IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

LAND CASE APPEAL NO. 13 OF 2013

(From the Decision of the District Land and Housing Tribunal of Korogwe District at Korogwe in Land Case Appeal No. 120 of 2012 and Original Ward Tribunal of Misima Ward in Application No. 14 of 2012)

MBELWA MOHAMED .....APPELLANT

VERSUS

NDAIKA LEMOSHANI .....RESPONDENT

JUDGMENT

Rugazia, J.

The appellant sued the respondent and won in the Ward Tribunal but lost in the District Land and Housing Tribunal. The dispute is over a piece of land measuring about sixteen acres. He laid down seven grounds of appeal which are:

1. *That, the learned Chairman of Korogwe District Land and Housing Tribunal erred in law and fact in not appreciating that the appellant is the legal owner of the disputed land which is clan land that he is inherited from his late father Mzee Rajabu Nkondo after his death in the year 2006.*

2. *That, the learned Chairman of the District Land and Housing Tribunal erred in law and fact in not appreciating that the appellant legally owned the disputed land after being allocated to him by Misima Village Authorities during the exercise of "OPERESHENI VIJIJI" in the year 1975.*

3. *That, the learned Chairman erred in law and fact in not appreciating that the respondent trespassed into the disputed land in the year 2007 after the death of appellant's father.*

4. *The learned Chairman of Korogwe District Land and Housing Tribunal erred in law and fact in not appreciating that the respondent could not be the legal owner of the disputed land in so far as the land was not allocated to him by Misima Village Authorities.*

5. *That, learned Chairman of the District Land and Housing Tribunal for Korogwe erred in law and fact in not appreciating that the respondent developed the bush "pori" without the blessing and awareness of Misima Village Authorities because he trespassed into the area.*

6. *That, the learned Chairman of the District Land and Housing Tribunal for Korogwe erred in law and fact in not appreciating that the respondent* ***DESERVED NO COMPENSATION*** *for crops and developments on the disputed land since he was a trespasser into the disputed land.*

7. That, the learned Chairman of the District Land and Housing erred in law and fact in not appreciating that the respondent deserved no legal ***ENTITLEMENT*** *of 16 Acres as he was not* ***INITIALLY*** *allocated such area by Misima Village Authorities.*

According to the evidence which was tendered before Ward Tribunal, it appears as if the disputed land was originally owned by the appellant's grandfather. It was led in evidence that the respondent moved into the land in dispute in the year 1998 and started to make some developments there - he built a lot of homesteads because when the Ward Tribunal visited the place *(locus in quo)* they found 4 tin-roofed houses and 10 other houses. The Ward Tribunal found for the appellant and ordered the respondent to vacate the disputed land within a period of 4 months from the date of the decision.

However, on appeal, the District Land and Housing Tribunal reversed the decision of the trial Tribunal. The main grounds for its decision was the period the respondent was in occupation of the land in dispute. The

appellate tribunal found that the respondent was in occupation for 14 years so it invoked the provisions of **The Law of Limitation Act, Cap. 89 R. E. 2002.** The Tribunal said that the matter in the Ward Tribunal was filed beyond the limitation period prescribed for such action so it ought to have been dismissed under section 3(c) of the Limitation Act – correctly it should have been section 3(1) of the Act.

On the set of facts as presented, one cannot help wondering how the appellant and other members of his entire family just sat idle and watched the respondent clearing the land and making other improvements to the extent of erecting all the houses. Surely, they were sitting on their rights. As it was alleged that the respondent was in adverse possession of the land, there is no doubt that the action to recover the land was instituted when it was already too late.

Pursuant to *item 22 of Part 1 of the Schedule to the Law of Limitation Act,* a suit to recover land has to be instituted within a period of twelve years. As it is, since in the instant matter the action was brought well outside the limitation period, I find no reason to fault the decision of the

appellate tribunal. It is unfortunate that limitation is a ruthless beast which when called into play knows no mercy.

It is on the basis of the foregoing that I join hands with the appellate tribunal and, in the upshot, dismiss the appeal with costs.

P.A. RUGAZIA, J.
21/03/2014

Judgment delivered. Parties absent.

P. A. RUGAZIA, J.
21/03/2014