IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPEAL NO. 8 OF 2019

(From the Decision of the District Land and Housing Tribunal of Mtwara at Mtwara in Land Case Appeal No.144 of 2019 and Original Ward Tribunal of Mkunya Ward Tribunal in Application No. 18 of 2019)

AJALI JOJI MSELEMA..APPELLANT

VERSUS

MAIMUNA TUMAINI SEMBIA..............................RESPONDENT

JUDGMENT

18 May & 6 August, 2021

DYANSOBERA, J.:

The appellant, Ajali Joji Mselema sued Maimuna Tumaini Sembia before Mkunya Ward Tribunal for grabbing the suit land situated at Chilanga village and Nkunya Ward which was previously owned by his late father one Joji Mselema who died in 1998. It was alleged by the appellant that when burial ceremony was completed, there emerged one person called Kasbeti Tumaini who told them that the farm situated at Chihanga did not belong to Joji Mselema; rather it was a clan land. He required them not to include it in the estate of the late Joji Mselema. The Kasbeti's concern was accorded weight and the Chihanga's farm became under his control since the appellant was not available. Kasbeti owned that farm for ten years something which prompted the clan members to ask him and later on they went to Nanguruwe Ward Tribunal claiming their inheritance. Thereafter, they divided Chihanga's farm into five parts to the following persons Kasbeti Tumaini, Fatu Issa,

Tatu binti Likongolo, Maimuna Tumaini and Lusi Mtavinga. According to the appellant, each person named above continued utilising a piece of land divided to him/her. When the appellant came back, he found the estates of his late father divided to the member of his clan though some of the estates were under the control of his sister.

The appellant sat with his sister and was given a duty to make follow-ups of the estates taken by the members of the clan. Before he ventured to that exercise, the appellant dealt with the land controlled by his sister and in due course he realized that his sister was not truthful. Seeing that, the appellant sued her in the primary court which ordered them to file the probate and administration matter for their late father. In 2016 he started dealing with the farm of Chihanga. Thereafter, the respondent came and found the appellant dealing with the suit farm. This prompted the respondent to sue him at Mkunya Ward Tribunal whereby the appellant was declared the lawful owner. The respondent was dissatisfied with the result. She appealed to the District Land and Housing Tribunal which nullified the proceedings, decision and orders thereto for lack of *locus standi*. The respondent continued using the suit farm, the act which prompted the appellant to file a land case before Mcholi Ward Tribunal whereby the appellant won the case. Thereafter, the respondent appealed to the District Land and Housing Tribunal which, for the second time, nullified the proceedings and decision thereto for being instituted in the Ward Tribunal which lacked jurisdiction. Thus, the appellant filed a fresh land matter against the respondent before Mkunya Ward Tribunal which declared him the lawful owner.

On the part of the respondent, she claimed that the suit farm was owned by the Mzee Mselema and his wife Binti Mpita. After the demise of Mzee Mselema and his wife the farms including the suit farm were divided to different people including her. According to the respondent, the appellant and his sister had divided the farm land situated at Kilimani.She was puzzled to see the appellant claiming the suit farm while his father possessed three farms.

After a full trial, the Ward Tribunal declared the appellant the rightful owner. That decision made the respondent unhappy. She consequently e appealed to the District Land and Housing Tribunal for Mtwara at Mtwara which for the purpose of this case will be referred as 'District Tribunal'. The District Tribunal heard the parties and eventually allowed the appeal by quashing and setting aside the orders and declared the respondent the rightful owner of the suit land. The Tribunal reasoned that the respondent has been in use of the suit farm for more than twelve (12) years without interference and the appellant instituted his case against the respondent out of time required to claim land.

Undaunted, the appellant has preferred an appeal to this court on six grounds of complaint as follows: -

1. That, the trial Appellate Tribunal grossly erred in law and fact by deciding the suit land in respondent's favour.
2. That, the trial Appellate Tribunal grossly erred in law and in fact by declaring the suit land is time barred.
3. That, the trial Appellate Tribunal grossly erred in law and in fact that at the time the late Joji Mselema passed away, the

Appellant was in Dar es Salaam where he stayed for 11 years, before he returned home.

4. That, the trial Appellate Tribunal grossly erred in law and in fact when failed to consider that the law limitation is exemption for a person who is far away from the jurisdiction of the disputed matter.
5. That, the trial Appellate Tribunal grossly erred in law and in fact when failed to consider that, the suit land was/is lawful property of the appellant's late father by which after his death were not properly distributed to the legal heirs.
6. That, the trial Appellate Tribunal grossly erred in law and in fact by deciding the suit land in personal whims, without considering the strong arguments advanced by the appellant on how the appellant is lawful owner of the suit land.

