

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MBEYA DISTRICT REGISTRY)

AT MBEYA

LAND APPEAL NO. 34 OF 2023

**(Originating from the District Land and Housing Tribunal for Mbeya at
Mbeya Application No. 77 of 2021)**

TUMPE NAMKUMBWA 1ST APPELLANT

ATUGANILE NAMKUMBWA 2ND APPELLANT

NDIMBUNI NAMKUMBWA 3RD APPELLANT

VERSUS

ROBERT MCHOME..... 1ST RESPONDENT

BRYSON NAMKUMBWA 2ND RESPONDENT

JUDGMENT

Date of last order: 13/11/2023

Date of judgment: 13/12/2023

NGUNYALE, J.

The appellants TUMPE NAMKUMBWA, ATUGANILE NAMKUMBWA and NDIMBUNI NAMKUMBWA filed Application No. 77 of 2021 before the District Land and Housing Tribunal claiming a piece of land alleging to have been trespassed by the respondents ROBERT MCHOME and BRYSON NAMKUMBWA. In the course of the trial, the respondents raised a preliminary objection on point of law that the application was time barred.



The trial tribunal sustained the preliminary objection as a result the application was dismissed on 30th November 2022 for being filed out of time.

The appellants were seriously aggrieved with the decision of the tribunal, they preferred the present appeal premising three grounds of appeal; -

One, that the findings by the trial tribunal were without justification.

Two, that the trial tribunal erred both in law and fact for not comprehending that the respondent was not entitled by adverse possession to the disputed land to the effect that the cause of action had accrued to the parties between 2016 to 2018 thus the said adverse possession was itself a disputable fact in issue that evidence may be given in proceedings to prove its existence.

Three that the trial tribunal erred both in law and fact for not being aware that there was no proof made on the disputed sale agreement between the parties with respect to the land in dispute.

The matter was heard by written submission. The court is very grateful to the timely filing of the relevant submission.

In the first ground of appeal that the trial tribunal decision was not justifiable it was argued by the appellants that the land belongs to the



appellants and it was allocated to them by their deceased father in 1970's. The respondents did not establish that the matter was time barred. Normal practice and procedure establish that the preliminary objection is to be determined without further evidence, it has to be determined confined to the pleadings only. But the nature of this case the preliminary objection raised has to be resolved through further evidence. They cited the case of **Soitsambu Village Council V. Tanzania Breweries LTD and Tanzania Conservation Ltd**, Civil Appeal No.105 of 2011 to cement his position. Therefore, the tribunal was supposed to overrule the preliminary objection and to allow the matter to proceed on merit.

Turning to the 2nd ground of appeal that the 1st respondent was not entitled to adverse possession because the cause of action accrued to the parties between 2016 and 2018. The appellants claimed that the land collectively was under the supervision of the 1st appellant under direct custody of the 2nd respondent who was physically living at the suit land. When the 1st appellant returned from Zambia, he did not find the 2nd respondent who was in custody of the land in dispute. She was told by her neighbours that the 2nd appellant was chased away by the 1st respondent on the ground that the same land was sold to him by the 1st appellant since 2004. The 1st appellant reported the matter in the year



2017 to the 2nd and 3rd appellants who opted for a legal action in the year 2021.

Coming to the third ground of appeal that there was no proof made in respect of the disputed sale agreement on the disputed land. The 1st respondent claimed that the 1st appellant was the one who sold the land to him. It was discovered that the 1st respondent come into possession of the disputed land through the forged sell agreement in the year 2004 alleged to have purchase the land from the 1st appellant knowing that the said appellant was in Zambia. The sell agreements were not witnessed by local authorities by the neighbourhood.

The issue of time limitation was dealt separately. He cited the case of **Morandi Rutakyamirwa V. Petro Jospheh** (1990) TLR 49 where the decision reached was based on the memorandum of appeal. He referred to Section 20 of The Law of Limitation Act, Cap 89 R.E 2019, that the 1st appellant was absent from Tanzania therefore the time cannot run against her.

He also cited the case of **Bikubwa Issa Ali V. Sultan Mohamed Zahran** (1997) TLR 295 that the time could not be computed from the time when the deed of transfer was made. Also, that the land was administered customarily under Nyakyusa tribe there is no specific period



for limitation. He cited the case of **Kabuya Essore V. Mturu Nyegeri** (1989) TLR 172 to cement his position.

The question as to whether delay was unwarranted is a question of fact. The case of **Yeromino Athanase V. Mukamulani Benedicto** (1983) TLR 370, the case is on the issue of sale. He referred Section 5 of the law of Limitation Act that the right of action in respect of any proceeding shall accrue on the date on which the cause of action arises.

The appellant prayed the appeal to be allowed and the same to proceed with hearing before District Land and Housing Tribunal.

In reply the respondents appeared in person unrepresented. From the outset they denied all the grounds of appeal. Regarding the first ground of appeal the trial tribunal decided the matter legally basing on the Law of Limitation Act in the 1st schedule item no.22 which states that the suit to recover land is twelve years. The ground raised is purely point of law.

