

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 166 OF 2019

*(From the Decision of the District Land and Housing Tribunal of KINONDONI District at
KINONDONI in Land Application No. 537 of 2018)*

GERMANO SANGA APPELLANT

VERSUS

SAIDI DIUCHILE RESPONDENT

JUDGMENT ON APPEAL

S.M. MAGHIMBI, J:

The appellant herein has been aggrieved by the decision of the District Land and Housing Tribunal for Kinondoni ("the Tribunal") in Land Application No. 537/2018. ("the Application") and has lodged this appeal on the following grounds:

1. That the District Tribunal chairman erred in law and fact in relying on a fraudulent document (Evidence) produced by the respondent.
2. That, the District tribunal chairman erred in law and fact in deciding the case without proof.
3. That, the District tribunal chairman erred in law and fact entertaining the case without jurisdiction.
4. That, the District tribunal chairman erred in law and fact in entertaining a time barred case.
5. That, the District tribunal chairman erred in law and fact for non-joinder of the Attorney General, District Commissioner, Regional Commissioner and the village council.

6. That, the district tribunal chairman erred in law and fact in cooking facts not found in evidence.
7. That, the District chairman erred in law and fact in disregarding the evidence of the respondents witness D1, D2, D3, D4 and D5.
8. That, the District chairman erred in law of fact for not visiting the land in dispute (Locus in quo)

The appellant's prayer was that the appeal is allowed with costs. By an order of this court dated 22/10/2020, the appeal was disposed by way of written submissions. The appellant's submissions were drawn and file by Mr. Edwin Msigwa, learned advocate while the respondent's submissions were drawn and filed by the respondent in person.

Before going into the merits of this appeal, the brief background of the matter that has led to this appeal is summarized. The dispute is over a piece of land measuring 2 acres located at Mpiji Magohe Kibesa in Ubungo District of Dar-es-salaam Region. At the tribunal, the respondent herein was the applicant who successfully sued the respondent for trespass. It was the respondent's allegation that he purchased the suitland from one Omari Machela in the year 1993 at a consideration of Tshs. 20,000/- (EXP1). He continued to utilize the land without any interference until the year 2018 when the appellant herein trespassed into the land.

On his part, the appellant traced his ownership to the disputed land from allocation/grant by the Kibamba Ward Development Committee in the year 2000. The grant followed a message from their headquarters that the employees of Tanzania People Defence Forces (of which the appellant was one of them) should apply for pieces of land at Mpiji Majohe following a Regional Commissioner's directive to re-allocate abandoned lands to other

people. He successfully applied for the land and he tendered both allocation letter and the receipt of payment (EXD1) of which he was allocated 3 acres inclusive of the disputed 2 acres. The appellant alleged to have used the disputed land without any interference for 18 years. The dispute arose after the Government issued a public notice of survey for grant of residential licence (EXD2) whereby both parties herein claimed ownership over the same piece of land. The dispute was then referred to the Tribunal, a decision of which is a subject of this appeal on the above mentioned grounds.

In determination of this appeal, I will begin to address the fourth ground of appeal that the Hon. Chairman of the Tribunal erred in law and fact in entertaining a time barred case. In his submissions to support this ground, Mr. Msigwa submitted that the records of the case are very clear that at the Tribunal, the applicant filed his application on 24th day of October 2018 while it is vividly clear that he respondent was allocated the Bush and cleared the bush on 14/7/2000. He argued that the appellant cleared the bush, assisted by DW4, Thomas Maige and DW5 Charles Magomba. He continued to the use it to date and that there was no independent evidence given by the respondent that the land in dispute was under him. He concluded that it is almost 19 years which means even if it was the respondent's land, he is time barred to claim the land.

In reply, the respondent who appeared in person simply argued that the ground should have been raised at the trial tribunal not at this stage of appeal; praying that the court dismiss the ground.

