IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA
MISCELLANEOUS LAND APPEAL NO. 45 OF 2022
(Arising from the District Land and Housing Tribunal for Singida in Land Appel No. 38 of 2019)

SELINA NGAA .....APPELLANT
Versus
OMARY RAMADHANI (Administrator of Estate of the Late Ramadhani Ntandu).....RESPONDENT

JUDGMENT

Date of Last Order: 15th December 2023.
Date of Ruling: 9th February 2024.

MASABO, J:-

This is a second appeal. It emanates from the District Land and Housing Tribunal of Singida (the appellate tribunal) exercising its appellate jurisdiction over a decision issued by Makiungu Ward Tribunal which I shall refer to as the trial tribunal.

The brief background of the appeal as deciphered from the record is that the appellant was the applicant in Land Case No. 01 of 2016 before the trial tribunal. She was seeking recovery of her land which she alleged was trespassed into by the respondent. The respondent denied the claim stating that the suit land belongs to him. That, he purchased the same from the appellant and her sisters. Convinced by the respondent's evidence the trial tribunal decided in his favour and dismissed the application. The appellant was aggrieved. She filed an appeal before the appellate tribunal. One of the issues canvased in this appeal was the time limitation whereby, it was held that the time limitation for institution of

claims for recovery of land had already lapsed when the applicant instituted her claim before the trial tribunal. Hence, it was time barred. Her appeal was consequently dismissed for being predicated on nullity proceedings. Aggrieved further, the appellant has knocked on the door of this court armed with the following grounds:-

> "1. That, the District Land and Housing Tribunal erred in fact by departing from deciding on adjoining piece of land of about five acres trespassed by the respondent in 2016, instead it went on justifying respondent ownership over the whole seven acres using evidence of two acres, bought legally on 2009, hence arriving at wrong findings.
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> 2. That, ward tribunal and district land and housing tribunal unreasonably erred in finding that the appellant confessed to have seen the trespass since 1971 while in fact she testified to see the respondent inside her suit land in 2016 after the respondent extended cultivating activities from the purchased two acres to appellant's five unsold acres.
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> 3. That, both land tribunals erred in fact and law in awarding the whole suit land to the respondent, in the absence of evidence of physical improvements done by respondents, if he really was inside the land since 1967 and without evidence of handover from appellant father to respondent grandmother in 1967 as alleged by the respondent.

4. That, tribunals findings largely relied upon the unsupported testimonies of the respondent in evaluating and assessment of its verdicts, hence to arrive at unintelligible legally judgment especially when it fails to mention the exact amount of land which were in dispute and what amounts, respondent was awarded."

Hearing of the appeal proceeded in writing. The appellant submissions were drawn and filed by Mr. Godwin Benda learned Advocate whilst those of the respondent were drawn and filed by Ms. Amina Sungura Nyangarya, the learned Advocate.

Submitting in support of the appeal, Mr. Benda submitted that the first appellate tribunal erred in holding that the matter was time barred. This is because the appellant knew about the trespass in 2016 and not in 1971. The holding that she knew about the trespass in 1971 was misguided as the appellant did not state so in her testimony. All she stated is that she discovered the trespass in 2016 when she returned home after the dissolution of her marriage. It was further submitted that the record was doctored to show that the appellant learned about the trespass in 1971 as opposed to 2016. Referring to different answers rendered by the appellant (PW1) in the course of cross examination, he concluded that all evidence on record shows that after the appellant got married, she moved to Ikhenga and had her abode there until when her marriage was dissolved. Throughout this time, she was not going back to suit land, hence she had no idea who was tilling it. All she knows is that when she

came back, she found the appellant tilling her land. Thus, she cannot be punished for being time barred. Similarly, the principle of adverse possession does not arise as the appellant stated that the land came into his hands after he was given the same by her mother. Lastly, he argued that the court misconceived the land under dispute. The appellant is not challenging the respondent's ownership of the 2 acres which he bought. The conflict is over 5 acres which he has trespassed into and the same are situated on the eastern side of two acres. In fortification of his argument, he cited the provision of sections 110(1) and (2) of the Law of Evidence Act Cap. 6 RE 2022 and argued that the appellant ably proved her ownership of the five plots. The evidence from PW3 was to the effect that, the land which the respondent's mother was given is located at the western side of the suit land and is used by a person known as Apolinary Tomasi. In conclusion, he prayed that the appeal be allowed with costs.

In reply, Ms. Sungura submitted that the suit against the respondent could not have been sustained as it had multiple irregularities. As per the evidence, the land belonged to the appellant's deceased parents hence they form part of their estate. Contrary to the law, the appellant instituted the application in her personal capacity and not as an administrator of the estate of her deceased parents who were the owners of the suit land. Hence, she had no capacity. Bolstering her submission, the counsel cited the case of **Registered Trustees of SOS children's Villages Tanzania vs. Igenge Charles Masumbuko Alon and Others,** Civil Application No. 426/08 of 2018 [2022] TZCA 428 TanzLII.

On the issue of time limitation, it was argued that the record shows that the appellant's father owned the land since 1967. On the other hand, it shows that the respondent has been in occupation of the same since 1971. Moreover, it was submitted and argued that the time limitation within which to institute a suit for recovery of land is 12 years. Therefore, since the appellant had been occupying the land since 1971 as a trespasser the suit filed against him in 2016 was time-barred and could not be entertained. In fortification, the case of **Erizeus Rutakubwa vs. Jason Angero** [1984] TLR 365 was cited.

