IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

LAND APPEAL NO. 82 OF 2022

(Appeal from the decision of the District Land and Housing Tribunal for Ngorongoro at Loliondo in Land Application No. 01 of 2016)

NDOROSI SIATOI ..... APPELLANT

VERSUS

VEREDIANA JOHN ..... RESPONDENT

JUDGMENT

04th May & 12th June, 2023

KAMUZORA, J.

The Appellant herein was the 3rd Respondent before the District Land and Housing Tribunal for Ngorongoro at Loliondo in Land Application No. 01 of 2016 that was decided in favour of the Respondent herein. The geneses of the dispute leading to this appeal is a piece of land measuring 30x16 feet located at Ndalalani area in Ngarasero Village (hereinafter "the suit land")

Briefly the Respondent herein sued the Appellant together with 3 others who are not part of this appeal for a piece of land above described. The Respondent claimed to be lawful owner of the suit land

after being allocated the same by the Village Chairman of Engusero in the year 1987 and built a house therein. That, when the Respondent went for treatment, the Appellants and others trespassed into the suit land and damaged the Respondent's house. In their defence, the Appellant and others claimed that the suit land was allocated to them by the village council in year 1992 and they developed the same by constructing houses therein.

After the trial Tribunal heard both parties it decided in favour of the Respondent by declaring her the lawful owner of the suit land. However, compensation for damaged house was not awarded on account that the Respondent was unable to prove such damage. The Appellant and others were declared trespassers to the suit land and the Appellant herein together with the 1st Respondent before the trial Tribunal were ordered to bear the cost of the suit.

The Appellant was not pleased by that decision hence, preferred this appeal raising 4 grounds which are reshaped hereunder: -

1) *That, the trial Tribunal erred in law and facts in not finding and holding that the application was time barred.*
2) *That, the trial Tribunal erred in law and facts in holding that the Respondent managed to prove her case to the standard required while the case was not backed up with any evidence on record.*

3) *That, the trial Tribunal erred in law and fact by failing to visit the suit land thus pronounced unfounded judgment.*
4) *That, the trial Tribunal erred in law and fact in failing to evaluate the evidence to arrive to a just decision.*

At the hearing of the appeal the Appellant was represented by Mr. Ngeeyan Laizer, learned counsel while Ms. Happiness Mfinanga, learned counsel from Tanzanian Women Lawyers Association drafted in gratis on behalf of the Respondent herein. The appeal was heard by way of written submissions and both parties complied to the submissions schedule.

The Appellant's counsel submitted jointly for the 2nd and 4th grounds of appeal argued separately for the 1st and 3rd grounds of appeal. Arguing in support of the 1st ground, the Appellant's counsel submitted that the Tribunal erred in not finding that the application was time barred based on the principle of adverse possession. That, the Appellant took the possession of the suit land through abandonment as the Respondent was not living at Ngarasero village. That, the Appellant requested to be allocated the suit land and his request was granted by the Ngarasero Village Council. That, until the dispute arose, he had stayed in the suit land for over 13 years un interrupted. He maintained that the trial Tribunal chairman ought to have rejected the Respondent's

claim for contravening the law of limitation Act Cap 89 RE 2019, section 3(1)(2) read together with its Schedule, Part I paragraph 22.

Arguing for the 3rd ground the Appellant submitted that trial Tribunal erred in failure to visit the suit land. It is the Appellant's claim that there was no clear description of the size and boundaries of the suit land. That while the Respondent stated that the suit land measured 30x6 feet the Appellant stated that the suit land measured 4x16 feet. It was his argument that visiting locus in quo would have assisted the Tribunal to identify the boundaries and clear doubt on actual size of the disputed land. He was of the view that failure to visit the locus in quo to ascertain the size, boundaries and description of the suit land is contrary to Regulation 3(2) (b) of the Land Disputes Courts Act (District Land and Housing Tribunal) Regulation 2003 GN No. 174 of 2003. To cement on this, the Appellant cited the case of **Jeneroza Prudence Vs. Matungwa Salvatory,** Land Case Appeal No 25 of 2020 HC at Bukoba (Unreported).

Arguing the 2nd and 4th grounds the Appellant's counsel submitted that during trial the Respondent did not submit any document proving ownership of the disputed land. Referring the principle, 'he who alleges must prove' the Appellant submitted that the Respondent was unable to

prove his allegation. To buttress his argument the Appellant's referred section 110(1) (2) of the Evidence Act Cap 6 R.E 2019 and the case of **Felix M. Shirima Vs. Mohamed Farahani and another**, cited in the **the Manager NBC Tarime Vs. Enock M. Chacha** (1993) TLR 228. The Appellant maintained that the Respondent failed to prove her case to the requires standards as no document was tendered to prove her ownership of the suit land. In concluding, the Appellant prayed for the appeal to be allowed with costs.

