IN THE HIG COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT ARUSHA

LAND APPEAL NO.5 OF 2015

(C/F Appeal No.61 of 2013 in the District Land and Housing Tribunal of Arusha originating from Mateves Ward Tribunal in Application No.2 of 2013)

PAULO LESHONGON ..... APPELLANT

VERSUS

MESHUKO KILUSU ..... RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J.

In the Mateves Ward Tribunal Application No. 2 of 2013 the appellant herein successfully sued the respondent. Aggrieved by the said decision, the respondent herein successfully appealed to the District Land and Housing Tribunal of Arusha in Appeal No. 61 of 2013. Aggrieved by the outcome, the appellant herein preferred this second appeal against the Judgment and Decree of the Appeal No. 61 of 2013 dated 17/12/2014 on the following four (4) grounds namely:-

1. That, the learned appellate chairman grossly erred in law and in fact in not finding and holding that the Appellate at the trial Ward Tribunal in Original Application No. 2 of 2013, was not duly appointed legal representative of his deceased father.

2. That, the learned appellate chairman grossly erred in law and in fact in not finding that the trial Ward Tribunal lacked pecuniary jurisdiction to determine the original Application No. 2 of 2013, a land

of more than 30 acre each valued at more than shillings 30,000,000/=

3. That, the learned appellate chairman grossly erred in law and in fact in finding and holding that the Respondent did not prove that he had been in occupation of the disputed land since 1991.

4. That, the learned appellate chairman grossly erred in law and in fact in finding and holding that the Respondent had invaded in the disputed land since 1991 without Interruption thus Appellant's original application in Application No. 2 of 2013, was time barred.

The Appellate prayed that his appeal be allowed by quashing and setting aside the decisions of both lower land tribunals with costs and any party interested party be allowed to a fresh action in court of competent jurisdiction.

Submitting on the first ground of appeal, it was the appellant's contention that it is clear from the record of the trial Ward Tribunal the appellant had sued in capacity of an Administrator of Estate of his late father Leshongon Meilanyi. Nevertheless, a cursory look at the judgments of the Ward Tribunal patently shows that the appellant did initiate the proceedings in his own capacity. The appellant argued that considering the fact that it was in the course of proceedings the appellant informed and tendered to the trial Ward Tribunal letter of his appointment of administration of the estate of his late father, it was irregular for the trial Ward Tribunal to hold that the appellant was clothed with necessary capacity to sue for the property of his late father. The appellant argued that it is trite law that appointed administrator should sue in his capacity as a duly appointed administrator by indicating clearly immediately after his name in the title of the case. He argued that a reading at the last page of the trial Ward Tribunal decision that "***vilevile mdai ana hati ya mirathi iliyotolewa na mahakama ya mwanzo Emaoi iliyotolewa tarehe 27/08/2013***" reveals the fact that

letters of administration of the estate of the late Leshongon Meilanyi given to the appellant might have been introduced to the Ward Tribunal in course of hearing the complaint. To support his arguments the appellant cited the court of appeal of Tanzania case in Civil Application No.5 of 2014 **Saidi Ibrahim** *(Legal Personal Representative of Ibrahim Ramadhani)* **Vs Melembuki Kitadho** where Luanda, J.A. observed at page 2 of the Ruling that:

> *".....I wish to point out that to be appointed as an administrator of the deceased estate is not enough to enable such person to represent the deceased in Court, the administrator must make a formal application in this Court so that he is made party to the proceedings..."*

In view of the decision of the Court of Appeal and the facts of the case as submitted here in above, the Appellant had no locus standi to sue in his own name for the property of his late father. The appellant prayed that this ground 1 of the Appeal be allowed.

In his reply, the respondent submitted that the argument lack merits since the same argument was raised by the respondent's counsel as ground no.3 in the appellate tribunal in Land Appeal No.61 of 2013 to the effect that the appellant has no locus standi to sue the Respondent but to our surprise the learned counsel for the Appellant herein presented the same ground in the High Court just to pre-empt decision of the District Land and Housing Tribunal of Arusha in which the learned Chairman allowed Appeal with costs raised on the issue of time limitation. He argued that to entertain the same matter of locus standi which was raised earlier amount to waste of time and court resources.