As for the principle of adverse possession, it was submitted that the appellant testified that the respondent trespassed into her land since 1971. Hence, the principle applies as it means that the respondent has so far been in the occupation of the suit land for almost 50 years during which he has made some developments to it. Hence, eligible for the protection as an adverse possessor. In support, the case of **Tanzania Electric Supply Company Limited vs. Hellen Byera Nestory** Land Appeal No. 113 of 2021 [2021] TZHC 5817 TanzLII and **Bhoke Kitang'ita vs. Makuru Mahemba**, Civil Appeal No. 222 of 2017 [2020] TZCA 66 TanzLII were cited.

In rejoinder, it was submitted that the appellant is the owner of the suit land as she owns it through customary inheritance. Hence, there is no dispute on it as she is recognized so by the family and clan members. In supporting this position, the decision of this court in the case of **Edward Ntinkule vs. Evarist Ntafato**, Misc. Land Appeal No. 11 of 2022 [2022] TZHC 10040 TanzLII, was cited. As regards time limitation, it was

reiterated that the record is clear that the appellant's father died in 1978 and her mother died in 1997 and in 2016, not 1971, the respondent trespassed into the land. He concluded that the criteria on adverse possession as stipulated in the case of **Moses vs. Lovegrove** [1952] 2 QB 533 and **Hughes vs. Griffin** [1969] 1 ALLER 460, were not proved.

I have carefully considered the grounds of appeal in the light of the records of the two tribunals which I have thoroughly read alongside the submissions by the parties. There are three issues to be determined. The first issue is whether the application was time barred. The second is whether the principle of adverse possession is applicable and the third is whether the appellant proved the case to the required standard. There is also in addition an issue on *locus standi* raised by the respondent in his reply submission. His argument which was neither raised nor canvased in the trial and appellate tribunal is that the application was incompetent for want of *locus standi* because the suit being for recovery of a parcel of land ordinarily owned by the appellant's deceased parents, ought to have been instituted by an administrator of the estate and not the appellant in her capacity. Thus, if the appellant wanted to institute the application, she had first to petition and obtain letters for administration.

I will start with the issue of the time limitation relied upon by the appellate tribunal in dismissing the appeal. The law on limitation as stipulated under item 22 of Part I of the Schedule to the Law of Limitation Act, Cap 89 RE 2022 states that the time limitation for suits for recovery of land is 12 years. Accordingly, a person seeking recovery of a parcel of land trespassed into by another person has to do so within 12 years reckoned

from the date of trespass. The failure to institute the suit within that time would render the claim time barred and the suit so instituted incompetent and liable for dismissal under section 3(1) of the Law of Limitation Act.

In the present case, the parties are at loggerheads on the time when the respondent allegedly trespassed into the suit land. Relying on the appellant's testimony, the respondent has argued that the trespass if any occurred in 1971. The appellant's counsel, on the other hand, did not point to the time when the trespass occurred. Rather he has based his submission on the date when the appellant became aware of the trespass which is 2016 and, on that basis, he has argued that the application was filed well within time. He has, in addition, questioned the accuracy of the tribunal's record and seems to suggest that they were doctored.

With much respect to the counsel, I accord no weight to the allegation that the record was doctored as it is not supported by evidence hence inconsistent with the law that court records which in the context of the present case include the record of the trial and appellate tribunal cannot be easily impeached. As stated by the Court of Appeal in **Alex Ndendya vs Republic** (Criminal Appeal 207 of 2018) [2020] TZCA 202 (6 May 2020), TanzLII:

> It is settled law in this jurisdiction that a court record is always presumed to accurately represent what actually transpired in court. This is what is referred to in legal parlance as the sanctity of the court record. In **Halfani Sudi v. Abieza Chichili** [1998] T.L.R. 527 the Court followed its previous decision in **Shabir F. A. Jessa v. Rajkumar Deogra**, Civil Reference No. 12 of 1994 (unreported) to hold that:

"A court record is a serious document; it should not be lightly impeached. "

We also subscribed, in that case, to the decision of HM High Court of Uganda by **Bennett Ag. CJ in Paulo Osinya v. R.** [1959] EA.353, to hold that:

"There is always a presumption that a court record accurately represents what happened. "

As for the merit of the complaint, I have scrutinized the record to ascertain what transpired. In that endeavor, I have observed that, proving her claims, the appellant paraded 4 witnesses herself being the first witness. Answering questions posed to her by the respondent in the course of cross examination, she stated that the appellant trespassed into the land in 1971. She was then asked whether she was working on such land or had hired someone to work on it but she responded that she knew nothing as she was in a foreign land. The record further shows that the appellant left her village in 1971 after her marriage. By then her parents were alive. In 1978 her mother died and in 1997, her father died.

Going by this record and the response that the appellant trespassed the suit land in 1971, it is obvious that by the time the appellant herein instituted her claims for recovery of the suit land in 2016, 45 years had already lapsed. Hence her claim was time barred. Even if I were to assume that the trespass occurred after the demise of the appellant's father in 1997, the verdict would not change as a duration of 19 years reckoned from 1997 to 2016, had already lapsed. Hence the claim was time barred. The appellant's argument that the appellant became aware of the trespass in 2016 is misguided because the appellant herself stated that she became aware in 1971. Besides, even if I were to agree with the counsel that the

appellant became aware in 2016, my finding will remain intact as what matters is not the date on which the appellant became aware of the trespass. The time limitation is reckoned from the date of the trespass not otherwise.

For this reason and since the only remedy for a time-barred matter is dismissal as per section 3(1) of the Law of Limitation Act, Cap 89 RE 2019, I see no reason to fault the appellate tribunal's finding that when the appellant filed her application before the trial tribunal, it was hopelessly time barred and the proceedings therein were, therefore, a nullity.

In the foregoing and considering that the finding above disposes of the appeal, I dismiss the appeal with costs for want of merit.

DATED at **DODOMA** this 9th day of February, 2024.

J.L. MASABO

JUDGE