

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPEAL NO. 54 OF 2017

*(From the decision of the District Land and Housing Tribunal of Kinondoni
in Land Appeal No. 97 of 2015 and original Ward Tribunal of Goba in
Application No. 214 of 2015)*

TUMAINI ATHUMANI MSUYA.....APPLICANT

VERSUS

JUMA K. KASALA.....RESPONDENT

JUDGMENT

MAKURU, J

This appeal traces its genesis from the Ward Tribunal of Goba in which the Appellant Tumaini Msuya sued the Respondent for trespass to his piece land located at Goba Kibululu. The respondent's story on trial was that he purchased the disputed land from one Bahati John Mbirika in the year 1996 for Tshs 220,000/=. He continued to use the land uninterruptedly until year 2015 when the Respondent Juma Kasala came up and claimed to be the owner of the same as he purchased it in the year 1979. It is from that misunderstanding that the Appellant sued the Respondent at the Ward

Tribunal in which the Respondent was declared to be the lawful owner of the land in dispute. The Appellant unsuccessfully appealed to the District Land and Housing Tribunal, this is now a second appeal⁰ where he appeals on the following grounds:-

1. That the Hon. Chairman of the District Land and Housing Tribunal for Kinondoni District erred in the decision of the Ward Tribunal which was not properly constituted contrary to section 11 of the Land Disputes Courts Act Cap 216.
2. That the chairman of the District Land and Housing Tribunal erred in law and facts in declaring the respondent the lawful owner while time was barred.
3. That the Hon. Chairman of the District Land and Housing Tribunal erred in law and in fact by declaring the Respondent lawful owner without considering the fact that he (the respondent) bought the disputed land from a person who had no title to pass to him.

Mr. Juma Nassoro learned counsel appeared for the Appellant while the Respondent enjoyed the legal services of Mr. Wandiba learned counsel. With leave of the court the appeal was argued by way of written submissions.

In course of his submission Mr. Nassoro abandoned the third ground of appeal and proceeded to argue on the first and second grounds of appeal

In support of the first ground of appeal Mr. Nassoro argued that, section 11 of the Land Disputes courts Act requires the Ward Tribunal to be constituted by eight (8) members, three of them must be women. He went on to submit that, the composition of the Wad Tribunal differs when the tribunal sits for mediation by virtue of section 14(1) of the Act where it may consist of three members who at leastone of whom shall be a woman. According to him, in this appeal only four members sat to hear and determine the matter and two of them were women. Hence, violation of section 11 of the Act.

As for the second ground of appeal it is submitted that, since the Respondent alleged to have bought the disputed land in the year 1979 and the Appellant purchased the same land in 1991, the Respondent was time barred to claim the suit land in 2015 after the elapse of 12 years. He cited Item 22 of the Law of Limitation Act Cap 89 RE 2002.

In reply thereto Mr. Wandiba submitted on the first ground of appeal that, the interpretation of section 11 is that, the members may be either 4, 5, 6,

7 or 8 but should not be less than four. According to him, the Ward Tribunal was properly constituted by four members two of them being women.

Replying to the second ground of appeal Mr. Wandiba submitted that, adverse possession occurs when the person has trespassed into the land and stayed there for twelve years undisturbed. But, if the person has stayed in the land for twelve years while exactly knows the owner, adverse possession does not arise. According to him the person who was in occupation of the land by the authorization from the Respondent is Bahati John and that time does not run against fraudulent acts, it starts to run upon the knowledge of the complainant. The learned counsel informed the court further that, in this case the appellant obtained the suit premises fraudulently thus, time could not start to run until the said misdeeds came into the knowledge of the Respondent.

It is Mr. Wandiba's further submission that, it is the Appellant himself who sued the Respondent and there is no any record that the Respondent knew about the trespass and waited for twelve years but rather the Respondent knew about the trespass after being sued by the appellant.

