

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO.43 OF 2023

(Arising from land Application No. 7 of 2021 at Ilala District Land and
Housing Tribunal before Hon. Mgulambwa, Chairperson)

RASHID BAKARI SWALHU APPELLANT

VERSUS

SAID BAKARI SWALHU RESPONDENT

JUDGMENT

Date of last Order: 03.04.2023

Date of Judgment: 05.04.2023

A.Z.MGEYEKWA, J

This appeal stems from the decision of the District Land and Housing Tribunal for Ilala in Land Application No.7 of 2021. A bit of history needs to be narrated to help appreciate how the parties got here; the dispute aroused in 2002 and in 2021, Rashid Bakari Swalhu, the appellant instituted a case against Said Bakari Swalhu, the respondent at the District

Land and Housing Tribunal for Ilala. The appellant claimed that he is the lawful owner of the suit land. He testified to the effect that his late father gave him the suit land in 1981 and planted coconut trees in 1987. In 2016, the respondent was his caretaker. The respondent denied the allegations and argued that he is the lawful owner of the suit land which he obtained from his late father. His late father allowed him to construct a house and plant coconut trees. The DLHT decided the matter in the favour of the respondent for the main reason that the respondent occupied the suit land for more than 12 years without being interrupted by anyone.

The District Land and Housing Tribunal decision did not amuse the appellant. He decided to challenge it by way of appeal before this court on three grounds of appeal as follows:-

- 1. That, the Honourable Tribunal erred in law and fact by delivering a decision in favour of the respondent without evaluating and taking into account weal evidence adduced by the respondent.*
- 2. That, the Honourable Tribunal erred in law and fact by determining the dispute relying on the will which is tainted with incurable defects.*
- 3. That, the Honourable Tribunal erred in law and fact by determining the dispute by raising that the application was statutory time barred*

disregarding the fact that in the 1990s and 2000's there was no dispute between the appellant and the respondent rather the real dispute commercial in the year 2016.

When the appeal was called for hearing on 22nd March 2023 before me, the appellant had the legal service of Mr. Abel Ngallaba, learned counsel and the respondent had the legal service of Mr. Adinan Chitale, learned counsel. The respondent's counsel urged this Court to argue the appeal by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly confirmed by the appellant.

The appellant's counsel started to narrate the genesis of the matter at hand which I am not going to reproduce in this appeal. On the first ground, Mr. Ngallaba, contended that the evidence adduced by the respondent was very weak and hearsay despite of the fact that the number of witnesses was high compared to the number of witness on the appellant's side. He went on to submit that there was no even a single witness who testified in the Tribunal that he witnessed the respondent being gifted the disputed land by Bakari Swahili his late father he claimed that the respondent was required to prove his allegations as per section 110 (1) of the Evidence Act, Cap.6 [R.E 2019].

The learned counsel for the appellant continued to argue that a written WILL was among the documentary evidence, and a WILL is governed by customary law of inheritance whereas no one can revoke a will which is complied with the requirement of customary law of inheritance. He added that the intended WILL was tainted with incurable illegalities and the same was not signed, not dated and written in Arabic language. He insisted that the WILL was incurable defective to the extent that it was unworthy to be admitted as an exhibit.

Submitting on the third ground, the learned counsel for the appellant was very brief. He simply contended that the Application was timeous. He submitted that the limitation period of recovering a piece of land is 12 years and there was no dispute from the beginning. He went on to submit that both parties testified in at the Tribunal to the effect that the dispute commenced in 2016. He added that in 2016, the respondent refused to compensate the appellant. The counsel for the appellant insisted that the appellant's evidence was heavier compared to the respondent's evidence.

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

In his reply, on the first ground, Mr. Chitale counsel for the respondent submitted that the appellant's counsel did not understand the nature of the case at the trial Tribunal. He stated that the appellant is the one who instituted a case at the trial tribunal claiming for ownership of the suit land. The learned counsel for the respondent continued to submit that the issue for determination was who the lawful owner is of the suit land. It was his submission that the appellant had the burden to prove his ownership as stipulated in Evidence Act, Cap.6. He valiantly argued that the respondent has failed to prove his case, his evidence was weak hence he could not prove his ownership.

The learned counsel for the respondent went on to submit that the respondent's testimony was stronger than the appellant's evidence. He defended the tribunal's decision as sound and reasoned while the appellant's evidence was not supported by any document. He went on to submit that the counsel for the appellant has misguided this Court by stating that the computation of 12 years started to run in 2016 when the dispute arose the right to sue on the part of the appellant started to run when the respondent occupied the suit land in 1990. He contended that the appellant was out of time to lodge the suit for approximately 20 years. In his view the tribunal was correct to dismiss the suit for being time barred.

