IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 332 OF 2024

(Originating from Land Application No. 39 of 2023, District Land

and Housing Tribunal for Mbulu at Dongobesh)

ELIFARIJI NAFTALI.....APPELLANT

VERSUS

NAFTALI TSERE.....RESPONDENT

JUDGMENT

28th May & 18th June, 2024

D. C. KAMUZORA, J.

The Appellant and Respondent in this appeal are son and father. The father sued the son before the District Land and Housing Tribunal (herein to be referred to as the trial tribunal) for vacant possession of his house to where the son was residing with his family. The decision was in favour of the father/the Respondent herein and the son/the Appellant herein was declared a trespasser and ordered to vacate the Respondent's house.

The brief background of the dispute as could be gleaned from the record is that, sometimes back, the Respondent allowed his son to use three rooms in his house built in Plot No. 66 block B situated at Mbulu

district, within Manyara region (hereinafter referred to as the suit property). According to the Respondent, he purchased the plot and started construction thereon in 1999 in which 11 rooms were built. It was also claimed by the Respondent that when the Appellant's wife got sick, he allowed the Appellant to occupy three rooms in that house for him to take care of his wife as it was a nearby place to the hospital. Years later, the Respondent demanded back his three rooms and asked the Appellant to vacate the rooms but he refused. The Respondent therefore referred the dispute to the ward tribunal for mediation but in vain hence, decided to file a suit before the trial tribunal claiming for; an order for the Appellant to vacate from the suit property, permanent injunction restraining the Appellant, his agent, servant or any person acting under the Appellant's instructions from interfering with the suit property, costs of the suit and any other relief the trial tribunal deemed just to grant.

The Appellant disputed the Respondent's claim on the ground that he was invited by his father to live there and he constructed three rooms and toilet in the suit property. To him, he was legally occupying the suit property as he was part of the family and he injected his money in developing the house thus, the Respondent was not justified to ask him vacate the house which the Appellant called a family home.

After hearing the parties, the trial tribunal found that the Respondent was a legal owner of the suit property and the Appellant was just a trespasser and therefore, ordered the Appellant to vacate from the suit property. The Appellant was aggrieved with the trial tribunal's decision henceforth preferred the instant appeal with four grounds of appeal as follows;

1. *That, the trial tribunal grossly erred in law and fact for failure to critically evaluate and analyze the evidence adduced by the Appellant herein hence, reached to unjust decision.*
2. *That, the trial tribunal erred in law and fact by neglecting the oral agreement between the Appellant and Respondent on occupation of three rooms of the said house upon completion of construction by the Appellant.*
3. *That, the trial tribunal erred in law and fact for failure to recognize that the Appellant was in occupation of the three rooms given by his father (Respondent) for more than 15 years.*
4. *That, the trial tribunal erred in law and facts for declaring the Appellant a trespasser on the property of his father to which he has right over it as a biological son of the Respondent.*

When the matter was called for hearing the Appellant appeared in person while the Respondent was represented by Mr. Joseph Mniko,

learned advocate. The appeal was disposed of by way of written submissions. The Appellant joined the 2nd and 3rd grounds while the 1st and 4th grounds were argued separately.

In his submission in support of the 1st ground of appeal, the Appellant faulted the trial tribunal for its failure to critically evaluate and analyze the evidence adduced by the Appellant. He argued that, in his testimony he never claimed that he is the owner of the said house rather he is the user (licensee) of the three rooms given to him by the Respondent and he has been occupying them for a very long time. He argued further that, the trial tribunal's finding based on who has the title over the suit house without considering that the Appellant is the licensee of the alleged rooms, was incorrect. To buttress his arguments, the Appellant referred to the case of **Ramadhani Mtulia Mwega vs Shaweji Salum Mndote & another** Land Case Appeal No. 50 of 2019 [2021] TZHC Land D 565 Tanzlii.

In his submission in support of the 2nd and 3rd grounds, the Appellant faulted the trial tribunal for its failure to address the issue of period of time to which the Appellant spent in the said three rooms. The Appellant argued that, he has been living in the said house for quite long time and for that reason, the trial tribunal should have considered the common law and doctrine of equity in dealing with the matter. He referred the decision

of this court in the case of **Paulina Paulo Vs Maria Dukho** Land Appeal No. 26997 of 2023 [2024] TZHC 1387. The Appellant added that, the findings by the trial tribunal on the proof of existence of the agreement between the parties is misconceived because the Appellant and his witnesses orally proved that the rooms were built by the Appellant.

On the 4th ground of appeal, the Appellant submitted that the trial tribunal erred in declaring him a trespasser to his father's property to which he has a right as the biological son of the Respondent. The Appellant argued that, by being a biological son of the Respondent, he is also a legal heir of his father's properties and he cannot in anyway be a trespasser. He therefore urged this court to allow the appeal and proceed to quash and set aside the trial tribunal's decision.