In rejoinder Mr. Nassoro reiterated his submission in chief and insisted that, the composition of the Ward Tribunal was in contravention of the provisions of the law.

Upon careful perusal of the entire record of this case and having also considered the contending submissions of the learned counsel for both parties, I will now determine the grounds of appeal raised in seriatim.

On the first ground of appeal I will directly reproduce the provisions of **section 11 of the Land Disputes Courts Act Cap 216 RE 2002** for the purpose of clarity. It states:-

11. Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act, 1985.

My understanding of this provision of law is that, the composition of the Ward Tribunal should consist of not less than four members and not more than eight members three of whom shall be women. Therefore I agree with Mr. Wandiba that the tribunal may be composed of 4, 5, 6, 7 or 8

members provided that they do not exceed 8 or less than 4. In the instant case the record shows that, the Coram of the tribunal is as follows:-

1. Edward Masenga- male
2. Mwanaharusi Baraka- female
3. Erick Mwaihoba- male
4. Josephina Mbele- female

Now, from the wording of the above cited provision of law, the tribunal ought to be composed of not more than eight and not less than four members. Logically, I am of the view that, the requirement that three must be women is when all the 8 members are present. But if the members are lesser than the number of women might differ. For instance in this case where the members were only four, it wouldn't be logical to have three women and only one man. Thus, the tribunal was properly constituted by 4 members of which two of them are men and two are women.

However, even if we assume that the tribunal was improperly constituted section 8 of the Ward Tribunals Act provides that the proceedings of the Ward Tribunal are in the nature of mediation. **Section 14 of the Land Disputes Courts Act Cap 216 RE 2002** provides that:-

14. (1) The Tribunal shall in all matters of mediation consists of three

members at least one of whom shall be a woman.

Hence, basing on section 14 (supra) the trial Ward Trubunal was properly constituted.

As for the second ground of appeal in his submission Mr. Nassoro based on the **1st schedule item 22 of the Law of Limitation Act Cap 89 RE 2002** which sets the time limitation for instituting a suit for recovery of land to be 12 years. He alleged that the Respondent purchased the suit land in 1979 and the Appellant bought the same land in 1991 and has been in peaceful occupation since then. Hence, the respondent is time barred to claim the suit land in 2015 after the elapse of 12 years.

However, upon perusal of the record it appears that, it is the Appellant who instituted the suit at the trial Ward Tribunal claiming that in year 2015 the respondent approached him alleging to be the owner of the disputed land. In the same year 2015 the Appellant instituted a case at the Ward Tribunal.

Thus, the issue of time limitation as per Item 22 does not arise because the cause of action arose in 2015 when the Respondent claimed ownership.

As for the issue of adverse possession the record shows that, the Appellant alleged to have purchased the disputed land from one Bahati Joni Mabirikain the year 1996. The Respondent on the other hand alleged to have purchased the same land in the year 1979 from one Boniface Chitawala. He then built a hut and took Bahati John Mabirika to be the caretaker of the said land. The said Bahati then decided to sell the disputed land to the Appellant.

For the purpose of clarity, I think it is apposite to understand the **doctrine of adverse possession**. Adverse possession can be defined as a method of acquiring land right by Prolonged and uninterrupted occupation of land without consent of the owner. An adverse possessor in essence is a trespasser. The one encroaching another's property without seeking owner's consent. Or occupation of land by trespasser in a manner inconsistent with the right of the owner. The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of not less than twelve years.

In the instant case as stated herein above it appears that, the Appellant purchased the disputed land from a person who was authorized by the Respondent to take care of the disputed land. Hence, neither the Appellant nor Baraka could claim adverse possession over the disputed land as the said Baraka was authorized by the lawful owner of the land to take care of the same. It follows therefore that, no good title have passed from Baraka to the Appellant because Baraka had no title to the disputed land as he was a mere caretaker.

In the upshot, I find the two grounds of appeal raised to be devoid of merits. The appeal is hereby dismissed with costs.

C.W. MAKURU

JUDGE