**IN THE COURT OF APPEAL OF TANZANIA**
**AT ARUSHA**

**CIVIL APPEAL NO. 3 OF 2011**

**(CORAM: MUNUO, J.A., KILEO, J.A., And MANDIA, J.A.)**

**DEEMAY SIKAY ..... APPELLANT**
**VERSUS**

**NEEMA MAGONI..... ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Arusha )**

**(Mussa, J.)**

**dated the 21st day of September, 2007**

**in**

**PC Civil Appeal No. 30 of 2003**

**JUDGMENT OF THE COURT**

01st & 05th March, 2012

**MUNUO, J.A:**

The appellant, Deemay Sikay, is challenging the decision of Mussa, J. in (PC) Civil Appeal No. 30 of 2003 in the High Court of Tanzania at Arusha. The suit commenced in the primary court.

The suit started as Civil case No. 3 of 2002 in Karatu Primary Court wherein the appellant, Deemay Sikay, sued for the repossession of land the

respondent, Neema Magoni, trespassed upon. The land in dispute measures 10 acres and it is located at Mbunga Nyekundu in Karatu within Manyara Region. Three trespassers were sued and two have since vacated the land but the respondent has not, claiming that he inherited the land from his late father so he lawfully occupies it.

Testifying as SM1, the appellant stated that the respondent is his co-villager at Mbuga Nyekundu village in Man'gola within Karatu District in Manyara Region. He complained that the respondent first invaded his 10 acres of land in 1998. He sought the intervention of the village authorities in vain so he instituted the suit in the primary court. SM1 said that the respondent stayed away from the land for a while but in 2002 he again trespassed on the material land giving rise to the present suit.

It was the evidence of SM1 that his father acquired and occupied the land from 1981. To keep off invaders, the village authorities demarcated the boundaries in 1994 and authorized the appellant to possess the same per the letter, Exhibit P1. Although SM1's father, SM4 Sikay Deemay occupied the material land from 1981, he later shifted to another village

and left the land under the occupation of his son, the appellant. SM4 stated during cross-examination at page 17 of the record:

> *"...mdai hana eneo linguine mbali ya hilo lililokuwa la kwangu."*

Meaning that the appellant did not have land other than the land which belonged to SM4, his father.

Refuting the claim, the respondent gave his evidence as SU2 saying that he inherited the land in dispute from his late father in 1996 and that the latter acquired the land in 1974 during Operation Vijiji.

The primary court allowed the claim thence affirming the appellant's customary land title over the material land. Dissatisfied, the respondent lodged Civil Appeal No. 15 of 2002 in District Court at Mbulu . The District Court dismissed the appeal whereupon the respondent lodged Civil Appeal No. 30 of 2003 in the High Court at Arusha. Mussa, J. allowed the appeal by nullifying the proceedings of the courts below on the ground that the appellant had no *locus standi* to sue for the repossession of the land

which belonged to his father unless the said father issued a special power of attorney to him.

Mr. Maruma, learned advocate for the appellant, represented the appellant while the respondent was represented by Mr. Lumambo, learned advocate. Both learned counsel submitted in writing.

In the memorandum of appeal, Mr. Maruma, learned advocate, listed 6 grounds of appeal thus:

1. The learned judge erred in adjudicating upon and making an adverse decision which was neither in issue at the trial nor raised as a ground of appeal on the first appeal and without giving the appellant an opportunity to be heard.
2. The learned judge erred in holding that a power of attorney under the Civil Procedure Code is applicable in the primary court.
3. The learned judge erred in evaluating the evidence in that the father should have sued

personally or sue through the appellant under a power of attorney.

4. The learned judge failed to wholly evaluate the evidence of the present appellant who was unrepresented.
5. The learned judge failed to hold that since the appellant lawfully occupied the land in 1981, moved but left the appellant continuous and uninterrupted occupation, the learned judge should have held that respondent's adverse claim over the land was time barred by limitation.
6. The learned judge erred in law in failing to hold that the respondent's claim of inheriting the material land from his late father in 1996 was false as witnesses from the village authorities in 1994 could find no trace of the respondent's father on the suit land.

Counsel for the appellant prayed that the decision of the High Court be quashed, that the appellant be declared the lawful owner of the land in dispute, and that costs of this appeal and the courts below be provided for.

Adopting his written submission and further submitting before us, Mr. Maruma faulted the learned judge for finding that the appellant had no *locus standi* to prosecute the suit. This being a third appeal, counsel argued, the learned judge should have refrained from interfering with concurrent findings of fact by the courts below. He maintained that the appellant lawfully occupied the land and that when his father shifted to another village have gave the land to the appellant, that as the land had been occupied by the appellant and it continues to be occupied by the appellant without interruption, the appellant lawfully possesses the same.