In reply to the 1st ground of appeal, Mr. Mniko submitted that the trial tribunal critically evaluated the evidence on record as seen at page 2 to 4 of the trial tribunal's judgment. He pointed out that the Respondent's evidence was heavier than that of the Appellant for the Respondent tendered certificate of title and receipts evidencing ownership and payment of land rent over the suit property. To him, the trial tribunal correctly decided in favour of the Respondent. He added that, in their testimony the Appellant and his wife agreed that the suit house belongs

to the Respondent. That, the Appellant did not tender any evidence to prove that the suit property was ever distributed to him.

Responding to the 2nd and 3rd grounds of appeal, Mr. Mniko submitted that the Appellant was an invitee to the suit property for there is no evidence proving that he was given permanently the three rooms. He argued that, the Appellant cannot claim ownership while the evidence shows that he was a merely an invitee to the suit property. To buttress his arguments, the learned advocate referred to the case of **Mussa Hassani Vs. Barnabas Yohana Shedafe,** Civil Appeal No. 101 of 2018 (unreported).

On the Appellant's argument that the trial tribunal did not consider the oral agreement between the parties, Mr. Mniko submitted that there was written agreement which was tendered before the trial tribunal as exhibit M3 in which the Appellant agreed to give vacant possession of the three rooms. He argued that, written agreement cannot be varied by oral agreement. He referred to section 100(1) and 101 of the Evidence Act [CAP 6 RE 2022] and the case of **UMICO Limited Vs Salu Limited** Civil Appeal No. 91 of 2015 (unreported).

Responding to the 4th ground of appeal, the learned advocate argued that, being the biological son of the Respondent does not give the Appellant an automatic right to use Respondent's property. He added that,

since the Respondent is still alive the issue of Appellant being legal heir does not arise. He maintained that, the Appellant was just an invitee to the three rooms and being an invitee does not make him the owner of the suit property. The learned advocate for the Respondent urged this court to dismiss the appeal for want of merits.

Having gone through the parties' rival submissions and the record, there are three issues for determination. The first issue is, whether the trial tribunal evaluated the evidence on record, the second issue is, whether the Appellant's long stay in the suit property gave him ownership right over the suit property and the third issue is, whether by being the Respondent's biological son, the Appellant has automatic right to stay in the suit house.

Starting with the first issue which responds to the 1st and 2nd grounds of appeal, the Appellant faulted the trial tribunal for not analyzing the Appellant's evidence resulting to incorrect decision. He argued that there was ample evidence to prove that he is the one who constructed the three rooms in dispute thus, the tribunal's finding as to who has the title over the suit property was wrongly made. He added that the trial tribunal neglected the oral agreement between the parties.

I have gone through the judgment of the trial tribunal and I agree with the counsel for the Respondent that the learned trial chairperson well

analyzed the evidence on record and arrived to the conclusion that the Respondent is the lawful owner of the suit property. After summarizing the evidence from both parties, the trial tribunal assessed the evidence from both parties as can be seen at page 4 to 6 of the tribunal's judgment. The evidence of the Appellant and his witnesses was well assessed by the trial tribunal which was satisfied that the Respondent's evidence was stronger as compared to the Appellant's evidence. At page 5 to 6 of the tribunal's judgment the trial tribunal pointed out that the Appellant admitted in his evidence that the suit property belonged to his father except that they agreed orally for the Appellant to supervise the suit property. That, the Appellant moved in the house with his family in which he developed the house and constructed the toilet. The trial tribunal however was not satisfied with such evidence for it lacked supporting document over such agreement. The trial tribunal also referred the evidence of the Appellant's witnesses who claimed that the three rooms were constructed by the Appellant. The trial tribunal did not find any strong evidence from them because SU2 supported the fact that the suit property belonged to the Respondent while PW3 failed to prove how and when the Appellant constructed the three rooms. The trial tribunal was therefore satisfied that the Respondent's evidence was stronger as compared to that of the Appellant as he was able to prove with

documentary evidence that he was the owner of the suit property and at one point, the Appellant agreed to vacate from the suit property.

The trial tribunal also considered the weight of the alleged oral agreement by the Appellant and made a conclusion that the Appellant was unable to justify such agreement. In that regard, the Appellant's contention that his evidence was not critically evaluated and analysed or that his oral agreement was not considered, is weak. In the same footing to the decision referred by the Appellant in the case of **Ramadhani Mtulia Mwega (supra),** the trial court considered the probative value and weight of evidence from both parties before arriving to a conclusion that the Respondent's evidence was strong as compared to that of the Appellant.

It was also argued by the Appellant that the tribunal misdirected itself in basing its decision on the claim for ownership which was not raised by the Appellant. He contended that he never claimed ownership over the suit property rather he claimed to be the user (licensee) of the three rooms given to him by his father/the Respondent.

I have revisited the pleadings and judgment before the trial tribunal. It is on record that before hearing had commenced before the trial tribunal, three issues were framed; who is the lawful owner of the suit house, whether there was an agreement between the parties for the

Appellant to construct three rooms in the suit property and maintenance of six rooms and the third issue was on the reliefs. Those issues were framed based on pleadings by the parties as both the Appellant and the Respondent claimed ownership of the suit property.

