

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA

LAND CASE APPEAL NO. 44 OF 2009

*(From the Decision of the District Land and Housing
Tribunal of Tanga District at Tanga in Land Case No. 75
of 2007)*

SEVERINE BARTHOLOMEW & 13 OTHERS .. APPELLANTS
VERSUS
ALI STAIR SYKES RESPONDENT

J U D G M E N T

FKIRINI, J:

The 13 appellants are appealing to this court the decision of Tanga District Land and Housing Tribunal in Application No. 75 of 2007. The respondent forcefully contested the appeal. While the appellants through their counsel Mr. Nyasebwa advanced and argued two grounds of appeal:

1. The none consideration of the doctrine of prescription, and

in the none consideration that the appellants were allocated the said land after it was left unattended for 12 years by the Village Government.

Explaining on the doctrine of prescription, it was Mr. Nyasebwa's submission that a person can have a right or title to a particular piece of land; but when that person fails to attend the said land for a certain period of time and another person attended to the said land, the latter is more inclined to that land even though he had not title.

The appellants in this appeal claim to have satisfied the above definition, since they have been in the suit land developing it by cultivating and improving social services, uninterruptedly for more than 20 years. It was therefore their claim that they have good title over the suit land. However, the tribunal did not consider that.

Mr. Nyasebwa, further submitted that the title issued to Judy Plantation and mortgaged to NBC did not relate to the piece of land the appellant's were

occurring, but to their surprise, the NBC sold the respondent the whole area including part which was not subject to the said mortgage. It was the appellant's submission that NBC acted ultra vires.

Furthermore. Mr. Nyasebwa submitted that the respondent in claiming his land was therefore supposed to claim only the portion he bought from NBC. As for the remaining part which in Mr. Nyasebwa's view not subject to the NBC mortgage, he submitted that the appellant's had good title as disputed land was left unattended for many years and the appellants have ever since been in occupation, which is more than 20 years.

In addition, it was the appellant's argument that no one has come forward to claim the land and that at some point the Village government decided to allocated the same to the appellants. After all these years the respondent then appeared claiming the land belonged to him. Some of the appellant's in the group are seniors and some were born in the suit land. Based on the above it was thus Mr. Nyasebwa's submission

that this appeal has merit and prayed for it to be allowed.

Mr. Mramba counsel for the respondent, in responding submitted that the NBC sold the respondent only the part which was mortgaged and not the whole farm as submitted by the appellant's counsel. The respondent therefore had nothing to do with the remaining part of the farm, which is farm no. 17/1 and lays no claim at all over it.

The respondent only raised claim in respect of his land which was invaded by the appellants. This land as per documentary evidence was registered in 1952 for the lease of 99 years. The appellants are alleged to have trespassed into parts of this registered land on pretext that they have been in occupation for long and therefore under the doctrine of prescription they have good title.

Mr. Mramba vehemently refuted the claim and submitted further that the doctrine of prescription did not apply on the leased land. The appellants were

therefore trespassers irrespective of how long they have been in the suit land.

Along the same line, Mr. Mramba as well countered the appellant's counsel submission regarding social services facilities developed in the area by submitting that there was not such evidence adduced before the lower tribunal. Moreover, that did not change their status from trespasser or invaders.

Mr. Mramba as well countered Mr. Nyasebwa's the submission regarding titled land by submitting that the government of the United Republic of Tanzania or Village government have no powers to allocate the registered land. Therefore if the Village government did so it was unlawful.

Mr. Mramba concluded by praying for the dismissal of the appeal in its entirety.

Rejoining his submission Mr. Nyasebwa reiterated his earlier submission. In addition to that Mr. Nyasebwa argued that the respondent had to adhere to the

doctrine of "*buyer beware*" whereby he had to find out if the purchased land had encumbrances. It was to his surprise that the respondent did not conduct any search or site verification and thus ended buying the land which was in adverse possession, as the appellants had good title already.

Mr. Nyasembwa, went further arguing that good title in relation to land used to become effective after 12 years of uninterrupted occupation but recently the limitation has gone down to 10 years. Once the holder of the title has failed to fulfill the conditions coming with the title, he therefore cannot claim anything over it.