In conclusion, the counsel for the appellant urged this Court to dismiss the appeal in its entirety with costs.

I have subjected the rival arguments by parties to the serious scrutiny they deserve. Having so done, I think, the bone of contention between them hinges on the question *whether the appellant had good reasons to warrant this court to allow his appeal.*

In my determination, I will combine the first and second grounds because they are intertwined. Except the third ground will be argued separately. I have opted to start addressing the third ground, the appellant is complaining that the tribunal faulted himself by deciding that the application was statutory time-barred.

I have gone through the trial proceedings and noted that the appellant who was the applicant at the trial tribunal lodged an Application at the District Land and Housing Tribunal for Ilala claiming that he is the lawful owner of the suit land. He claimed that he is the lawful owner of the suit land property which he obtained from his late father Babari Swalihu in 1981. According to the application, Bakari Swalihu gave each of his children a portion of a piece of land. Reading the records, the appellant testified to the effect that in the year 1987 he moved from his village to

a nearby village. After the death of his late father, he went back to his village and claimed his piece of land. On his side, the respondent claimed that their late father gave each of them a piece of land whereas the appellant had a piece of land apart from the suit land.

From the parties' submissions and the trial Tribunal's decision, it is clear that the issue of time limitation was raised and determined by the District Land and Housing Tribunal for Ilala. At this juncture, this Court needs to determine whether or not the suit at the District Land and Housing Tribunal was time-barred and therefore a subject of dismissal.

It is noteworthy that for a suit to be tried by the Court of law, it must be lodged in Court within the prescribed period of the law. That is to say, the time limit is among the elements that give a Court jurisdiction to try any matter. Time limitation is being prescribed under the Law of Limitation Act, Cap. 89 [R.E 2019]. In determining whether, as contended by the respondent, the Application was time-barred. The answer to this question requires me to cast an eye on the Applicant's pleadings and annexures thereto to find out when the right of action accrued for the time limit to be construed as provided under section 4 of the Law of Limitation Act, Cap. 89 [R. E 2019].

I have scrutinized the District Land and Housing Tribunal's Application, specifically in paragraphs ix) and x), the appellant stated that the cause of action arose in the year 2002 when their father passed away, and after his death, the respondent started to claim that he is the lawful owner of the suit land. Contrary to Mr. Ngallaba, counsel for the appellant submission that the dispute commenced in 2016. For ease of reference I reproduce paragraphs ix) and x) of the Application as follows:-

ix) That in the year 2002 the father of the applicant and respondent respectively passed away.

x) That after the death of the late BAKARI SWALIHU, the respondent changed and started to claim that the disputed land belongs to him hence he turned their mutual agreement.[Emphasis added].

From the above excerpt, it is crystal clear that the dispute arose in 2002 whereas the right of action accrued in 2002. As rightly pointed out by the Chairman in her Judgment, the limitation period started to run in 2002 or soon after 2002 when the appellant's father passed away. Section 4 of the Law of Limitation Act, Cap.89 [R.E 2019] provides that the period of limitation concerning any proceeding shall commence from the date on which the right of action for such action accrued.

In determining whether the Application at the trial tribunal was lodged within time, this issue requires me to look at Item 22 of Part I of the Schedule to the Law of Limitation Act, Cap.89 [R.E 2019] which provides a limitation of 12 years for a suit to recover land. For ease of reference, I find it apposite to reproduce Item 22 of Part I of the Schedule to the Law of Limitation Act, Cap.89 [R.E 2019] as hereunder:-

"Suit recovery land is twelve years."

Glancing through the trial tribunal records, it is revealed that Application No.07 of 2021 was filed at the District Land and Housing Tribunal for Mafia on 23rd September 2021 while the cause of action arose in 2002. As contended by the counsel for the respondent and the record reveals, as well, that Application No.07 of 2021 was lodged out of time. The Application was filed 19 years after the date of cause of action and, therefore, timeously lodged.

The consequences of filling the suit out of time are provided under section 3 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019], if the matter is filed out of the prescribed time, the remedy is to dismiss the suit. This was also the holding in the case of **NBC Limited & Another v Bruno**

Vitus Swalo, Civil Appeal No. 331 of 2019, where the Court of Appeal of Tanzania held that:-

"The suit that has been filed out of time has to be dismissed in accordance with section 3 (1) of the Law of Limitation Act."

Given the foregoing, I deem it superfluous to deal with the remaining grounds of appeal since the issue of jurisdiction suffices to dispose of the appeal at hand.

In the upshot, I proceed to dismiss the Land Appeal No. 43 of 2023. No order as to the costs.

Order accordingly.

DATED at Dar es Salaam this 5th April 2023.




A.Z.MGEYEKWA

JUDGE

05.04.2023