Mr. Lumambo, learned advocate supported the decision of the High Court. He maintained that the appellant filed no special power of attorney authorizing him to pursue his father's land so the learned judge rightly nullified the proceedings because the appellant had no *locus standi* to sue for the ownership of the land in dispute.

Mr. Maruma filed a number of authorities in support of the appellant's long ownership of land. He referred us to the case of **Amani Rajabu Njumla versus Thomas Amri (1990) TLR 58** in which Court held that :-

> *"The village government may allocate land to anyone. But that does not mean that the village government has power to take away land from one person and give it to another."*

In the present case, the village authorities demarcated the boundaries in 1994 and the appellant has remained in effective occupation of the same to date. Counsel for the appellant also referred us to the case of **Amrattal Damoder and another versus A.H. Tariwalla (1980) TLR 31,** cited with approval by the Court in **Civil Appeal no 103 of 2009, Fatuma Ally versus Ally Shabani (CA)** (Unreported) wherein the Court ruled that:-

> *1) " Where there are concurrent findings of facts by the two courts, the Court of Appeal, as a wise rule of practice, should not disturb such findings*

*unless it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice, or violation of some principle of law or practice."*

Had the learned judge carefully evaluated the evidence, he would have held that the appellant possessed the material land without any incumbrance.

The issue before us is whether the appellant had *locus standi* to sue for the repossession of the land the respondent trespassed upon.

We had the advantage of reading the Book titled "The Customary Land Law of Tanzania, a Source Book by W. James and G. M. Fimbo, on the Acquisition of Title by long possession. The learned authors state at page 533,

" *Received law permits a person to acquire an interest in property by long uninterrupted possession and user..."*

The learned authors quote the judgment in the case **of Stephen s/o Sokoni versus Millioni Sokoni (1967) C. A. No. D/183/1963** wherein the court recognized the doctrine of long possession by stating at page 539:-

> *" Alternatively it could be argued that the respondent has occupied the shamba for such a long time that it would be unreasonable and unfair to allow the appellant to disturb him at this time. If the appellant had really required the shamba he could not have kept quiet for more than 30 years."*

At page 543 of the Book the learned authors refer to the case of **Bi Juliana Rwakatare Versus Kaganda (1965) L. C. C. A 43/1963** in which Saidi, J. as he then was observed:

> *"All these years it appears from the evidence, the respondent did not require the land at all, it is not clear as to why he wants it now, With so many years of occupation.... It would be grossly unfair after a long time to disturb the appellant .... The*

*land is declared to be the property of the appellant*

*by virtue of long occupation of 28 years."*

In the present case, there is evidence from the appellant's father that he occupied the land after being allocated the same by the village authorities for herding in 1981. He remained in continuous and uninterrupted possession until he moved to another village and left the land to his son, the appellant, who remained in effective occupation until the respondent trespassed thereon in 2002. SM4, Sikay Deemay has not set up a rival claim over the land so he has in fact given the land to the appellant. He deposed at the trial that he left the land under the occupation of the appellant. Hence for 21 years, the appellant has been in effective occupation of the land (1981 up to 2002 when the respondent trespassed thereon) without interruption.

As Sikay Deemay is not contesting his son's title over the land, and in view of the appellant's long and uninterrupted possession of the said land, the learned judge erroneously held that the appellant had no *locus standi* to sue for ownership of the land. The respondent's claim over the

village authorities.

Under the circumstances, we are satisfied that the primary and district courts properly determined the case. We quash and set aside the decision of the High Court. We find merit in this appeal and hereby allow the appeal with costs.

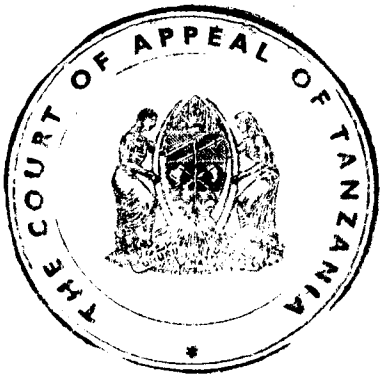
DATED at Arusha this 02nd day of March, 2012.

E. N. MUNUO
**JUSTICE OF APPEAL**

E. A. KILEO
**JUSTICE OF APPEAL**

W. S. MANDIA
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.




E. Y. MKWIZU
**DEPUTY REGISTRAR**
**COURT OF APPEAL**