IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL 126 OF 2018

SELEMANI ALLY MATUWA ..... APPELLANT

VERSUS

1. SHABANI RASHIDI COSTA
2. RAMADHANI SAIDI MOHAMED } **..... RESPONDENTS**

(Appeal form the decision of the District Housing and Land Tribunal for Morogoro district at Morogoro (Hon. Mkwandi, CM.))

dated the 24th day of March, 2015

in

Land Appeal No. 156 of 2013

JUDGMENT OF THE COURT

Date of Last Order: 12/11/2021 &
Date of Ruling: 16/11/2021

S.M. KALUNDE, J.:

This is an appeal against the decision of the District Land and Housing Tribunal for Morogoro district at Morogoro **("DLHT")** dated 24th day of March, 2015 in Land Appeal No. 156 of 2013. This appeal originates from the decision of the Mvomero Ward Tribunal **("the ward tribunal")** in Case No. 36 of 2013.

The brief facts are that: the appellant, an owner of a piece of land located at Mgudeni village in Mvomero in Morogoro region **("suit property")**. He lived on the property for four (4) before his departure from the village for almost ten (10) years. On his return, he realized that the respondents have been allocated his land and have affected developments over the same including planting trees. Aggrieved by the intrusion, the appellant filed case at the ward tribunal against the respondents. Upon hearing the parties and visit to the *locus in quo*, the ward tribunal resolved to partition the disputed land between the appellant and the respondents.

Displeased by the decision of the ward tribunal the respondents appealed to the DLHT. The appeal at the DLHT was based on the following grounds:

(a) *The ward tribunal erred in enlisting the Secretary of the tribunal in the list of members;*

(b) *The ward tribunal erred in not holding that the respondent's claim is time barred;*

(c) *The decision of the ward tribunal is against the weight of evidence;*

(d) *The decision of the ward tribunal is vague; and*

(e) The tribunal was not properly constituted.

In response to the above grounds the appellant filed a reply to the petition of appeal in which he contended that the ward tribunal was properly constituted. Further to that, the appellant contended that listing the name of the secretary into the name of the members of the tribunal did not occasion any miscarriage of justice.

Upon consideration of the records and submissions made by the parties the DLHT was satisfied that there was no irregularity in the proceedings of the ward tribunal. After determining that **Ms. Hawa Lulumba** identified herself as a secretary, the DLHT made that finding that, no miscarriage of justice was occasioned. As for the merits of the case, the DLHT was satisfied that the evidence before the ward tribunal was strongly in favour of the respondents (appellants then). The DLHT was of the opinion that, having abandoned his land from 1974 to 2014 the appellants claims were time barred. The appeal was allowed. In the end, the decision of the ward tribunal was set aside, and the appellants (now respondents) were declared as lawful owners of the suit land.

The decision of the DLHT irritated the appellant. He now appeals to this Court on five grounds of grievance, namely:

> *(1). That the DLHT erred in law and in fact in failing to make a proper assessment of evidence and witness testimonies adduced at the ward tribunal;*
>
> *(2). That the DLHT erred in law and in fact in failing to take into account the testimony of the witnesses of the 1st and 2nd respondents who testified that the were seing the appellant coming to harvest his coconut;*
>
> *(3). That the DLHT erred in law and in fact in failing in holding that the appellant was in possession of the disputed land since 1965;*
>
> *(4). That the DLHT erred in law and in fact in holding that the appellant kept quite from 1974 to 2014 and hence he was time bared; and*
>
> *(5). That the DLHT erred in law and in fact in holding that the respondents had strong evidence that they allocated land in 1974.*

In view of the above grounds, the appellant urged this Court to quash and set aside the judgment and decree of the DLHT; declare the appellant as the rightful owner of the suit property and an order for costs. The respondents filed a joint reply objecting the appeal.

They prayed that the appeal be dismissed and a declaration confirming them as lawful owners of the suit property.

Hearing of the appeal was conducted through written submissions. **Mr. Chrispinus R. Nyenyembe**, learned advocate prepared and file submission of the appellant, whilst those of the respondents were drawn and filed by learned counsel **Mr. Daudi Mzeri**. Submissions were accordingly filed in accordance with the schedule issued by the Court and hence the present judgment.

Having carefully gone through the records and the submissions made by the parties, the remaining question for my determination is whether the appeal is merited.

I propose to start with the fourth ground of appeal in which the appellant main complaint is that the first appellate court erred in holding that the appellant kept quite from 1974 to 2014 when the suit was filed, and hence he was time bared. In support of this argument the appellant contended that he had been possession of the suit land since 1965 and had been in undisturbed possession

throughout up to 2014. In support of the argument, he cited the case of **Jackson Reuben Maro vs. Hubert Sebastian**, Civil Appeal No. 84 of 2004. He alleged that he only allowed the respondents to conduct their activities over the suit property.