Furthering the adverse possession argument Mr. Nyasebwa stated the condition precedent: that it must be actual, visible, exclusive, hostile and continued during the time necessary to create bar under the statute of limitation. In support of this Mr. Nyasebwa cited the case of *Paskazia Bwahama vs Aloyce Salilo [1967] HCD 117*.

He concluded his submission by submitting that from the above elements mentioned and through the statutory limitation and from evidence on record the appellants had been in adverse possession. They therefore had good title. From the above, it was thus Mr. Nyasebwa's prayer that this appeal be allowed with costs.

In course of deciding on this appeal, there are in my view two issues to answer, one when does the time start to count for the doctrine of prescription to come into force. Two, whether registered title can be overridden by doctrine of prescription as argued by Mr. Nyasebwa and refuted by Mr. Mramba.

My journey starts with the case cited by Mr. Nyasebwa that of Paskazia (supra) whereby the principle of adverse possession was elucidated. This is what was said by Saidi, J:

***“In order to support a claim to the property
Based upon adverse possession,
defendant must show that he has***

been in continuous and uninterrupted possession of the shamba for twelve years or more."

So for the doctrine of prescription to be applicable, based on the above cited case four things must occur:

1. The person must have been in the suit land,
2. Must be in the suit land continuously,
3. Must be in the suit land continuously uninterrupted,
4. For 12 years or more.

Coming to the case before us and relying on evidence adduced before the tribunal, there was no exact date or years as to when people started moving or leaving in the suit land. There were varied times as to when everybody arrived there. However, that is not an issue. Further in perusing the record, it is obvious people went to the said estate mainly looking for employment or that they were employed there. Again, time as to when everybody arrived there varied.

As to the estate itself and its owners, the story goes as far as 1952 when the said land was registered. I have not bothered to trace far back owners as that is not relevant to this appeal. My tracing started from where the appellants started tracing their ownership. From the tribunal's record and specifically evidence of RW1. Bernard Bartholomeo, he personally acquired his land in 1995. I therefore take that all the appellants acquired their pieces during or around that time.

From the same record there is evidence that in the 1990, someone by the name of Sasilo appeared and claimed to have bought the said farm from Korogwe Sisal Estate, and the farm got a new known name as Judy Plantation. This Judy plantation borrowed money from the bank using the title of this farm as collateral. This piece of evidence is supported by the documentary evidence which was a copy of the right of occupancy showing all the transactions in relation to the said farm.

From the copy of the title deed it shows that Judy plantation acquired the said farm on 11th November

1989. Part of this farm was mortgaged to NBC and part was surrendered to his Excellency the President. Judy plantation remained with part under filed document Nos. 5105 and 5106 which was mortgaged to NBC.

In 1998 the NBC sold the mortgaged farm to the respondent Alli Stair Sykes. From the record it indicates that the respondent in 2007 approached few village location leaders including the chairman and executive officer of Marungu village and handed them notices on behalf of the villagers that they should vacate the farm by 30th June 2007. The convened leaders refused to accept the notices pending official statement from the government and until when this matter has been sorted out.

Now computing the years involved. From 1995 when the appellants based on RW1's evidence started to occupy the suit land to 1998 when the NBC sold the property is about 4 years. And from 1998 when the respondent bought the farm to 2007 is about 9 years. Combined together is about 13 years. Therefore to

start with it is not even 20 years or more as claimed by Mr. Nyasebwa counsel for the appellants.

But when does exactly the time starts to count? In my view it would be unfair if the time applicable to the doctrine of prescription will start to count from 1995. This is because no rational was given as to why computation started in 1995 if some of the appellants have alleged to be in the suit land for their lifetime which this can vary from one person to another, but some claim to have been there for 40 years or so.

Furthermore, since there has been change of hands in relation to the suit land, I thus do not think the continuity of counting regarding adverse possession continues. I am saying so based on the logic stated in the case of *Mkyemalila & Thadeo Vs Luilanga [1972] HCD*. For brief background of that case was the respondent inherited the land in dispute from his deceased father. From 1954 he allowed the first appellant to use it to grow seasonal crops on it. The latter eventually sold the land to the second appellant. The respondent sued for the recovery of his land. The

primary court found against the respondent on the ground that the land was no longer his.

