

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA
MISCELLANEOUS LAND APPEAL NO. 87 OF 2008

(From the Decision of the District Land and Housing Tribunal of
Tanga District at Tanga in Land Appeal No. 19 of 2008 and Original
Ward Tribunal of Kizara Ward in Application No. 5 of 2008)

ATHUMANI MUSSA KAMOTE ----- APPELLANT
VERSUS
EMMANUEL KANJU ----- RESPONDENT

JUDGMENT

Date of last order: 10/07/2013

Date of judgment: 11/07/2013

NDIKA, J:

The respondent, Emmanuel Kanju, sued Athumani Mussa Kamote, the appellant, before the Ward Tribunal of Kizara, for a declaration that he was the lawful owner of a farmland measuring 1¾ acres, now allegedly invaded by the latter. Having lost the suit, the appellant challenged that decision to the District Land and Housing Tribunal of Tanga District, where, again, he lost. Undeterred, the appellant has filed three grounds of appeal, which, in essence, contend that the appellate tribunal erred in law and fact for failing to find that, on the evidence on the record, the appellant was the lawful owner of the land in dispute having bought it from its previous owner, one John Mhina.

Both parties to the appeal appeared before me in person and unrepresented.

In the course of the hearing, I invited the appellant to respond to an apparent concern that the appeal was filed out of time without leave

Contrary to section 38 of the Land Disputes Courts Act, Cap. 216 RE 2002, which specifies sixty days as the limitation period for appeals to this court against the decisions of the District Land and Housing Tribunal on matters originating from the Ward Tribunal. It is evident on the record that while the appellate tribunal's decision was handed down on 11th August 2008, the appellant lodged his appeal on 7th November 2008, about 88 days after the judgment. I note further that the appellate tribunal's decision bears 24th September 2008 as the date on which a copy of the decision was certified.

In reply, the appellant disputed that his appeal was time-barred. It was his belief that had it been time-barred, it would have been dismissed much earlier.

The question, which I now have to deal with, is whether this appeal was filed within the prescribed period of sixty days.

Since this matter originates from the proceedings of a Ward Tribunal, the applicable law on any matters related to limitation of actions is the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules, G.N. 311 of 1964 by virtue of section 52 (1) of Cap. 216 (*supra*). That section states thus:

"(1) The Customary Law (Limitation of Proceedings) Rules shall apply to proceedings in the Ward Tribunal in the exercise of its compulsive jurisdiction.

(2) The Law of Limitation Act shall apply to proceedings in the District Land and Housing Tribunal and the High Court (Land Division) in the exercise of their respective original jurisdiction."

The simple construction of the foregoing provisions is that limitation of actions should be governed by the Rules (that is G.N. 311 of 1964) even in appeals to the High Court, provided that the matter originates from a Ward Tribunal. The Law of Limitation Act (Cap. 89) is only applicable in the District Land and Housing Tribunal and the High Court in the exercise of their respective original jurisdictions.

Unfortunately, the application of G.N. 311 of 1964, as opposed to Cap. 89 (*supra*), has a far-reaching detriment: the former lacks provisions for excluding from the computation of the period of limitation the time requisite for obtaining necessary documents for appeal purposes, which are contained in section 19 of Cap. 89 (*supra*). Accordingly, in the instant matter the time in which the appellant might have waited to be supplied with the necessary papers by the appellate tribunal for appeal purposes cannot be legally excluded. Yet, it is significant to note that in terms of section 38 (2) of Cap. 216 (*supra*) filing of an appeal to this court on a matter originating from a Ward Tribunal is complete when petition of appeal is presented to the District Land and Housing Tribunal upon payment of requisite filing fee. No document is required to be attached to the petition. Therefore, it seems that once the sixty days of limitation have elapsed, an appeal can only be filed upon leave for extension of time to appeal being sought and obtained.

Such appeal procedure on matters originating from the Ward Tribunal seems rather harsh. It is hard for a litigant to file proper grounds of appeal without the benefit of a copy of judgment. Unless legislative intervention is made, I do not find any feasibility for interpreting section 52 (1) of Cap. 216 (*supra*) beyond its clear import that matters originating from such a tribunal be dealt with according to G.N. 311 of 1964 (*supra*) rather than Cap. 89 (*supra*).

Unavoidably, I find that the present appeal, having been filed about 88 days after judgment was delivered by the appellate tribunal, was hopelessly time-barred.


Although the foregoing finding is sufficient to dispose of the appeal, I find it necessary, at least for argument's sake and in passing, to briefly deal with

the essence of the appeal, that is, the appellant's contention that the appellate tribunal erred in law and fact for failing to find that, on the evidence on the record, the appellant was the lawful owner of the land in dispute having bought it from its previous owner, one John Mhina.

It is on the trial record that both parties to the appeal claimed to have acquired the land in dispute by purchase from its previous owner, John Mhina, at different times. While the appellant asserted that he bought it in 1977 for TZS 2,700.00, the respondent adduced that he purchased it in 1986 for TZS 1,500.00 and two chickens. The said Juma Mhina confirmed at the trial to have sold the land to the respondent. He fervently denied to have vended it to the appellant. The trial tribunal, for obvious reasons, preferred the respondent's story to the appellant's case and accordingly entered judgment for the respondent.

I agree with the appellate tribunal that, on that evidence, there is absolutely no ground to interfere with the trial tribunal's finding that the respondent bought the land in dispute from its previous titleholder and so, he was its lawful owner. On this analysis, the three grounds of appeal lack substance.

In the end, I strike out the appeal with costs for the reason that it was hopelessly time-barred.


G.A.M. NDIKA
JUDGE
11TH JULY 2013

Court: Judgment delivered in chambers in the presence of the appellant and respondent in person.

G.A.M. NDIKA
JUDGE
11TH JULY 2013

Right of appeal fully explained



G.A.M. NDIKA
JUDGE
11TH JULY 2013