At the hearing of this appeal, the appellant appeared and was represented by Mr. Ali Kasian Mkali, the learned advocate whereas the respondent appeared in person and unrepresented. The parties opted to dispose of this appeal by way of oral submissions.

The learned counsel for the appellant argued the 1st, 2nd, 5th and 6th grounds and dropped the 3rd and 4th grounds of appeal. The thrust of Mr. Mkali's submission before me in respect to the first ground was that case No. 144 of 2019 was not of the first instance but originated from Application No. 7 of 2016 from Mkunya Ward Tribunal whereby Ajali George Mselema was the claimant and the present respondent Maimuna Tumaini Sembia was the defendant. There, the appellant carried the day. Seeing that, the respondent appealed vide Land Appeal No. 81 of 2016.Later on, the District Tribunal quashed and nullified that decision

of the Ward Tribunal and directed the matter to start afresh before the same Ward Tribunal by taking into account the quorum and the signatures of the members.

It was the further argument of the learned counsel that it was ordered that respondent should be appointed as administrator of estate of his late father. Though the respondent is not the sole person holding the disputed property but they are five people who are using the disputed land. Mr. Mkali went on and submitted that the order they are challenging is the declaration that the dispute land belongs to the respondent while the suit land is being claimed by other persons.

The learned counsel further submitted that the tribunal carried as it did not take into account the order of trial de novo. He emphasized that the competence of the jurisdiction is considered in every sitting. Thus, he argued that before the Ward Tribunal, the quorum was incomplete and was in contravention of its previous order. In addition, Mr. Mkali submitted that secretary to the ward tribunal was one of the members who sat in the matter and this vitiated the proceedings as the quorum was incomplete. In light of his submission, the learned counsel was of the view that the chairman at the District Land and Housing Tribunal was supposed to set aside the decision of the Ward Tribunal and not to decide in favour of the respondent. For that reason, the learned counsel for the appellant argued that the judgment of the lower Tribunal which originated from a nullity should be nullified.

Submitting on the second ground Mr. Mkali argued that issue of time limitation was raised by the Chairman this was not true as before the trial Tribunal the issue of time limitation not raised. The learned counsel stressed that the main issue was the ownership of the disputed

land and it was clear that the land belonged to the late Mselema. He based his argument on the evidence in the record of trial tribunal that he had three fields whereby two fields were at Kihanga while the other was at Kilimani.

Furthermore, Mr. Mkali submitted that after the demise of the appellant's father in 1998 there was no administrator but his property remained in the hands of relatives and his in laws. The learned counsel further argued that in 2012 letters of administration were issued to appellant. Mr. Mkali argued that since there were three farms, only one farm was being used by clan members after the appellant was granted letters administration. In addition, the learned counsel submitted that in 2015 the appellants wanted to distribute the estates but confronted with an obstacle on the farm situated at Chihanga where the clan elders had divided it between themselves alleging that it was clan land.

In view of that submission, Mr. Mkali argued that the learned Chairman erred in holding that the case was time barred as the clan members including the respondent and other four. In addition, the learned counsel for the appellant argued that the respondent and her late brother Kasbert were licensees who were given permission to use the suit farm. He further stressed that the respondent and her fellows were not adverse possessors since they had permission to use the suit farm. Mr. Mkali went on and submitted that the licensee has no good title and cannot claim to be an adverse possessor. Also, the learned counsel for the appellant argued that from 2016 the parties are on court's corridors on the ownership claims. Besides, he submitted the respondent was not the sole person holding the land. Eventually, the learned counsel for the appellant prayed this court to nullify the

judgments of both the Ward tribunal and District Land and Housing Tribunal as they were in unjust.

As regards to the fifth ground, Mr. Mkali submitted that even the learned Chairperson admitted that the late Joji Mselema had three farms and the farm situated at Chihanga was given to the clan members and was used as a clan land (Page 6 of 2nd paragraph). The learned counsel further argued that it is this land which is in dispute. Apart from that, he submitted that the appellant is the son of the deceased and adverse possession had no place. Thus, the learned counsel for the appellant was of the view his submission on the fifth ground answers the sixth ground. Lastly, Mr. Mkali prayed that this appeal should be allowed and the justice be seen to be done.