I have gone through the records of the trial tribunal on the issue of time limitation, with respect, contrary to the respondent's argument that the

matter cannot be raised at this appeal, the issue goes to the root of jurisdiction of the court to entertain the matter. According to ***Halsbury's Laws of England***, 4th Edition, Re issue Vol 10 para.314, Jurisdiction is defined as follows:

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which is constituted, and may be extended or restricted by similar means"

From the above therefore, an issue of jurisdiction can be raised at any time, even in appeal or execution because a decision made by a court lacking jurisdiction is a nullity. That said, I will therefore proceed to determine the issue as the respondent has opted to argue only against the entertainment of this ground.

Going to the records of the tribunal, during trial, it was the appellant's unshaken evidence that he purchased the disputed land in the year 1993 from one Omari Machela. He tendered EXP1 to that effect, an evidence which was corroborated by that of PW2. However, in my strong view, the respondent miserably failed to prove any kind of development or care taking of the land before the same was re-allocated to the appellant by the Government.

On the other hand, I have considered the whole evidence of the appellant starting with himself as DW3 who testified that he got the suitland from the operation held in 2000. He tendered collective EXD1 an exhibit including an allocation certificate dated 14/07/2000 with a proof of payment dated 17/03/2001. There is also EXD2 which is undated on the

formalization of ownership of the land. His evidence was corroborated by oral testimony of DW2 who testified to have been the appellant's neighbor since 2005. There was also DW4 who was the caretaker of the said farm and lived in the farm for fifteen years to 2015 when he left and was succeeded by the DW5.

All the above evidence is sufficient to prove that the appellant was allocated the land in 2000 and has remained in undisturbed occupation therein up to 2018 when the respondent emerged to claim ownership. Since the allocation was well published, and known to public, had the respondent known that he had ownership to the land, he should have approached the authorities then and prove that he did not abandon his land.

The above notwithstanding, the respondent has claimed the trespass to begin in 2018, but he did not adduce any evidence to show that he was in active occupation of the land for all the time prior to 2018. On the other hand, the appellant's witnesses adduced evidence of the appellant's occupation of the land since 2000 till the emerging of the claim by the respondent in 2018. The respondent's only witness testified to be aware of the sale that happened in 1993 and there was no further testimony of continuous occupation therein by the respondent's evidence something which he ought to have done.

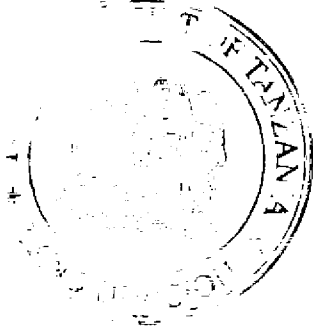
On those findings, it is sufficient to conclude that the appellant managed to establish that he was in continuous occupation of the suitland since 2001 and was not disturbed. The respondent could not therefore come 17 years later to claim ownership of something which may be safely concluded that he abandoned. The fourth ground of appeal is therefore found to be meritorious, the application at the tribunal was time barred as the claim of

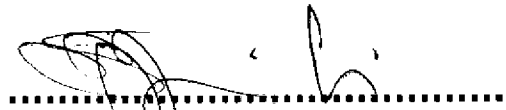
trespass was lodged 17 years after the appellant's uninterrupted occupation of the suitland contrary to the provisions of item 22 of Part I to the Schedule of the Law of Limitation Act, Cap. 89 R.E 2019.

Having found that the matter at the tribunal was time barred, I need not dwell on the remaining grounds of appeal. This appeal is allowed on the 4th ground that the Land Application No. 537/2018 at the tribunal was time barred. Therefore the proceedings, judgment and subsequent decree of the tribunal are hereby nullified. The appellant remains the lawful owner of the suitland and he shall be left with peaceful enjoyment therein. The appellant shall have his costs.

Appeal Allowed

Dated at Dar es Salaam this 14th day of December, 2020




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S.M. MAGHIMBI
JUDGE