The case went through different appeal channels and finally it landed before Judge Kisanga, this is what he had to say:

“The limitation period therefore cannot be said to have started running from 1954 when respondent allowed the appellant Mukuyemalila to occupy the land. It started to run when Mukuyemalila sold the land to the second appellant Thadeo.”

In the appeal before me, I am of the same view that with the respondent time for the doctrine of prescription to be applicable should start to count after the respondent had acquired or purchased the suit land from NBC in 1998 and not prior to that. This is because it is after acquiring the said farm he then started to exercise his rights and the ownership. Otherwise the appellants cannot claim to have been in

occupation uninterrupted counting all the years, which as stated above failed to comprehend how was 1995 picked and not any other year if some had been there even before.

Apart from the above, my research on the cases which mostly were from the High Court digest were related to land owned under customary law, therefore with varied customs. It has therefore been difficult to wholly rely on them since the matter before me does not squarely fall within that ambit.

Mr. Nyasebwa, might not agree to my finding, since he raised the applicability of the doctrine of “*caveat emptor*”. I completely agree to his submission but in relation to this case, the evidence before me gave a different flavour. This is because if we compute the years as to be from 1995 to 1998 when he bought the land then he is very much within time frame whereby the doctrine of prescription does not apply. But if you compute from 1995 to 2007 when he issued notices for the appellants to vacate probably that could give appellants some points to argue. However, in my view

still that would not count, as in my considered opinion the respondent's time for doctrine of prescription to apply starts when he bought the farm from NBC.

From the above reasoning I therefore conclude that the doctrine of prescription as far as this appeal is concerned does not apply.

Coming to issue whether the doctrine of prescription can override the legal title, it is my view that is not possible. This is because once the land has been registered no one else can alter that right except for the President of the United Republic and he can do so for a good reason. Moreover, there has to as well be revocation of the title given and this is done after the holder has been informed and given opportunity to express him/herself as to why the title should not be revoked and not just like that, the case of *Ndesamburo Vs Attorney General [1997] TLR 137* though not relevant in all aspects but is on some.

This therefore means, one can be in the titled land for as many years as it can be counted but no title will be

acquired without the above elaborated procedure. To prove this, that is why all the leaders have been coming and going without solving the issue regarding the suit land. This is due to the fact that there was a legal title in respect of the said land.

The second issue is therefore answered by stating that adverse possession cannot override the registered title despite all what has been submitted by the appellants counsel.

Finally, just in passing, I have several times come across the submission that village government had powers of allocating land or had done so. The village government have authority but only to a certain extent. First it can only deal with land which it owns. Second, for a registered land I think they will be acting beyond their powers. Yes, they can allocate land such as in the present situation but I believe its only for temporary use and not permanently. I believe this is what they did and that is why people were warned not to cultivate and plant permanent crops.

For the foregoing, I have come to conclusion that this appeal has no merits and therefore proceed to dismiss it with costs.

It is so ordered.

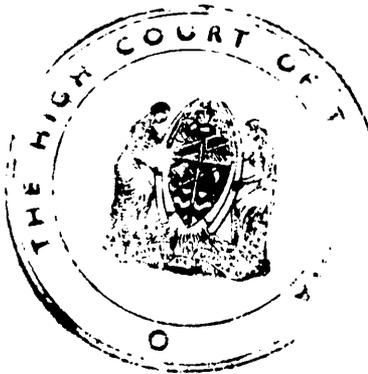
Judgment Delivered this 24th day of 2012 in the presence of Mr. Nyasebwa for the Appellants and Mr. Mramba for the Respondent.

P.S. FIKIRINI

J U D G E

24th October, 2012

Right of Appeal Explained.



A handwritten signature in black ink, appearing to read "P.S. FIKIRINI", is written over a horizontal line.

P.S. FIKIRINI

J U D G E

24th October, 2012