations by appellants that, one Salum Hassan was not an administrator of the Late Omary Hassan because he did not tender any document indicating that he was the administrator and that no inventory report was tendered, I have discussed this issue herein above. To be frank, I would not tax my mind on this facet for a reason that, there are plentiful evidence exhibited both in the proceedings of the trial Tribunal and the decision thereof. It is evident that in Probate Cause No. 185 of 1996, Salum Hassan (AW2) being an administrator of the deceased's estate, was successfully challenged by 1st appellant, Tausi Hassan upon applied for revocation for his post, but her victory became sour because this Court overturned the decision of the lower court by way of **Revision in PC Civil Appeal No. 15 of 2011 HC (T) at DSM between Tausi Hassani & Another Vs. Salum Hassan**. In its decision, this Court ruled that the revocation of Salum Hassan (AW2) and subsequent appointment of the 1st appellant was irregular because the probate cause had been already closed by the court on the 2nd August, 2006. On facet, there was abundant evidence on



the preponderance of probability that, Salum Hassan (AW2) was an administrator of the estate of the Late Omary Hassan and form No.4 which is form for the appointment of an administrator is not the only document that can be necessarily relied on to prove that he was appointed as such. In my view, the presence of the aforementioned probate cause suffices to prove the fact. On scrutiny of the proceedings at trial, I found no iota of pieces of evidence suggesting that the appellants tendered in evidence some documentary evidences to establish and prove that they possess the house in dispute let alone showing that they own the same. This reminds me to the established principle of the law that, a civil case must be proved on the balance of probability. **See: Section 3 (2) (b) of the Evidence Act, [CAP. 6 R. E. 2022]**. The principle of law further demands that, a person with heavier evidence than his/her adversary must win the case. This stance of the law was underscored in the case of **Hemedi Saidi Vs. Mohamedi Mbilu [1984] TLR 113** thus:

"According to the law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

As to the grievance that, the Tribunal erred in law and fact by failing to consider the testimony and evidence adduced by the 1st appellant herein concerning her interest in the disputed land, to be honest, this ground is full of deficiency of clarity because on the face of it, it is vague. Indeed, I have failed to grasp what exactly the 1st appellant meant. Even the learned Counsel



for the appellants did not clearly explain the interest that the 1st appellant is claiming to have engulfed in Plot No. 233, Block "K/A" situated at Kichangani within Morogoro Municipality. I find no merit on this ground.

In view of what I have endeavored to deliberate hereinabove, I find no merits in this appeal, and it is hereby dismissed in its entirety with costs. The decision of the District Land and Housing Tribunal for Morogoro, at Morogoro is sustain. I so order.

DATED at MOROGORO this 15th day of December, 2023.



M.J. CHABA

JUDGE

15/12/2023

Court:

Judgment delivered under my hand and the Seal of the Court in Chamber's this 15th day of December, 2023 in the presence of the 2nd Appellants and Respondent and the absence of the 1st Appellant.



A.W. Mmbando



DEPUTY REGISTRAR

15/12/2023

Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.



A.W. Mmbando



DEPUTY REGISTRAR

15/12/2023