Before submitting on appeal, the Respondent raised a complaint that she was not served with the grounds of appeal on time. She contended that she was served with summons without attaching the petition of appeal hence the Respondent was not aware of the grounds of appeal. Referring Order XXXIX Rule 14(1) of the Civil Procedure Code Cap 33 R.E 2019 the Respondent claimed that she was taken by surprise as she found the grounds of appeal at the hearing stage after being served with written submissions.

Responding to the 1st ground of appeal the Respondent submitted that the cause of action arose in the year 2005 where the Respondent found trespassers into the suit land. That, she lodged the application before the trial Tribunal in year 2016 that is, within 11 years which is

within the time limit to lodge land dispute. She added that 12 years should be counted in considering that the disputed was first referred to other adjudicatory bodies as per section 3(1) (2) and Schedule at part 1 Paragraph 22 of the Law of Limitation Act Cap 89 R.E 2019. That, from 2005 to 2013 the dispute was being dealt with by the Village Land Counsel and the minutes to that effect was tendered as admitted as exhibit. Referring section 7 (a)(c) of the Land Disputes Courts Act, Cap 216, R.E. 2019, the Respondent insisted that in counting time for filing suit, the time spent in trying to settle the dispute in the Village Land Counsel should be considered.

The Respondent further submitted that, before the trial Tribunal the issue of time limit was not raised by the Appellant thus, the same could not be raised at the appellate stage. She referred the cases of **Joel Mwangambako Vs. Republic,** Criminal Appeal No 519 of 2017, **Halfani Rajabu Mohamed Vs. The Republic,** Criminal Appeal No 34 of 2020 HC at Dar es Salaam.

On the 3rd ground the Respondent submitted that visiting locus in quo is not mandatory unless the chairman of the Tribunal discover the importance of doing so. That, the Respondent discharged her duty by describing the boundaries and size of the disputed land and the Tribunal

chairman narrated the reasons behind vacating from an order for visiting the locus in quo. She invited this court to refer the case of **the Concern Development Initiatives in Africa (For DIA) & another Vs. Ambero Consulting (Gessellschaft mbH) & another,** Civil Case No. 26 of 2017 [2020] HC 1460 Tanzlii on the holding that court orders must be obeyed and cannot easily be impeached by any party to the proceedings.

On the 2nd and 4th grounds the Respondent submitted that the record and judgment of the trial Tribunal revels that there was a clear evaluation of all evidence adduced by the parties before the trial Tribunal. She invited this court to be guided by the case of **Yasin Kagurukila Vs. Republic,** Criminal Appeal 2022 (unreported) in concluding that the trial Tribunal which had duty to assess witnesses, performed its duty and properly assessed and considered their evidence before concluding that there were weaknesses in defence evidence for they failed to tender exhibits proving process of acquisition of the suit land. That, the trial Tribunal in its obiter dictum narrated the procedure of the village council to re-possess the abandoned land. That, the Appellant failed to call any member from the Village Council to testify on the procedures under section 45 and 8 of the Village Land Act, Cap. 114

R.E 2019. The Respondent concluded with a prayer that the appeal be dismissed and the decision of the trial Tribunal be upheld.

In a brief rejoinder, the Appellant's counsel first responded to the Respondent's complaint of not being served with grounds of appeal. He argued that such complaint is baseless as it was never raised before the matter was scheduled for hearing. He was of the view that since the Appellant entered appearance before an order for hearing was made, she could have requested for the copy of petition of appeal.

In response to the submission on grounds of appeal, the counsel for the Appellant reiterated his submission in chief and added that if there is proof that the suit land was occupied by Appellant since 1988 the application instituted in 2016 was time barred for 28 years has passed. On the issue on visiting the suit land, the Appellant maintained that the Respondent failed to describe the suit land in terms of size and boundaries. He insisted on the need to visit the locus in quo and invited this court to be guided by the case of **Nizar M.H Vs. Gulamali Fazali Janmohamed** (1980) TLR 29. The Appellant thus prayed that the appeal be allowed.

