IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 05 OF 2022

(Arising from Land Appeal No.15 of 2021 the Mkuranga District Land, originating from Mwaseni Ward Tribunal in Land Case No.29 of 2020)

TABIA SHABANI NZELEKELA ..... APPELLANT

VERSUS

SULTANI ALLY MSANGA ..... RESPONDENT

JUDGMENT

Date of Last order: 09.03.2022

Date of Judgment: 16.03.2022

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Mwaseni in Land Case No.29 of 2020 and arising from the District Land and Housing Tribunal for Mkuranga in Land Appeal No. 15

of 2021. The material background facts to the dispute are briefly as follows; At the trial tribunal, Sultani Ally, the respondent in this appeal claims that his father was the owner of the suit land. He claimed that her aunt informed him that his father had land in Dar es Salaam and his aunt showed the respondent the suit land which was occupied by Tabia Shabani Nzelekela, the appellant. The appellant claimed that she occupied the suit land since 1978. The trial tribunal decided the matter in the favour of Tabia Shabani Nzelekela.

Aggrieved, Sultani Ally Msanga lodged an appeal to the District Land and Housing Tribunal for Mkuranga vide Land Appeal No.15 2021 challenging the judgment of the trial tribunal. The appellant complained that the trial tribunal did not consider the fact that he bought the suit land in 1978 from the appellant's father. He also claimed that Tabia Shabani Nzelekela had no locus standi to lodge the case at the trial tribunal. The appellate tribunal overruled the decision of the trial Tribunal and declared Sulatni Ally Msanga, the lawful owner of the suit land. The first appeal irritated Tabia Shabani Nzelekela. Hence this appeal before this court whereby she has raised one ground of grievance, namely:-

1. *That the trial appellate tribunal Chairman erred both in law and facts by overlooking the provisions by considering the baseless and incredible evidence from the respondent's party and when he failed to take into account the watertight and credible testimonies from the appellant's party.*

When the appeal was called for hearing on for hearing on 9th March, 2022, the appellant had the legal service of Mr. Mohamed Manyanda, learned counsel and the respondent enjoyed the legal service of Pendo Ngoye, learned counsel.

In his submission, the learned counsel for the appellant that the appellant has raised one ground of appeal whereas they are blaming the Chairman for failure to observe the provision of the law. He referred this court to the appellate tribunal proceedings specifically on page 11 where the appellant who was the applicant at the trial tribunal claimed that " Nimekuja hapa kumshitaki Sultani Ally kwa kunitapeli na amejenga kwenye nyumba yangu." The appellant was claiming for his house.

He went on to submit that the respondent in his testimony stated that in 1978, he saw an old house which he demolished and constructed a new house. He claimed that the respondent admitted that he found a house

in the suit land. He stated that surprisingly the appellate Chairman, the trial tribunal on page 3, paragraph 3 of its judgment stated that it is undisputable fact that the previous owner of suit land was the father of Tabia Shabani Nzelekela but Sultani Ally was in the suit land since 1978 and he developed the suit land. He added that the Chairman ruled out that failure for the appellant's father to claim ownership over the suit land reveals that he was not interested in the suit land. The learned counsel for the appellant valiantly contended that examining the proceedings of the trial tribunal, there is nowhere the respondent tendered any documentary evidence.

The learned counsel for the appellant continued to submit that the records are silent whether the respondent bought the suit land from the appellant's father. Mr. Mohamed argued that long occupation of the suit land does not automatically mean that he is the lawful owner of the suit land. It was his further submission that the respondent was an invite, thus, the same does not exclude the owner of the suit land and the owner can claim his land from the invite any time. Fortifying his submission, he cited the case **of Musa Hassan v Barnarba Yohan**a, Civil Appeal No.111 of 2018.

On the strength of the above submission, Mr. Mohamed urged this court to allow the appeal with costs.

In his reply, the learned counsel for the respondent submitted that the respondent lived in the suit land from the year 1978 and the appellant lodged the suit before the tribunal after 33 years. She contended that the limitation period to lodge a claim on land ownership and trespass is 12 years as per the Law of Limitation Act, Cap.89 [R.E 2019]. The learned counsel submitted that the respondent was in continuous occupation on the suit land for more than 12 years. It was her view that the doctrine of adverse passion is applicable, thus, the appellant was barred to lodge his claims at the Ward Tribunal.

She continued to submit that there is ample evidence on the record that the respondent purchased the suit land from the appellant's father in 1978. Ms. Pendo went on to submit that the appellant's testimony at the trial tribunal is clear and straight that he was not aware of the existence of the suit land. Instead, the appellant was informed by his uncle which is hearsay and this court cannot reach its decision in relying on hearsay evidence. She went on to argue that the suit land was sold before the appellant was born and there is no any direct evidence to support the

appellant's assertation. She added that there is nowhere stated whether the appellant was an administrator of the estate of his late father. She valiantly argued that the issue that the respondent was an invitee is baseless and cannot stand since the records are silent instead it is clearly stated that the appellant took more than 12 years to make a follow-up on the suit land, thus, the same is an afterthought.

Ms. Pendo did not end there, she asserted that the appellant is the one who alleged thus he was bound to prove his allegations on the standard of civil cases which is propounded of probability. She submitted that the appellate tribunal evaluated the evidence and considered the evidence adduced by both parties. It was his view that the evidence on record does not move this court to allow the appeal in the appellant's favour. Supporting his contention Ms. Pendo referred this court to section 110 of the Evidence Act, Cap. 6 [R.E 2019] which state that:-

> " *Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*"

It was her further submission that the appellant was supposed to prove his assertation that he is the owner of the suit land without relying on hearsay evidence.

