

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DODOMA

LAND CASE APPEAL NO. 18 OF 2014.

*(From the decision of the District Land and Housing Tribunal of
Dodoma District at Dodoma*

In Land case No. 78 of 2013

ANTHONY MLEWA.....APPELLANT

VERSUS

SOSPETER MASIMA & ANOTHERRESPONDENTS

JUDGMENT

26/05/2015

&

22/10/2015

H. H. KALOMBOLA, J.

ANTHONY MLEWA have come to this court as an appellant following his dissatisfaction by the decision made by Dodoma District Land and Housing Tribunal for Dodoma at Dodoma, Application No. 78/2013 delivered on 5/12/2013 by Chairman Mandari. He raised three grounds of Appeal:-

1. That, the Chairman of District Land and Housing Tribunal of Dodoma erred in Law and fact for failure to consider the weight of evidence adduced by the appellant through his submission.
2. That, the Chairman of District Land and Housing Tribunal of Dodoma misdirected himself that the respondent built their houses into the suit land in 1996 while the respondents built their house in dispute in 2004.
3. That, the Chairman of District Land and Housing Tribunal of Dodoma erred in Law and fact that the Respondents were in the knowledge upon the legal owner of the House in dispute and farm that the applicant used to visit the premises on several occasions in order to see the suit what was happening thereto:-

Appeal was disposed by way of written submission.

Njulumi and Company Advocates provided legal services to the appellant who submitted on the first ground of appeal that the appellant before the tribunal adduced very strong evidence as to this continuous ownership of the suit in Land, which proved as to non- abandonment of the said land.

That at the beginning the respondents were allowed by the appellant to live in the suit land following the demolition of their houses by heavy rain. They agreed orally that the respondents later had to leave.

Therefore this transaction could not give the respondents right of Adverse Possession as this principle requires that the entrance that is without permission from the owner. In the present case, the situation is different as the Respondents were conditionally permitted to live into the suit land promising to leave after sometimes. They support this position with a case of KUMA Vs KUMA (1938) 5 W.A.C.A 4 (Ghana) , P.C decision.

On the second ground of Appeal it is not true that the respondents built their houses in 1996 rather it was in 2004.

This fact is found in respondent's evidences before the Tribunal.

On the third ground, the respondents are aware that appellant is the owner of the disputed land as appellant used to visit the premises on several occasions. That the appellant started demanding the suit land from the year 2000.

Since the Respondent's houses were built in year 2004, the purported improvement were made at their own peril like what was held in the case of LWEIKIZA VS NDYEMA (1971) HCD 326.

He prays for this court to set aside the ruling of the District Land and Housing Tribunal for Dodoma.

Respondents replied in respect of the first ground of appeal that he raised preliminary objection at the trial tribunal to the effect that the suit is time barred.

As to the second ground of appeal, respondents submitted that they started living in the disputed land by erecting their houses in 1996. On the other hand, appellants failed to tender any legal document i.e letter of administration of estate of deceased brother Mlewa Kapuya, to prove that he inherited the said land from the deceased brother.

As to the third ground of appeal they are saying, appellants admitted that the respondents started to live on the disputed land in 1996. That, the present application No.78/2013 was filed in 2013 without obtaining leave for extension of time from the Minister responsible for land as stated under Section 44 (1) of the Laws of Limitation Act, Cap 89 R.E 2002. They submit this appeal is time barred as it was found in TATU RAMADHANI VRS NAJMDIN JAFFER, MISC. CIVIL Application No. 23/2008, at Dar-es-Salaam(unreported).

They pray the appeal be dismissed with costs.

Does this appeal has merit? Record in the District Land and Housing Tribunal is to the effect that the application was dismissed for being time barred. This ruling was delivered on 5/12/2013. This means, appellant ought to have challenged this ruling in its contents.

In fact, appellant referred to this ruling in this appeal but his submission does not show as to why he is saying that he is not time barred. It seems also that by the time the respondents were

said to have moved to live in the disputed land, he was no longer living in the area as seen in page 2, second paragraph from top he stated, I quote:-

"the applicant had already been moved from Nalavillage since 1967 and went to live at Nzunguni village where to date stays there..."

According to respondent's written submission in support of the objection, the dispute arose in 1996, moreover applicant (appellant) in his application in paragraph 6 (v) stated to have been demanding for his land in year 2000 where he said, I quote:-

6(v) "That in 2000 applicant after started to demand for the land... the 1st and 2nd respondents denied to vacate by claiming that the land ... is theirs of which is not true because they were started to live in land... under the grace of applicant's after their houses destroyed in 1996 by the rain".

and in para 6 (iv) applicant /appellant stated, I quote:-

"That in 1996 respondents pray to live in applicant's land... that after the time they will left the land in quo to the applicant".

Therefore from applicant's application and that of the respondent's in their submissions, it is not in disputed that respondents started living in the area in 1996.

Therefore going by the first ground of appeal that the chairman of District Land and Housing Tribunal failed to consider the weight of evidence adduced by him through submission, I am of the view that, appellant in his written submission in challenging the written submission by the respondents in support of objection failed to show that his application was not time barred, but labored much in explaining about merits of the case while at that stage they had to submit on preliminary objection only. I thus find first ground of appeal lacks merit.

As well, in the second ground of appeal like I have said in the first ground of appeal, the issue for determination before the Tribunal was on preliminary objection and not hearing of the case on merits, then I am saying, the second ground of appeal lacks merit as the tribunal was not in a status of discussing as to whether respondent's houses were built in 1996 or 2004.

Lastly on the third ground of appeal, there was no use for the appellant to have explained to the Tribunal whether he used to visit the premises as this point could have been useful if the case had reached stage of hearing.

I find the decision by the Tribunal correct, as the appellant even in his ground of appeal has fail to challenge the decision on preliminary objection; instead he based his argument even in his written submission as if he was arguing a main application while that stage had not reached.

Having said so, I find no reason of disturbing the decision of the District Tribunal, it is upheld.

The appeal is found having no merits, it is dismissed with costs.

Ordered accordingly.




(H. H. KALOMBOLA)

JUDGE

22/10/2015