In reply, the respondent submitted that there were two farms and before my mother and the uncle died, they distributed the farms and was given the Chihanga's farm which belonged to her late mother. Whereas, the appellant and Victoria Mselema were given the farm situated at Kilimani.She further argued that then the appellant decided to snatch her farm which before belonged to his aunt (respondent's mother). The respondent insisted that she refused as her mother and appellant's father were came from the same womb.

Apart from that, the respondent argued that she sued the appellant at Mkunya Ward tribunal whereby the appellant carried the day. She successfully appealed to the District Land and Housing Tribunal. The respondent further argued that the suit farm belongs to her and she uses alone. Besides, the respondent submitted that the appellant got his farm from his sister while she got the suit farm from her late mother. Then, as part of her submission she posed a question

why the appellant is grabbing her land. Thus, she emphasised that the suit farm is mine and does not belong to the appellant. Also, the respondent finalised her submission by submitting that the District land and Housing Tribunal was right in its decision. Thus, she called this court to do justice.

In a very short rejoinder, Mr. Mkali submitted that only Kasbeti can have a word and the farm was a clan.

I have carefully gone through the proceedings, decisions of both Tribunals, grounds of appeal and the submissions of the parties. Like they did, I would like to discuss them in the order they appear.

The first ground centre on the appellant's complaint that the appellate Tribunal grossly erred in law and fact by deciding the suit land in respondent's favour. The main arguments by the appellant's learned advocate were that the suit farm is being claimed by other persons. Another argument was the quorum was incomplete and was in contravention of its previous order of the same Tribunal. Mr. Mkali substantiated his argument that secretary to the Ward Tribunal was one of the members who sat in the matter and this vitiated the proceedings as the quorum was incomplete. Before going into details, I think it will be so wise to revisit the law establishing the Ward Tribunals in our jurisdiction. Undaunted, the Ward Tribunals are established under section 3 of the Ward Tribunals Act, [CAP 206 R.E. 2019]. Also, the composition of Ward Tribunals is founded under section 4 of the Ward Tribunal Act(supra). For better understanding and for avoiding pervasion of interest of justice the following are extracts of the provisions of the law:

"3. Establishment of Ward Tribunals

There is hereby established a tribunal for every ward in Tanzania to be known as the Ward Tribunal for the ward for which it is established:

Provided that the Minister may, by notice published in the Gazette, establish for a Ward if the opinion that there are special circumstances which make it necessary or desirable to do so.

4. Composition of Tribunals

(1) Every Tribunal shall consist of-

(a) not less than four nor more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward complied in the prescribed manner;

(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).

(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.

(3) The quorum at a sitting of a Tribunal shall be one half of the total number of members.

(4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal in the event of an equality of Votes the Chairman shall have a casting vote in addition to his original vote.

Whereas, the Land Disputes Courts Act, [CAP 216 R.E. 2019] also touches the composition of the Ward Tribunal as seen under section 11 provides as follows: -

> "Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under 4 of the Ward Tribunals Act"

As far as the complaint is concerned, particularly with regard to the submissions of the learned counsel for the appellant. It is quite clear that the Ward Tribunal of Mkunya was composed with four members who are Abdala S. Mtukutile (Chairman), Hakika M. Mtandi (Member), Aziza M. Mtukucha (Member) and Tabia Abas (Member). These members attended and formed a quorum of the Ward Tribunal for Mkunya as reflected in the untyped proceedings of Ward Tribunal at page 1,5,6,7 and on the sketched map. In all pages I have indicated above there is no name of secretary of the Ward Tribunal of Mkunya. Besides, in the judgment of the Ward Tribunal of Mkunya the members who composed the siting of the Ward Tribunal were the same members

who sat during the hearing of the land dispute. According to my perusal of the record of the Ward Tribunal of Mkunya I found no name of the secretary of the Ward Tribunal. Even the learned counsel for the appellant did not mention the name of the secretary of the Tribunal who sat in the Tribunal as a member rather there is a stamp of the Ward Secretary of Mkunya and signature of unknown name but who signed on behalf of the secretary of the Ward Tribunal which was appended below the names of members of the Tribunal. In that regard, it is quite clear that the stamp and the signature of the person who acted on the behalf of the secretary of the Tribunal did so in administrative capacity when issuing the record to higher Tribunal and not as claimed by the learned counsel. In the light of that observation, I find that the appellate Chairman was right in determining the matter as he did since there was no contravention of the provisions of the laws I have quoted above. Thus, I find the first ground of appeal has no merit hence dismissed.

