

TANZANIA / JUDGMENT

haji solyambingu vs inocent libanja

2023 tzhc 19290 30 june 2023

COURT
TZHCDECIDED
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UNITED REPUBLIC OF TANZANIA JUDICIARY HIGH COURT OF TANZANIA MOROGORO
DISTRICT REGISTRY AT MOROGORO LAND APPEAL NO. 55 OF 2023 (Originated from land appeal
no. 33 of 2021 of DLHT for Maiinyi District in Original Land Dispute No. 13 of 2020 Ifakara Ward
Tribunal) HA3I SOLYAMBINGU APPELLANT VERSUS INOCENT LIBANJA RESPONDENT

RULING

Date of last order: 07/06/2023 Date of ruling: 30/06/2023 MALATA,³ This is a ruling in respect of the second appeal from the decision of the District Land and Housing Tribunal in Land Appeal no. 33 of 2021. The respondent herein instituted the Land Case no. 13 of 2020 against the respondent before the Ward Tribunal for Ifakara. He claimed that the respondent trespassed into his piece of land and constructed a building Page 1 of 11 thereon. At the Ward Tribunal the respondent won a suit and he was declared the lawful owner of the disputed land. Aggrieved by the decision of the Ward Tribunal, the appellant herein unsuccessfully appealed to the District Land and Housing Tribunal (DLHT) for Kilombero at Malinyi in Land Appeal no. 33 of 2021. The appellant lodged this second appeal in this court armed with seven grounds of appeal;

1. That, the trial tribunal erred in law and facts in entering judgement in favour of respondent by disregarding the appellants ground of appeal on running of time as the appellant has been in occupation of the disputed land and developing it for 17 years from 2003 up to 2020 when the dispute arose with no interference.
2. That, the trial tribunal grossly erred in law and fact for failure to analyse and consider the ground on evidence adduced by the appellant in Ward Tribunal in line with the Land disputes law on how the appellant acquired the land.
3. That, the tribunal chairman grossly erred in law and fact for holding that the appellant failed to prove his case. Instead, the chairman considered a weak respondent's Page 2 of 11 evidence who failed even to prove how his mother acquired the disputed land.

4. That, the trial Tribunal erred in law and fact for failure to analyse the decision of the Ward Tribunal in accordance with the land disputes laws. The decisions which accepted the truth that the appellant had bought ruined house (gofu) and at the same time denied the right of that purchaser to have right to own that land.
5. That, the trial tribunal erred in law and fact for disregarding the appellants evidence and ground of appeal that he had established the building (ruined house) in the disputed land and planted a coconut tree which existed since 2003.
6. That, the trial tribunal erred in law and fact for concurring with the ward tribunal decision in favour of the respondent on issue of inheritance in which the respondent failed to produce any evidence, even minutes of meeting as proof.
7. That, the Tribunal Chairman misdirected himself for failure to analyse the issue of gender specification in Ward Page 3 of 11 Tribunals seat with member less than eight in which he held failure to specify is not fatal. The appellant prayed that, the appeal to be allowed, the decision of the DLHT to be set aside, costs of this appeal to be borne by the respondent and any other order this court may deem fit and just to grant. The respondent was served with a copy of memorandum of appeal and entered a reply with notice of preliminary objection. The preliminary objection was to the effect that: "This appeal is bad in law for being time barred" As a matter of practice therefore, when objection is raised, it must be disposed first before any attempt to proceed into the merits of the matter. On 07/06/2023 when the matter came for hearing, the appellant appeared in person unrepresented while the respondent was represented by Mr. Funuki Sikujua, Learned counsel. Submitting in support of the preliminary objection Mr. Funuki stated that, the appeal was filed out of time, the appellant appealed against the decision delivered on 15/12/2022. This appeal was filed on 12/04/2023. The appellant was required to file the appeal within sixty days from the date of the decision of DLHT. This is the requirement under section 38(1) of the Land Disputes Court Act (LDCA). In this case, the appellant filed the appeal out of time and contrary to the law. Further no leave to file the appeal out of time ever been sought and granted by this court. The learned counsel further stated that the consequences of filing appeal out of time is provided under section 3(1) of the Law of Limitation Act, Cap. 89 R.E. 2019 which provides,
 - (1) Subject to the provisions of this Act every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence" Further section 3 (2) of the Law of Limitation Act defines proceeding to mean; For the purposes of this section a proceeding is instituted- (a)