In the written statement defence, among the reliefs sought by the Appellant was a declaration order that Appellant is the lawful owner of the suit property (the three rooms). Such relief is basically referring the claim for ownership by the Appellant over the suit property. In that regard, the argument that he was only seeking for declaration as licensee/user to the suit property is an afterthought.

Even if we agree that he was claiming to be the licensee, such claim in itself does not establish any right over the suit property unless there is a proof of a license coupled with grant of an interest. A person claiming right over as a licensee is bound to prove that such property was granted to him and allowed to use and develop it without any condition. In the case of **Paulina Paulo**(supra) referred by the Appellant, this court referred the foreign decision in **Wood Vs. Laadbitter** (1845) in which it was clearly stated that licensee coupled with grant is irrevocable. The Appellant was therefore bound to prove that there was grant and he was allowed to use and develop the suit property unconditionally.

In the matter at hand, the evidence from the record speaks the contrary. The Appellant never proved the grant over the suit property as he himself admitted that he was allowed to live in the suit property and he lived there as a family home (nyumba ya familia). He had no right founded on grant. I therefore find no merit in the 1st and 2nd grounds of appeal.

On the second issue which responds to the third ground of appeal, the Appellant claimed to have stayed in the suit property for over 15 years and that, such long stay gives him right over the suit property. Although this was not an issue framed and determined before the trial tribunal, I agree with the submission by the learned advocate for the Respondent that, staying on the suit property for a long time did not give the Appellant any right over the same. Tracing the history of the Appellant's presence in the suit property, there is no dispute that he was invited by his father to live there. There is no evidence proving that he was permanently given the suit property by his father or if there was a license-cum-grant meaning that he was allowed to enjoy the fruits from the property or develop it. Although the Appellant claimed that he developed the suit property, he was unable to prove such claim. In his evidence he categorically stated how he entered the suit property and when being cross examined he admitted that he was staying there because he considered the suit

property as family home. In the absence of evidence to the contrary, it remains therefore that the Appellant was a mere invitee to the suit property. So whatever time he has stayed therein does not change his status as an invitee to give him right over the suit property. Therefore, the third ground of appeal is without merit.

On the last issue which responds to the fourth ground the Appellant insisted that being the Respondent's biological son, he has right to stay in the suit property thus, he cannot be declared a trespasser. He was of the view that, since he is the Respondent's son he is a legal heir to the Respondent's properties thus, his occupation to his father's property is legal and he cannot be considered a trespasser to his own father's property.

It is very absurd that the Appellant is considering himself the heir to his father's property while his father is still alive. While he categorically admitted that the suit property belongs to his father, the Appellant still thinks that he has an automatic right to be there for the property belongs to his father as he is the heir to his father's properties. I think this a very wicked thinking from the Appellant to think that he could inherit his father's property while his father is still alive. It is my settled position that, being the biological son of the Respondent does not give the Appellant an

automatic right of his father's properties. I therefore find the fourth ground of appeal devoid of merit.

The Appellant was bound to prove that he was permanently given the three rooms by the Respondent or a licensee- cum-grant for him to justify his stay in the suit property. In his evidence, the Appellant claimed that he was the one who built the three rooms on the suit house and a toilet. He also claimed to have renovated six rooms. He however failed to prove his claim that he constructed three rooms at the disputed premises. He had no any document justifying he was given the suit property by the Respondent or proving that he injected any fund in constructing any structure therein. He presented two witnesses before the trial tribunal; SU2 who is his wife and SU3 who claimed to be the manual worker/casual laborer at the time of constructing the toilet and three rooms. In her evidence, SU2 claimed that the Appellant constructed the three rooms and renovated six rooms. However, when she was cross examined, she clearly admitted that the suit property belongs to her father-in-law/the Respondent. She also admitted that her husband/the Appellant herein signed an agreement with the Respondent for the Appellant and his family to vacate from the suit property. She also agreed that it was not proper for them to continue staying in the Respondent's house.

In his evidence, SU3 claimed that he was a casual laborer who participated in digging the toilet pit/hole and constructing three rooms. When he was cross examined, contradicted himself by claiming that the house has 11 rooms constructed by the Appellant but again claimed that he did not know the owner of the house.

From the above evidence, I agree with the trial tribunal's conclusion the Appellant's evidence was weak to prove the claim as compared to the Respondent's evidence which was supported with documentary evidence proving how he acquired the suit property. The Respondent had certificate of title to the suit property, receipts evidencing payment of land rent in his name and the documents executed between him and the Appellant in which the Appellant agreed to vacate from the suit property. In that regard, the trial tribunal was correct in declaring the Respondent as the rightful owner of the suit property.

It is my conclusion that, the trial tribunal considered the evidence of both parties and arrived to a correct decision that the Respondent is the lawful owner of the suit property. Since the Respondent no longer needed the Appellant in his property and they both signed the agreement for the Appellant to vacate, his continued stay therein was illegal and he could be considered a trespasser. The trial tribunal was therefore justified

to order the Appellant to vacate the suit property. I therefore find the appeal lacking in merits and I proceed to dismiss it with costs.

DATED at **MANYARA** this 18th Day of June, 2024.

D. C. KAMUZORA

JUDGE