Arguing on the second ground of appeal that the learned appellate Chairman grossly erred in law and in fact in not finding that the trial Ward Tribunal lacked pecuniary jurisdiction to determine the original application No.2 of 2013, on a land of more than 20 acres valued at more than shillings 3,000,000/=; the appellant submitted that accordance with the

provision of **section 15 of the Land disputes Courts Act, No.2 of 2002,** the pecuniary jurisdiction of the Ward Tribunal is limited to the property or land valued at more than three million shillings. He argued that in the decision the trial Ward Tribunal measured the land as:

> *"upana na magharibi 405, urefu kusini ni mita 340 na eneo iliyolimwa 'kwa upana magharibi mita 280 na upana mashariki mita 291.*

Which indicates that the disputed farmland is over 7 acres which if at minimum estimated at value of one million shillings per acre shillings seven million beyond the pecuniary Jurisdiction of the trial Ward Tribunal. To support his argument the appellant brought to the attention of the Court that the land in dispute was formerly used by NAFCO which is makes it prime farmland and further cited the decision of this Court in Civil Case No.10 of 1994(unreported); **Awaichi Masawe V. Arusha Municipal Council**, where at page 2 first paragraph of his Ruling Mushi, J held;

"Therefore any doubt as to the jurisdiction of the court should be settled at the outset. Since a decision made by a court without jurisdiction is of no legal effect and it cannot be implemented any way, a party may raise it at any stage in the course of proceedings before judgment".

The appellant further cited the cases of **M.H. Jan Mohamed vs Registrar of Buildings (1972) HCD No.338**arguing that the two decisions put it utterly clear that the jurisdiction of the court could also be determined by an allegation of any party to the proceedings and it being a point of law can be raised at any stage of proceedings including on appeal. The appellant further cited the decision of the Court of Appeal Tanzania in the decision of **Tanzania Pharmaceutical Industries Ltd vs Dr. Ephraim Njau(1999) TLR 299** at page 305 wherein his Lordship Lubuva, JA as he then was, held:

> *"I accept Mr. Ngalo's complaint that at the trial, the issue relating to the legal status of the applicant company was not raised. But as Mr.*

Ngalo would be doubt be aware, a legal issue even thought not raised at the trial, can be raised at the appeal stage" (underlining is ours for emphasis)

And the court of Appeal of Tanzania **Wakf and Trust Commissioner (As Administrator of the Estate of the late Zawadi binti Said) V Abbass Fadhili Abbass and another (2003) TLR 377** at page 379, where Ramadhani, JA, as he then was, reporting for the Court observed:

"We do not agree with Mr. Patel that since jurisdiction was never an issue before the Regional magistrate, the learned Judge should not have entertained it when raised for the first time at the appellate stage. The issue of jurisdiction is fundamental and it can be raised at any time in proceedings".

The appellant submitted that the pint of jurisdiction of the lower trial tribunal was not raised in the first appellate Tribunal and thus being a fundamental point of law it can be raised and determined on appeal and hence prayed that the second ground of appeal be allowed.

In reply, the respondent contended that it was the appellant herein who instituted the original land application No.62/2013 in the trial ward tribunal and therefore there was no need to impute the blame to appellate tribunal on the issue of pecuniary jurisdiction. The respondent wrongly argued that it is a well known settled principle of law that an appellate Court cannot entertain new matters which were not raised at the trial unless the leave of the court id sought and obtained. The issue of jurisdiction can be raised at any stage as it goes to the root of competence of the authority to determine a matter, hence the case of **Warehousing and Forwarding Co. Ltd Vs Jaferali and Sons Ltd [1963] E.A 385** cited is also distinguishable in our case.

The respondent further argued that there was no valuation report which was entered by the appellant herein in the trial tribunal to show that the land in dispute is more than three million alleged by the appellant counsel.

That since there was no valuation report which was tendered before Mateves Ward Tribunal, then this Honourable Court will not be moved by rumors or empty allegations. The respondent submitted that this ground lack merits and ought to be dismissed with costs.

Regarding the 3rdand 4thground of appeal, the appellant submitted that the decision of the first appellate court on the basis that the Respondent did not lead any evidence to the effect that he had been in occupation of the disputed land since 1991. That going by the proceedings and Judgment of the trial Ward Tribunal there is no evidence that the Respondent testified and the only evidence offered is of his witness one Korduni Kilusu at page 2 of the Judgment which is not supportive to the Respondent and that by the evidence on record, it is trite that the lower tribunals could not have done justice to any party meritoriously on the basis that the evidence of both parties taken as whole is very scanty and vague. The appellant argued that considering the scantiness of evidence and for better dispensation of justice, it enjoins this Honourable Court to order for taking of additional evidence. The appellant cited the case of **Willian Mrema Vs Samson Kivuyo [2002]291 TLR**, where the Court of Appeal of Tanzania held that;

> *"Additional evidence can be taken on appeal where the need arises and the other party should be given an opportunity to cross – examine the said witness."*

The appellant hence argued that in the circumstances, there is exceptional circumstance that warrants taking of additional evidence for clarification due to scantiness of the record of the trial Ward Tribunal including issued which are still very uncertain surrounding the matter at hand such like previous case (Civil Case No.58/1994) touching the same land which considerably was determined by other competent court.

In alternative to the order of taking additional evidence or generally taking submissions on grounds of appeal as one whole, the appellant submitted

and prayed that the Court order retrial of the suit in court of competent jurisdiction to ensure justice triumph to the party on merit.

