

TANZANIA / JUDGMENT

marietha thomas vs paulo niima

another 2024 tzhc 863 15 march 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI LAND APPEAL NO. 42 OF 2023 (Arising from the decision of the District
Land and Housing Tribunal of Babati at Babati in Land Application No. 85 of 2019) MARIETHA
THOMAS..... APPELLANT VERSUS PAULO
NIIMA.....1st RESPONDENT HABITO
HILONGA..... 2nd RESPONDENT

JUDGMENT

5th & 15th March, 2024 Kahyoza, J.: Marietha Thomas, the appellant, sued Paulo Niima and Habito Hitonga claiming for a piece of land measuring 2 3A acres situated at Mulbadaw ward. It was her contention that, she was given the disputed land together with her husband as a gift after they got married. She added that they used the disputed land for long period before the dispute ensued. On his part, Paulo Niima alleged that he bought the suit land from Marietha Thomas' husband in 2006 and Juliana who is a second wife of Marietha Thomas' husband was involved in the sale. Marietha Thomas lost the claim before the district land and housing tribunal (the DLHT). Aggrieved, Marietha Thomas preferred this appeal with 4 grounds of appeal, which raised one issue whether the DLHT was justified to hold in favour of the respondents. I will not reproduce the grounds of appeal as I will not base this Court's judgment on the grounds of appeal. Both parties were represented. At the hearing of this appeal, Ms. Veneranda Joseph, Advocate appeared for the appellant, and Mr. Abdallah Kilobwa, Advocate represented the respondents. They argued the appeal orally. While composing the judgment, I noted that there were legal issues which must be addressed. I summoned the parties' advocates to address me on the following issues-

1. Is the claim based on lack of consent from the appellant, a co- owner, to the sale agreement by her husband not time barred?
2. Is the claim based on an invalid contract for want of capacity of one of the parties not time barred?

3. The factual issue which may be resolved at the later stage, if necessary, is whether this was not a case where the evidence of the appellant's co-wife was required to be ordered as an additional evidence. The Court ordered the parties' advocates to file submissions to address the issues. It is unfortunate that the respondents' advocate, Mr. Kilobwa did neither comply with the order nor did he have the courtesy to explain why he was unable to comply. Thus, only the appellant's advocate submitted as ordered. I am grateful to her for complying with the order. The background is that; Marietha Thomas, the appellant, sued Paulo Niima and Habito Hilonga (the respondents) at the DLHT for; one, the declaration that she was the rightful owner of the suit land measuring 23A acres situated at Mulbadaw Village, Mulbadaw Ward within Hanang' District, Manyara Region; two, an order for vacant possession of the suit land; three, an order for costs of the suit; and four, any other relief(s) the DLHT found befitting to grant. To substantiate her case, Marietha Thomas (PW1) testified that, the suit land was given to her and Bungee (her husband) by Bungee's father (her father-in-law). In the year 2016, the respondents invaded the suit land on the claim that they bought the same from her husband. She refuted the respondents' allegation because her husband was not competent to contract as he was of unsound mind since 2003 to the date she testified before the tribunal. Thus, the suit land is a matrimonial property, she submitted. Elia Juha, (Pw2), testified that Bungee (the appellant's husband) is his uncle. He deposed that the suit land was given to the appellant together with Bungee, her husband, by Bungee's father in 1988. He added that his uncle had two wives; Marietha Thomas (senior wife), who he married in 1988 and Juliana (junior wife), whom he married in 1993). That the dispute arose in 2016, when Bungee surrendered the suit land to the first respondent, without marital consent. He testified that Bungee, his uncle became of unsound mind in 2002, and he was taken to Milembe Hospital in Dodoma. That the 1st respondent bought the disputed land in 2006 from Bungee. William Tsino, (PW3), the then Hamlet Chairperson and now the Village Chairperson of Mulbadaw Village, testified that Bungee became of unsound mind since 2003, on the burial ceremony of his father. He added that it became apparent that Bungee was of unsound mind, as he was speaking nonsense, brawling etc. He testified further that beside the fact that, he has assaulting people, Bungee still speaks nonsense. He supported the evidence that Bungee has two wives. The second respondent has been in occupation of the suit land since 2013, before that, it was the first respondent who was occupying the disputed land. The first respondent sold the disputed land to the second respondent in 2013. On the other hand, Paulo Niima, (Dwl), testified that the second respondent is the lawful owner of the disputed land measuring 2 acres, as he sold it to him in 2013. He added that he bought the disputed land in 2006 from Bungee and his second wife consented to the sale. That the village chairman and one Israel Singey witnessed the sale agreement. He occupied the suit land for eight years. Habito Hilonga, DW2, testified that he bought the suit land from the first respondent in 2013 in the presence of the village chairman, at a consideration of 900,000/=. Two sale agreements were admitted and marked as exhibit "D1". He prayed to be declared lawful owner of the suit land. Given the above evidence, the DLHT found in favour of the respondents. It is beyond dispute; one, that the disputed land belonged to Bungee, the appellant's husband; two, that Bungee is married to two wives; namely, Marietha Thomas