Before delving into the merit of the appeal, I would first respond to the complaint raised by the Respondent that she was not served with

the petition of appeal. The proceedings of this court reveals that the Appellant appeared in court before the matter was scheduled for hearing but at no point of time, she informed this court that she was not served with the petition of appeal. I therefore agree with the Appellant's argument that this complaint is baseless. Even if proved that she was not served with the petition of appeal, the Respondent was unable demonstrated how she was prejudiced. The appeal was argued by way of written submissions, the grounds of appeal were clearly listed and argued in Appellant's submission. Thus, the claim that the Respondent was taken by surprise is flimsy and unjustifiable as she had enough time to read the grounds of appeal and Appellant's submission and conduct research before preparing the submission against the appeal. This argument is therefore disregarded by this court for not going to the root of this appeal.

Now reverting to merit of appeal, I have given deserving weight to the submissions for and against the appeal. I have also considered the record of the trial Tribunal. I will determine this appeal based on the sequency adopted by the parties; the 1st and 3rd grounds will be determined separately while the 2nd and 4th grounds will be determined jointly.

On the first ground it was contended that the trial Tribunal had no jurisdiction to entertain a suit which was time barred. Two issues were raised here; one, that, 12 years for instituting land dispute was already lapsed and two, that, since Appellant was in occupation of the suit land for more than 12 years, the principle of adverse possession stands. It was argued by the Respondent that issue of jurisdiction based on time limitation was never raised before the trial Tribunal hence the same should not be entertained. In my view, that argument is baseless.

I understand that issue of time limitation goes to the jurisdiction of the court to determine dispute before it. It is a long-established principle that issues of jurisdiction may be raised at any time even at appellate stage. See, the Court of Appeal decision in Civil Appeal No. 26/01 of 2016, **Mwananchi Communications Limited and 2 others Vs. Joshua K. Kajula and 3 others** which cited with approval the cases of **Tanzania Revenue Authority Vs. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported) and **Tanzania-China Friendship Textile Co. Ltd. vs Our Lady of the Usambara Sisters** [2006] TLR 70.

Item 22 to the First Schedule of the Law of Limitation Act prescribes 12 years as the period of limitation for instituting proceedings

for suit to recover land. The law is very clear that computation of time (12 years) accrues from the date when the cause of action arose in terms of section 5 of the Law of Limitation. As it was ably demonstrated above, the cause of action which the Appellant challenges arose when the Respondent alleged to have discovered trespass to the suit land, in 2005. Her evidence also reveal that she started making follow up until 2013 when the matter was officially dealt with by the village authority. She then instituted a suit before the DLHT on 29th February 2016 as per exchequer receipt No. 3013285 which is almost 11 years from the date she discovered trespass. For that reasons, 12 years limitation could not apply in this matter.

On the argument that the trial Tribunal failed to consider the principle of adverse possession, I would like to be guided by case laws which made a clear interpretation of that principle. In this, I refer the cases of **Moses Vs. Lovegrove** [1952] 2 QB 533 and **Hughes vs. Griffin** [1969] 1 All ER 460 which were quoted with approval by the Court of Appeal of Tanzania in the case of **Bhoke Kitang'ita Vs. Makuru Mahemba,** Civil Appeal No. 222 of 2017 CAT at Mwanza (Unreported) which cited with approval the decision in the case of **Registered Trustees of Holy Spirit Sisters Tanzania Vs. January**

Kamili Shayo and 136 Others, Civil Appeal No. 193 of 2016, where it was held that: -

> *"[On] the whole, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following: -*
>
> *(a) That there had been absence of possession by the true owner through abandonment;*
>
> *(b) that the adverse possessor had been in actual possession of the piece of land;*
>
> *(c) that the adverse possessor had no colour of right to be there other than his entry and occupation;*
>
> *(d) that the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;*
>
> *(e) that there was a sufficient animus to dispossess and an animo possidendi;*
>
> *(I) that the statutory period, in this case twelve 12 years, had elapsed;*
>
> *(g) that there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
>
> *(h) that the nature of the property was such that in the light of the foregoing/adverse possession would result."*

In the matter at hand, the Appellant in his evidence at page 22 to 23 of typed proceedings of the trial Tribunal claimed that he occupied the suit land in 1998 but was officially allocated the land by the village

counsel in 2003. The circumstance in this case does not fit in the principle of adverse possession as above explained. In other words, since the Appellant allege to be allocated the suit land by the village authority, the claim based on adverse possession cannot stand. In Civil Appeal No. 104 of 2020, **Frank Lionel Marealle Vs. Joseph Faustine Mawala** (As legal representative of Jennifer P. Lyimo, Deceased), a party claimed adverse possession on the basis that he purchased a suit land. The Court of appeal held at page 11 as follows: -