In reply, the respondent submitted that the appellant's arguments are a misconception and misdirection in the eyes of law since at least all witnesses in the trial tribunal and the Appellant himself proved under the balance of probability that the Respondent herein has stayed in the disputed land for more than 21 years undisturbed. That this version was repeated by the Appellant herein at page 1 of the Trial Ward Tribunal Judgment in which the appellant alleged that the Respondent invaded the disputed land since 1992 and we quote the same for clarification.

> *"dai la mdai ni 'kwamba anamlalamikia mdaiwa kuvamia shamba la marehemu baba yao mnamo mwaka 1992 na kwamba marehemu baba yao aliacha wosia adai shamba hilo lililoko Laroi lenye ukubwa wa making0 12".*

The respondent argued that the law is very clear as to when any person is required to institute a suit to recover the land provided under item 22 of the 1st schedule of the law of Limitation Cap.89 [R.E.2002] as 12years. To support his argument, the respondent cited the case of **Yusufu Same and another Vs Hadija Yusufu [1996] TLR 347** where it was held by Honourable Msumi, J that:

> *"The limitation period in respect of land, irrespective of when letters of administration had been granted was 12 years and or this basis the claim was time barred".*

Further cited the case of **Mathias Katonya Vs Ndola Msimbi [1999] T.L.R 390** Honourable Moshi, J said that:

> *"As the land was held under customary law the limitation period for its recovery was 12 years and therefore the suit was time barred".*

The respondent submitted that him and his father have been in occupation of land for a minimum of 18 years which is quite a long time and it would be unfair to disturb their occupation

Having gone through the submissions, I think it is convenient that I start by disposing of the 2nd ground of appeal which touches the jurisdiction of the matter, followed by the 3rdand 4thgrounds of appeal on limitation of time and if need be, then I will address the remaining grounds of appeal.

On the second ground of appeal that the learned appellate chairman grossly erred in law and in fact in not finding that the trial Ward Tribunal lacked pecuniary jurisdiction to determine the original Application No. 2 of 2013, a land of more than 30 acre each valued at more than shillings 30,000,000/=. I have decided to address this issue with priority because issue of jurisdiction goes to the root of the ability of the tribunal to entertain the matter and the same can be raised at any stage. However, as correctly argued by the counsel for the respondent, it was the appellant who initially sued the defendant at the Ward tribunal. If the issue of value of land was crucial he should have approached the proper forum for the case. Furthermore, the value of land has not been disclosed at any point before this appeal was lodged in this Court therefore by merely submitting that the land is worth 30,000,000/= the Court will not be prompted to determine that as the actual value of the land for the sake of jurisdiction. No official valuation of land was done or any evidence adduced to that effect, hence considering the fact that the appellant is the one who lodged the first instance case, I cannot entertain the matter any further as what I am seeing here is that the appellant is doing forum shopping after seeing that the matter is about to reach the climax of litigations.

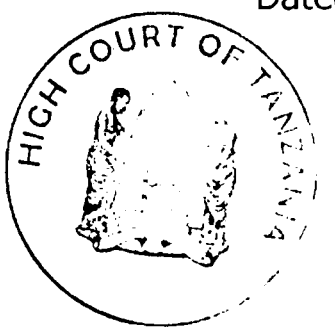
Going to the third and fourth ground of appeal that the learned appellate chairman grossly erred in law and in fact in finding without proof and holding that the Respondent had invaded in the disputed land since 1991 without interruption thus Appellant's original application in Application No.

2 of 2013, was time barred. I have gone through the records of both the Land Tribunals and the trial tribunal records has evidence that the respondent was in occupancy of the land without interruption since 1991. In cross examination by the respondent at the trial tribunal the appellant admitted that the last time he used the disputed land was in 1990 and that he realized that the respondent had invaded his farm in 2013, indeed this is a lapse of 22 good years before any action was brought against the respondent. As argued by the respondent that SM3 on the trial tribunal admitted also that the respondent allegedly invaded the land in 1991 and has since been in occupation of the same. Therefore by virtue of item 22 of the I Schedule of the Limitation Act, Cap 89 R.E 2002 the period of limitation for suits to recover land is twelve years. As such the appellant was time barred to bring the action for the recovery of land in question. I therefore agree with the Chairman of the District Land and Housing Tribunal that from the evidence adduced at the Ward Tribunal the respondent has been in uninterrupted occupancy of land for 21 consecutive years hence the initial claim at the Ward Tribunal was grossly time barred.

Having said that, I see no reason to dwell on the remaining two grounds of appeal. Under the circumstances therefore, I find the appeal devoid of merits and consequently I dismiss the appeal with costs. The judgment and decree of the District Land and Housing Tribunal is hereby upheld, the respondent herein is the lawful owner of the suit land and he should be left with peaceful enjoyment of the land. .

Appeal Dismissed

Dated at Arusha this 26th day of May, 2015



SGD

S. M. MAGHIMBI

JUDGE

I hereby certify to be a true copy of the original.

Deputy Registrar
High Court
Arusha
23/11/15