On the strength of the above submission, Ms. Pendo urged this court to find that this appeal is devoid of merit and dismiss the appeal with costs.

In his rejoinder, the appellant' Advocate reiterated his submission in chief. He claimed that the ground of adverse possession is not a point of law. It was his view that the principle of adverse passion is considered when all conditions are met. He argued that in the instant matter the previous owner did not abandon his land and the respondent stayed in the suit land after being allowed by the appellant's father and failed to prove his allegations that he bought the suit land from the appellant's father. It was his view that the respondent's evidence was incredible since he failed to prove how he possessed the suit land. Concerning the issue of administration of the estate, Mr. Mohamed claimed that the Ward Tribunal agreed that the suit land was owned by the appellant's father thus it was his view that there is no dispute that the respondent remains to be an invitee and the appellant is the lawful owner of the suit land.

In conclusion, Mr. Mohamed urged this court to allow the appeal with costs.

I am fully aware that this is a second appeal. I am therefore supposed to deal with questions of law only. It is a settled principle that the second appellate court can only interfere where there was a misapprehension of the substance or quality of the evidence. This has been the position of the law in this country. See the cases of **Salum Mhando v Republic** [1993] TLR 170 and the decision of the Court of Appeal of Tanzania in **Nurdin Mohamed @ Mkula v Republic**, Criminal Appeal No. 112 of 2013, Court of Appeal of Tanzania at Iringa (unreported).

However, this approach rests on the premise that findings of facts are based on a correct appreciation of the evidence. In the case of **Amratlal D.M t/a Zanzibar Hotel** [1980] TLR 31, it was held that:-

> " *An appellate court should not disturb concurrent findings of fact unless it is clearly shown that there has been a misapprehension of the evidence, miscarriage of justice or a violation of some principle of law or practice."*

Having heard the submission of the appellant, and after going through the ground of appeal on which the parties have bandying words the same made me peruse the records of both tribunals to determine *whether the appeal is meritorious*.

The learned counsel for the appellant is complaining that the respondent did not prove his case at the trial tribunal since he failed to tender any documentary evidence to prove whether he bought the suit land from the appellant's father. I have gone through the trial tribunal record and scrutinized the evidence on records and noted that Tabia Shabani Nzelekela instituted a land case at the trial tribunal claiming that her father left the respondent in his plot and went to live in Dar es Salaam. She said that her father in 2015 informed her that they have a house at Mloko and she headed to Mloko in 2018 to meet her aunt in 2020, her uncle showed her the suit land. The respondent wondered about her whereabouts all those years. In my view, from the beginning, the appellant was claiming ownership over her father's suit land, however, there is no any evidence to prove whether the appellant was appointed to administer the estate of her late father. In my view, the appellant had no *locus standi* to lodge the suit at the first place. The District Land and

Housing Tribunal in its decision stated that the appellant was appointed to administer the estate of her late father, however, the records are silent.

Again, the records are silent whether the suit land was transferred from the appellant's father to the appellant. It is no wonder the appellant's counsel fell into that trap hook line of the trial tribunal to arrive at such a conclusion without any supporting evidence.

Following the reasoning of this court by Samatta, J. K. (as he then was) in the case of **Lujuna Shubi Ballonzi, Senior V Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203, it boils down to one fact that the appellant had no *locus standi* to sue the respondent. In the **Lujuna Shubi Ballonzi's** case, the court had the following to say:-

> *"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court: see* **Halsbury's Laws of England**. *4th Ed, para 49 at p.52. Courts do not have power to determine issues of general interest: see* **Re IG Farbenindustrie AG Agreement** *[1943] 2 ALL ER 525. They can only accord protection to interests that are*

regarded as being entitled to legal protection. They will thus not make any determination of any issue that is academic, hypothetical, premature, or dead. Because a court of law is a court of justice and not an academy of law, to maintain an action before it a litigant must assert interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application. Of course, provided the interest is recognized by law, the smallness of it is immaterial".

Since the appellant was suing the respondent in respect of her late father's suit land, then there is no doubt that the appellant had no requisite *locus.* Hence as rightly submitted by the learned counsel for the respondent, the trial tribunal erred in declaring the appellant the lawful owner of the suit land, while she had no capacity to lodge the suit land.

In my final remarks, the Ward Tribunal ought to have dismissed the matter because the appellant had no *locus* to institute the said suit. Unfortunately, this anomaly was considered by the District Land and Housing Tribunal in the first appeal. This finding moves me to allow the appeal. And, with the foregoing position, I find no' need to delve in the

learned counsel for the appellant's submissions. Subsequently, I have find reasons to disturb the concurrent findings of the trial tribunal since it is clear that there has been a misapprehension of the principle of law that a party cannot lodge a suit on her/his own capacity.

Consequently, in line with what I have endeavoured to traverse above, I proceed to quashed and set aside the judgment, decree and orders of Mwaseni Ward Tribunal and Mkuranga District Land and Housing Tribunal. Appeal is allowed. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 16th March, 2022.

A.Z.MGEYEKWA
JUDGE
16.03.2022

Judgment delivered on 16th March, 2022 in the presence of both parties.

A.Z.MGEYEKWA
JUDGE
16.03.2022

Right to appeal fully explained.