Responding to the above argument, the respondents contended that in accordance with section 3 of **the Law of Limitation Act, Cap. 89 R.E. 2019** the time limit to file a suit for recovery of land 12 years. To further support the argument the respondent cited the case of **Bhoke Kitang'ita vs Makuru Mahemba** (Civil Appeal No.222 of 2017) [2020] TZCA 66; (20 March 2020 TANZLII) where the Court of Appeal **Mmila, J.A** held AT PAGE 9 that:

> *"As correctly submitted by the advocates for the respondent, the period of limitation to recover land is 12 years in terms of section 3 (1) of the LLA, read together with Part I item 22 of Part I to Schedule of the same Act. It is also factual that in terms of section 9 (2) of the LLA, time begins to run from the date the respondent is dispossessed or has discontinued his possession of the disputed land."*

Relying on the above case the respondent concluded that the fist appellate court was correct in holding that the suit was time barred for being brought outside the limitation period.

I have gone through the records and noted that in his testimony before the trial tribunal the appellant contented that he had been living on the suit property for four years and later he departed to a different village. He added that despite leaving the village, he used to send his children to collect coconut in the farm.Part of her testimony reads:

> *"Nilipoishi Mvomero miaka 4 - Nikahama nikaenda Kijiji kingine cha Mfulu. Nimeishi kule kwa muda mrefu zaidi ya miaka 10. Nilikuwa nawatuma Watoto waende wakatungue nazi."*

During cross-examination by the 1st respondent the appellant stated that he had been staying with her neighbors for four years between 1969 – 1972.

> *"Swali: wenzio ulikuwa unaishi nao toka mwaka gani?*
>
> *Jibu: Mwaka 1969 – 1972"*

It is, therefore, common knowledge that the appellant left the village in 1972. This story is also supported by Ramadhani Mtua, the appellant 1st witness who said the appellant left for Mvomero in 1972. The 2nd witness, Mashaka Rajab recalled that the witness left the village in 1974. The 2nd witness, Mashaka Rajab, added that the appellant was not present during operation Vijiji. Further to that Mashaka Rajab testified that, after his departure the appellant never came back to reside in the village. Both, the appellant and his two witnesses agree that operation Vijiji was carried out in 1974. Despite the strong evidence form his witnesses that he left the village in 1972 and never returned to the village, the appellant insisted that he was present during operation Vijiji in 1974 and that was the period when the land was allocated to him. Part of his testimony reads as follows:

> *"Swali: pale Mgudeni ulihama mwaka gani?*
>
> *Jibu: Mwaka 1975 baada ya kupita operation vijiji*
>
> *"Swali: Je operation ilifanyika mwaka gani?*
>
> *Jibu: Mwaka 1974*

"Swali: Je wakati operation vijiji inafanyika wewe ulikuwepo?

Jibu: Mwaka Nilikuwepo"

Through the above extract of the appellant testimony, it is demonstrated that the appellant was present in at the village in 1974 when operation vijiji was carried out. He also alluded that the land was given to him by the village during operation vijiji. However, in his earlier testimony, he stated that he lived in the village between 1969 – 1972. As pointed earlier, his two witnesses also testified that he left the village in 1972. There is therefore a contradiction in his testimony as to whether he was present during operation vijiji. The contradiction becomes crucial in ascertaining whether the appellant was allocated the said piece of land during operation vijiji. The fact that the appellant lied about the year in which he left the village raises doubts on his credibility and the weight of his testimony.

Having established that the appellant left the village in 1972, or even assuming that he left in 1974 which he did not, the next question now is whether he had been in possession of the suit property since then up to the year 2014, when the present dispute

arose. The appellant insisted that he had been in undisturbed possession of the property since 1974 up to 2014 when the respondents trespassed. He said he was sending his children to harvest coconut from the farm. There was no evidence establishing the sequence of the appellants children visit to the farm to ascertain that he had been in constant possession of the farm. The said children did not testify before the tribunal. It was also not established in evidence when was the last time the children went to harvest the coconut. The appellant, who was the applicant before the trial tribunal had the duty to establish these facts. He therefore failed to establish when he was dispossessed of the property. On their part, the respondent said they had been in possession of the said property since 1974 when they were allocated during operation vijiji. They have since developed the farm undisturbed and planted permanent trees.

In view of the above facts, if the applicant was, sincerely, in control or possession of the farm, he should have noticed the intrusion by the respondents and filed a suit for trespass or recovery of land. He did not do so for almost 40 years. As pointed out in

Bhoke Kitang'ita vs Makuru Mahemba (supra), in accordance with item 22 of the schedule to **the Law of Limitation Act (supra)** the limitation period for recovery of land is twelve (12) years. Section thereto provides that a suit which is instituted after the period of limitation prescribed in the second column on the schedule, shall be dismissed whether or not limitation has been set up as a defence. In the circumstances, I cannot fault the appellate tribunal finding that the suit was time barred.

On the strength of the foregoing reasons the appeal is destitute of merits. It is thus dismissed with costs.

DATED at **MOROGORO** this **16th** day of **November, 2021.**

S.M. KALUNDE

JUDGE