> *"Therefore, in our view, since the Appellant's claim of ownership of the dispute land is based on the purported sale between him and the seller, the question of adverse possession does not arise,...."*

Similarly, in our case the Appellant's claim of ownership of the suit land is based on the allocation by the village counsel hence the question of adverse possession does not arise. It cannot be said that the Appellant occupied the abandoned land and peaceful enjoyed using it for more than 12 years for him to claim under adverse possession principle. I therefore dismiss this ground and find that the trial Tribunal had jurisdiction to entertain the dispute between parties.

Regarding the 3rd ground on failure to visit the locus in quo, the records are clear that Respondent requested the Tribunal to visit the locus in quo and the court after closure of evidence of both parties,

adjourned the case for purpose of visiting the suit land. However, after several adjournments, there was a change of Charman who also discovered that assessors who assisted in trial were no longer operational. He then opted to vacate from the previous order for visiting the locus and gave reason for that decision. In that regard, I do not see any serious error committed by the trial Tribunal. It must be noted that, it is within the discretion of Tribunal or court to visit the locus in quo and that is done for purpose of ascertaining contention based on demarcation, size and location of the suit land. In the present case the Respondent described the suit land and its demarcation in her application form as well as reply to the defence. She stated that the suit land is measured 16x30 feet, located at Ndalalani suburb at Ngarasero village. The demarcations were described as water trench in the north, Mama Ziada/Yohana Seper/Jeremia, Emmanuel Kashanga in the west and Zakayo Olemedeye in the south. Nothing was raised by the Appellant during hearing in relation to the size and boundaries of the suit land and for that matter it was not among issues raised for determination. I maintain also that it was within the discretion of the trial Tribunal to rule out that there was need for visiting the locus in quo or not and if the Tribunal found no reason for that visit, it cannot be

faulted for invoking its discretion. I therefore find no merit in this ground.

On the 2nd and 4th grounds based on assessment of evidence, the matter for the consideration is whether there was proper evaluation of evidence by the trial Tribunal. It was contended by the Appellant that the trial Tribunal failed to properly evaluate the evidence thus arrived to erroneous decision that the Respondent proved her case to the standard required. Going through the judgment of the trial Tribunal I am certain that there was proper evaluation of evidence by the trial Tribunal. Form page 4 to 6 of the judgment, the trial Tribunal traced ownership for both parties and was satisfied that Respondent's evidence proved ownership as opposed to that of the Appellant and others. I also undertook initiative to go through the evidence in record.

The Respondent claimed that she was allocated the suit land in 1987 by Engusero village chairman Simon Sundi. That, she constructed a house therein in 1988 and lived therein. PW2 supported her evidence as he was the one who assisted the Respondent in constructing a house in the suit land and was among members of the village council. She left for treatment and when she went back to her village, she discovered that her land was invaded by the Appellant and other people who

demolished her house and her documents for allocation were damaged therein. She made follow and some of the people decided to release the land voluntarily but the Appellant and others refused. She made a complaint to the village authority and after a meeting conducted by village leaders and the decision was made that the suit land belonged to the Respondent. That fact is also supported by PW2, PW3, PW5 and Respondent's exhibits; P1 and P2. Although the Appellant alleged forgery to the village meeting minutes, no evidence was submitted to prove the alleged forgery. In addition, the village leader who also attended Respondent's complaint testified in court supporting Respondent's evidence that the suit land belonged to the Respondent.

The Appellant claimed that he started occupying the suit land in 1998 and was officially allocated the same by the village counsel in 2003 but never tendered the allocation letter that was issued to him. If we agree that the Appellant started to occupy land in 1998, the Respondent evidence will supersede that of the Respondent as her evidence reveal that she was in occupation of the same before the Appellant by 1987. And if we agree that the Appellant as allocated land in 2003, the same issue will arise that the appellant was unable to prove such allocation.

In the light of above discussion, it is my settled view that the trial Tribunal was correct to conclude that on balance of probabilities the Respondent proved ownership of the suit land. From what I have endeavoured to discuss above, the appeal is devoid of merit and the same is dismissed. I find no valid reason to temper with the decision of the trial Tribunal and the same is hereby upheld. The Appellant shall bear the costs of the appeal.

DATED at **ARUSHA** this 12th day of June, 2023

D.C. KAMUZORA

JUDGE