In the amended application under paragraph 6(i) the appellants stated that they come into knowledge on 2000 to 2004 and their application was filed on 2021. They referred Section 3(1) of the Law of Limitation Act Cap 89 R. E 2019. They cited the case of **Frank Lionel Marealle V. Joseph Faustine Mawala (as legal representative of Jennifer P. Lyimo, Deceased)**, Civil Appeal No. 104 of 2020, CAT at Arusha that the time



of limitation is 12 years. Also, they referred the case of **Fortunatus Lwanyantika Masha and John Woshi Obongo V. Claver Motors Limited**, Civil Appeal No. 144 of 2019, CAT at Mwanza.

The respondents went further to state that the case at hand is time barred as per requirement of the law in Civil Procedure Code Cap 33 R.E 2022, Order VII rule 6. To cement the position, he referred the cited case **Fortunatus Lwanyantika Masha (supra)**.

The appellants had filed their case out of time without stating any sufficient reason for delaying while the matter come into their knowledge in 2004. The respondents pray the appeal to be dismissed with costs.

In rejoinder the appellants reiterated the submission in chief. They argued that they come into knowledge that the 1st respondent trespass into their land between 2016 and 2018 and not between 2004. When the 1st appellant returned in Tanzania he come into knowledge that the said land was invaded between 2000 and 2004.

They went on to argue by raising knew issue that the sell agreement was made fraudulently by the 1st respondent. The same has is reflected under Section 26(a) (b) and (c) of Cap 89. He cited the case of **Calico Textile Industries Ltd and Another V. Tanzania Development Finance Co. LTD** (1996) PG 57. The appellants went further to insist that they were



not aware of the sale of the disputed land. The matter come into their knowledge in the year 2016 to 2018.They pray the appeal to be allowed with costs.

After a thorough perusal of the trial courts proceedings and pleadings therein and the submission made by both parties in this court, there is one issue to be determined, **whether the matter was time barred as held by the trial tribunal.**

The Law of Limitation Act provide for the time limitation for the one to claim the land. In the 1st schedule item number 22 states that;

"Suit to recover land twelve years".

The law is very explicit in the aspect of time, section 5 of the Law of Limitation Act provides;

"Subject to the provision of this Act the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises".

This was held in the cited case by the respondents in the case of **Frank Lionel Marealle**(supra), it was stated that;

"...The law is very clear that computation of time (12years) accrues from the date on which the cause of action arose in terms of Section 5 of the law of limitation".

The same Act under Section 9(2) of the LLA provides that;



"Where the person who institutes a suit to recover land, or some person through whom he claims, has been in possession of land has, while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance".

This was held in the case of **Idrissa Ramadhani Mbondera V. Allan Mbarouku and Another**, Civil Appeal No. 176 of 2020 that;

"Upon a careful reading of the above quoted s. 9(2) of the Law of Limitation Act, what emerges from there is a principal that in any claim for recovery of land the 12 years limitation period prescribed under item 22 part I of the said Act, starts running against the claimant when he gets knowledge of the dispossession of ownership".

This means that when the applicant came into knowledge that their land was invaded by the 1st respondent was between the year 2016 and 2018. But they were informed that the same land was sold to the 1st respondent by the 2nd respondent between 2000 and 2004. Therefore, this means that the cause of action arose between 2016 and 2018 as stated in their submission which is the time when they came into knowledge that their land was invaded by the 1st respondent. That is why the appellants filed their application in the year 2021 before the District Land Housing Tribunal. Accordingly, the application before the District Land and Housing Tribunal was filed within time. Therefore, the aspect of adverse possession is inapplicable in this case at hand.



Basing on the above discussion I think the three grounds of appeal have merit. Regarding the first ground of appeal that there were no justifiable reasons for the trial tribunal to reach on the said decision I concede with the appellants submissions that the preliminary objection raised needed further evidence to establish as to when the cause of action arose or started to run.

The same in the second ground of appeal that the appellants stated that their cause of action arose in between 2016 and 2018. This means that they come into knowledge that their land has been invaded by the 1st respondent between 2016 and 2018. But in the filed pleadings the appellants stated that the 1st respondents trespassed to the disputed land between 2000 and 2004. The filed pleadings do not bind them that the cause of action arose in the year 2004, the year 2004 is the history that the 1st respondent trespassed.

Regarding the third ground of appeal that there was no proof made in respect of the disputed sale agreement. The same was not proved in the trial tribunal because the preliminary objection raised dismissed the whole application.

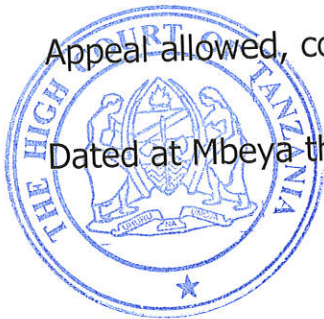
I concede with the appellants submission that the application was filed within the prescribed time by the law. The argument made by the



respondents that the cause of action accrued from 2004 has no basis and that the matter came into their knowledge in 2016 and the application was filed in 2021. The respondents failed to prove when the time limitation started to accrue.

Having explained the facts, I find the appeal has merit. The application was filed within time before the District Land and Housing Tribunal, the preliminary objection of time limitation was erroneously sustained. The order that the application No. 77 of 2021 was time barred is hereby set aside. The records are remitted to the trial tribunal for the matter to be heard on merit before another Chairman with competent jurisdiction.

Appeal allowed, costs to follow the event.



Dated at Mbeya this 13th day of December 2023.


D. P. Ngunyale
Judge

Judgment delivered this 13th day of December 2023 in presence of the appellants in person and the 1st respondent.


D. P. Ngunyale
Judge