

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MANYARA)

AT BABATI

LAND APPEAL NO. 50 OF 2023

(Originating from the decision of the District Land and Housing Tribunal
for Mbulu in Land Application No. 24 of 2022)

BAHA MATLE..... APPELLANT

VERSUS

MATHIAS QAMBADURESPONDENT

Date of last order: 29/2/2024

Date of Judgment: 8/3/2024

JUDGMENT

MAGOIGA, J.

The center of dispute in this matter is a piece of land measuring about 1¼ acres situated at Bargish Village, Bargish ward in Mbulu District (hereinafter referred to as the suit land). The respondent claimed to be the lawful owner of the suit land having acquired the same from his father in 1982 and has been occupying it for farming activities. He claimed that sometimes in 2018 the appellant trespassed on the suit land claiming to be his property.



The respondent in a bid to recover the suit land filed Land Application No. 24 of 2022 before District Land and Housing Tribunal for Mbulu at Dongobesh (the trial tribunal) for an assortment of reliefs such as, declaration that the respondent is the lawful owner of the suit land, an order for the appellant to vacate the suit land, an order for demolition of anything erected on the suit land by the appellant as well as costs of the matter.

In his written statement of defence, the appellant disputed the respondent's claim and claimed that he is the lawful owner of the suit land having acquired it from his late father in 1970.

After hearing the parties, the trial Tribunal Chairman decided in favour of the respondent and declared him the lawful owner of the suit land.

Aggrieved with the decision of the trial Tribunal, the appellant preferred the instant appeal armed with six grounds of appeal couched in the following language: -

- 1. That, the trial Tribunal grossly erred in law and facts*



for failure to evaluate properly evidence adduced by the appellant herein hence arriving unattainable decision.

2. That the honourable chairman of the trial Tribunal grossly erred in law and in facts for failure to observe that the respondent herein failed to describe properly the suit land.

3. That, the trial Tribunal grossly erred in law and facts in deciding the case in favour of the respondent without proof on a required standard.

4. That, the trial tribunal erred in law and fact in failing to observed the size of the suit land in Land Application No. 24/2022 with the size of land in previous proceeding Land Case No. 30/2018 and its subsequent appeal No. 45 of 2018 and 25/2020.

5. That the trial Tribunal grossly erred in law and facts in



deciding case in favour of the respondent herein and failure to observe that the suit land has the appellant's house and grave.

6. That the trial Tribunal grossly erred in law for failure to observe that the land case before him was hopelessly time barred.

In this appeal the appellant appeared in person whereas the respondent was represented by Mr. John Shirima, learned advocate. The appeal was disposed of by way of written submissions. Parties duly complied with the schedule. In his submission in support of the appeal, the appellant abandoned the second ground of appeal while the third, fourth and fifth grounds were argued jointly. The first and sixth grounds were argued separately.

In determining the grounds of appeal, I propose to begin with the sixth ground of appeal. This is because it raises the issue of limitation which goes to the jurisdiction of the trial Tribunal and is a trite law even without citing any case law that being a point of law can be raised at any stage of



the proceedings, even on appeal.

In this ground, the appellant argued that he was given the suit land by his late father one Matle Akonaay in 1970. He argued that he lived on suit land up to 1992 when the dispute between the appellant and Sisilia Qambadu (the respondent's sister, hence 22 years lapsed. He argued that there was another dispute which arose in 2005 which about 13 years after the first dispute. On the account of the above events, therefore, the respondent's matter before the trial Tribunal was time barred in terms of section 3 and part I item 22 to the schedule to the Law of Limitation Act [CAP 89 RE 2019], (the LLA) which provides for the limitation period of 12 years for a suit to recover land.

In reply, the respondent argued that the dispute over the suit land started from 2018 after the appellant had trespassed on the suit land. The respondent submitted further that the previous disputes do not restrain him from claiming his rights.

In rejoinder the appellant essentially reiterated his submission in chief.



Having considered the parties' rival submissions on the claim that the matter before the trial Tribunal was time barred, in order to resolve whether the matter before the trial tribunal was time barred reference should be made to the pleadings filed before trial Tribunal.

In his application form which is equivalent to plaint in land matters filed before the trial Tribunals, and in particular, on paragraph 6 (a)(iii) the respondent claimed that the appellant trespassed on the suit land in January 2018 and constructed thereon a house. This claim was disputed by the appellant in his written statement of defence in which he denied to have trespassed on the respondent's land and argued that, apart from the Sisilia Qambalu who is a sister to the respondent, in 2005 the matter was once and for all resolved by the village government and that since then the appellant remained mute till in 2018. According to the appellant, 13 years have elapsed since then which is far beyond the 12 years' time limit for the recovery of land.

Hence taking into account all what was pleaded above, indeed parties in 2005 had similar dispute which was resolved by the village and it is now



more than 13 years. This suffices for this court to find this ground is legally merited in the instant appeal. The argument by the respondent that the cause of action arose in January 2018 is without merits and is misconceived on the part of the respondent. The decision of the village authority was not appealed nor referred to any higher authority and as such it cannot be heard the respondent who was present to turn a blind eye on this naked truth.

In terms of item 22 part I to the schedule of the LLA suits for recovery of land have to be instituted within 12 years. The arguments by the appellant that, the matter before the trial Tribunal was time barred because he has been in occupation of the suit land since 1970 and the first dispute arose in 1992 between him and the respondent's sister as well as between her and the present respondent in 2005 is merited and cannot be ignored and hold water in this appeal.

Consequently, the sixth ground of appeal is merited and it is accordingly upheld.

That said and done, this ground suffices to dispose of this appeal without



even looking at the other grounds which become obsolete. In the circumstances, therefore, the decision of the trial Tribunal is quashed and set aside for it was arrived without the trial Tribunal's jurisdiction for entertaining a time barred application. The appellant and respondent should live peaceful in accordance to the decision of the village authority which remain undisturbed to date.

In final analysis I find the appeal is merited and the same is allowed in its entirety with costs.

It is so ordered.

Dated at Babati this 8th day of March, 2024




S. M. MAGOIGA
JUDGE
08/03/2024