Coming to the second ground, it is very true that the main issue before the ward tribunal was ownership of the suit farm between the appellant and the respondent. With due respect, I decline to accept the contention of the learned counsel that it was not right for the learned appellate Chairman to raise the issue of time limitation at the stage of appeal. The law of limitation is there purposely in order to bar suits which are filed out of time. In the present case the appellant's father who possessed the suit farm until in 1998, when passed away. After burial ceremony, emerged one person called Kasbet Tumaini who told them that the farm situated at Chihanga was not owned by the appellant's father therefore, should not be included in the probate of the

appellant's father. But the clan left the appellant and his sister with farm situated at Kilimani.

Furthermore, it was the evidence of the appellant that the claim by the Kasbet was not disputed since he was not around. The appellant further told the trial Tribunal that from there the suit farm was under ownership of Kasbet Tumaini for ten years. The evidence which was supported by his witness as reflected at page 5 of the proceedings of the Ward Tribunal of Mkunya. After ten years the clan members asked the Kasbet about the suit farm the situation which necessitated them to partition the suit farm into five parts which were given to Kasbet Tumaini, Fatu Issa, Tatu binti Likongolo, Maimuna Tumaini and Lusi Mtavanga. From there, each person continued using the land he/she got after being partitioned by the clan. According to the appellant, in 2016 he begun making follow-up on the farm situated at Chihanga where he invaded the suit farm which was given to the respondent by the clan after ten years from the death of appellant's father. As I have already said that the appellant's father died in 1998 then after ten years from the death of appellant's father was 2008. In 2008 is when the clan took step to partition the Chihanga farm to other clan members including the respondent and Kasbet Tumaini. On 6.3.2019 is when the appellant filed a land dispute No.18 of 2019 before the Ward Tribunal of Mkunya. From 1998 to 2019 is more than twenty years when the land dispute was filed. Though the record shows that the appellant started his struggle on the suit farm since 2016.

We are all aware that suits on recovery of land have its own time of limitation for instituting it in any tribunal or court of law. The law guiding

time limitation in our jurisdiction is the Law of Limitation [CAP 89 R.E. 2019]. Whereas, any suit for recovery of land is limited to twelve (12) years as per item 22 of the Schedule of the Law of Limitation Act(supra). In the light of that argument, I see no justifiable reason(s) advanced by the learned counsel for the appellant in departing from that truth which was founded by the District Tribunal. Besides, there is no evidence on the proceedings of the Ward Tribunal of Mkunya where either the appellant's father or the appellant had licensed the respondent and other persons to use the suit farm. In the light of that observation, I decline to accept the argument raised by Mr. Mkali that the respondent was the licensee over the suit farm. Therefore, I find this ground has no merit hence dismissed.

As far as the fifth and sixth ground is concerned there is no dispute that the District Tribunal properly determined the matter in favour of the respondent who had been in use of the suit land for more than twenty years without disturbance. Also, from 1998-2012 there are fourteen years where the respondent and Kasbert Tumaini used the suit farm without disturbance. We are all aware that soon after appointment as the administrator of the estate of his late father the appellant ought to have divided the estates to the lawful beneficiaries. But the facts reveals that he started dividing the estates of his late father in 2015 when he encountered with an hindrance from the respondent. This shows clearly that appellant knew that the suit farm did not belong to his late father that is why he took time to react against the respondent. In view of those arguments, I see the fifth and sixth grounds are devoid of merit hence are dismissed.

In view of the foregoing, I find this appeal to be devoid of merit and consequently dismiss it with costs.

It is so ordered.

W.P. Dyansobera

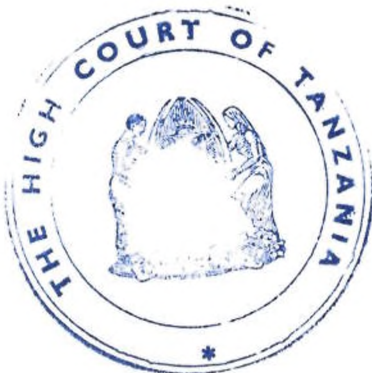
Judge

6.8.2021

This judgment is delivered under my hand and the seal of this Court on

This 6th day of August, 2021 in the presence of both the appellant and respondent.

Rights of appeal to the Court of Appeal explained.



W.P. Dyansobera

Judge