(senior wife) and one Julietha (Junior wife); three, that in the year 2006, Bungee sold the suit land to the first respondent and his second wife witnessed the sale; four, that the first respondent sold the disputed land to the second respondent. The sale agreements were tendered collectively as exhibit "DI". The appellant gave contradicting evidence regarding the period the respondents have been in occupation. Marietha Thomas (PW1) and Elia Juha, (PW2) deposed that the dispute commenced in 2016 when the respondent invaded the suit land. However, during cross-examination, Elia Juha, (PW2) deposed that, Paulo Niima bought the suit land in 2006. William Tsino, (PW3), deposed that the second respondent has been occupying the suit land from 2013 when he bought it from the first respondent. He testified that the first respondent was in occupation before 2013. I am of the firm view that the appellant lied to contend that the dispute arose in 2016 when the respondents trespassed onto the land. The central issue is whether the appellant is entitled to the suit land. The record also shows that the DLHT ruled that the appellant failed to prove her case on the balance of probability. The tribunal found in favour of the second respondent and declared him the rightful owner of the suit land. 6 The appellant's claim for suit land was based on two grounds; one, that she co-owned the suit land with her husband and that her husband sold the land without her consent; two, the appellant's second basis of claim was that the sale argument was null and void as her husband, the seller was mentally sick, thus, he had no capacity to enter a valid contract. Given the fact that the appellant seeks to challenge a contract concluded in 2006 by a suit filed in 2019, I entertained doubts whether her causes of action were not time barred. I invited the parties' advocates to address me on the issue whether the causes of action are not time barred. I wish to state one obvious thing that the law of limitation is a merciless sword, it cuts across into all those who get caught in its web. This Court held in *John Cornel v. A. Grevo (T) Ltd*, Civil Case No. 70 of 1998 (unreported) where Kalegeya J (as he then was) observed that- "However unfortunate it may be for the plaintiff, the Law of Limitation knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web." It is established that a court of law has no jurisdiction to entertain an application or suit which is time barred. Section 3 of the Law of Limitation Act, [Cap. 89 R.E. 2019] provides that the remedy for a suit or application, which is time barred must be dismissed. I will now consider whether the appellant's claim that the sale agreement was invalid for lack of her consent was not time barred. It is settled that Paulo Niima, (Dwl), bought the suit land from the appellant's husband in 2006 and the appellant instituted an application before the tribunal in

2019. The appellant's advocate submitted that her client knew that her husband had disposed of the disputed land in 2007. She did not sleep on her right as she took steps to recover the disputed land. The steps she took included lodging a complaint to clan members and to the ward tribunal. There is no dispute that the appellant instituted a legal action to recover the suit land in 2019. The law of limitation states in no uncertain terms that a suit to recover land may be instituted before the expiry of 12 years. Item 22 of Part I of the Schedule to the Law of Limitation Act, provides that the period for instituting a suit to recover land is twelve years. The action arose in 2006 and the suit was instituted in 2019, thus, the

appellant's claim to recover land for lack of her consent to the sale agreement is by any means time barred. 8 I was not able to buy the appellant's advocate's submission that, the appellant knew the existence of the sale agreement in 2007 for two reasons; one, there was no circumstance(s) adduced which prompted the appellant to know the existence of the sale agreement in 2007; and two, the contention that the appellant knew the existence of the sale agreement in 2007 came from the appellant's advocate's submission. Submission is not evidence. The appellant never testified that she came to know the existence of the sale agreement in 2007. I am of the firm view that, the appellant's claim for the disputed land on the ground that, the sale agreement was invalid for lack of her consent is time barred. I now consider whether the appellant's cause of action that the contract was invalid for lack of capacity to contract from her husband as it is alleged that he was mentally sick at the time of executing the contract. The appellant's evidence was that her husband became mentally sick in 2003 or according to Elia Juha, (Pw2), the appellant's husband was mentally sick in 2002 to the time he testified. Thus, it is appellant's contention that her husband had no capacity to enter valid contract in 2006 for lack capacity to contract. I totally agree with the appellant's advocate that if the appellant's husband was mentally sick had no capacity to contract and that, section 11 of the Law of Contract Act, [Cap. 345 R.E. 2019] categorically provides that an agreement entered into by a person not competent to contract is void. Section 11 of the Law of Contract Act, provides that- "11.-(1) Every person is competent to contract who is o f the age of , majority according to the law to which he is subject and who is of sound mind\ and is not disqualified from contracting by any law to which he is subject.

- (2) An agreement by a person who is not hereby declared to be competent to contract is void." There is no doubt that if the appellant's husband was mentally sick or of unsound mind, he was not a competent person to contract. Thus, there was no valid contract. It was void. However, Item 7 of Part I of the Schedule to the Law of Limitation Act, provides that, the period for instituting a suit founded on contract not otherwise specifically provided for is six years. The appellant instituted a suit after the expiry of 13 years from the date her husband executed a sale agreement with Paulo Niima, (Dwl). For that reason, her claim is time barred. I wish to remind the appellant that the Law o f Limitation, on actions; knows no sympathy or equity. In the end, I find that the appellant's application before the tribunal was time barred, the tribunal had no jurisdiction to entertain it. I invoke my powers of revisions under section 43 of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] to dismiss the application. I make no orders as to costs for the respondents' advocate refused to file written submission to the issues the Court raised. The respondents' failure to submit is akin to failure to appear. It is ordered. Dated at Babati this 15th day of March, 2024. Judge Court: Judgment delivered in the presence the appellant's advocate and the respondents and in the absence of the appellant and respondents' advocate. J. R. Kahyoza Judge 15 .3.2024 li

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