- (b) in the case of an appeal, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law; Page 5 of 11 In the instant appeal, the time limit within which to appeal is provided by section 38 (1) of the Land Disputes Courts Act, Cap. 216 R. E. 2019 which provides that;
- (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisionary jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court: Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired. The effect is therefore to dismiss the said appeal. To bolster his argument, the learned counsel cited the case of Emmanuel Mgwenuke Vs. Nisifori Mrundi and two others. Land Appeal no. 22 of 2022, High Court (Morogoro) where the court dismissed the appeal on the same reason. It was the learned counsel submission that, counting from the date of the judgment to the date of filing of this appeal, a total of 110 days has lapsed. Counting from the date he received the copy of the judgement on 08/02/2023 to the date of filing of this appeal on 12/04/2023 it is clear sixty-three (63) days had lapsed. Page 6 of 11 Therefore, this appeal is filed out of time, and the same should be dismissed with costs. The appellant, being a layman had not much to say and he briefly stated that, it is true that the appeal is out of time and he filed without leave of the court. Having gone through the submission by the parties, the sole issue for determination is whether the present appeal is time within time. It is a settled principle of law and practice in our jurisdiction that, for a preliminary objection to qualify must be purely based on points of law not otherwise, such as; one, time limit, two, lack jurisdiction, three, res judicata, four, failure to move the court, five, point of law on want of leave. The purpose of raising preliminary objection was propounded by the Court of Appeal in the Case of Bank of Tanzania Vs. DP Valambhia, Civil Application No. 15 of 2002, where it was held that: - "The aim of a preliminary objection is to save time of the court and of the parties by not going into the merits of the suit/application because there is a point of law that will dispose of the matter summarily. The result is to render all subsequent proceedings a nullity". Page 7 of 11 The present appeal, any aggrieved party by the decision by the DLHT in the exercise of its appellate jurisdiction is required to appeal within sixty
- (60) days from the date of the decision. This is governed by section 38(1) of the supra. The appellant filed appeal against the decision of DLHT delivered on 15/12/2022, thus filing the appeal on 12th April 2023, the appellant was out of time by 110 days. Counting from the date the appellant alleged to have received the copy of the judgement on 08/02/2023 to the date of filing of this appeal on 12/04/2023 it is clear sixty-three (63) days had lapsed. Still the appeal is out of time. It is settled law that, once the issue of time limitation is established, the court is ousted with the jurisdiction to entertain the matter. The court held consistently in a number of cases including Njake Enterprises Ltd vs. Blue Rock Ltd and another. Civil Appeal no. 69 of 2017, Mayira B. Mayira and 4 others vs. Kapunga Rice Project, Civil Appeal no. 359 of 2019, Nondorosi Village Council and 2 others vs. Tanzania Breweries Ltd and 4 others. Civil Appeal no. 66 of 2017 and Filon Felicion Kwesiga vs. Board of Trustees of

iSJSSF, Civil Appeal no 136 2020 (all unreported). Particularly in Mayira B. Mayira and 4 others vs. Kapunga Rice Project(supra) the court held as follows; Page 8 of 11 "Where the issue is that the appeal is time barred it means that the court cannot entertain it for lack of jurisdiction. Such an issue goes to the core of the determination of the case. For the foregoing reasons we ; decline to accept the invitation to overtake such an issue of jurisdiction. It is clear that, this court cannot proceed to consider on merits this appeal because the appeal was filed out of the prescribed time. Time limitation touches jurisdiction of the court. The court of appeal in Yusuf Khamis Hamza vs. Juma ASi Abdalla, Civil Appeal no 25 of 2020 had these to state that; "We are alive with the settled position of the law that time limitation goes to the jurisdiction issue of the court and it can be raised at any time The next issue is what should the court do in the circumstances? The answer is found in the case of Abdallah Athumani Masoryli vs. Rubondo Island National Park and Registered Trustees of the Tanzania National Parks, Civil Case no. 7 of 2019, where the court held that, the remedy is to dismiss it. Further, this is echoed by section 3(1) and (2)(b) of the Law of Limitation I Act Page 9 of 11

- (1) Subject to the provisions of this Act every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence. (2) For the purposes of this section a proceeding is instituted- (a) in the case of a suit, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court; (not applicable, comment is mine) (b) in the case of an appeal, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law; (applicable in the present appeal, comment is mine) As the case at hand is an appeal, section 3(1) and (2)(b) supra herein is applicable and the effect of filing a suit or appeal out of time is the same as per the wording of the afore cited provision herein above. Page 10 of 11 All said and done, I hereby uphold the preliminary objection and hold that, this appeal is time barred as it was filed outside the time limit prescribed by the law. Consequently, I hereby dismiss it under section 3 (1) of the Law of Limitation Act (supra). Costs to follow the event. IT IS SO ORDERED DATED at MOROGORO this 30th June, 2023 G. P. MA TA JUD(30/06/2023 DERIVERED at MOROGORO this 30th June, 2023 G. P. MAL JUDGI 30/06/2023 Page 11 of 11

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