

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 32 OF 1994
BAKARI MSHAMU.....APPELLANT
VERSUS
ABDALLAH REHANI.....RESPONDENT

J U D G E M E N T

KALEGEYA, J.

The Appellant, Bakari Mshamu aggrieved by the decision of Temeke District Court in Civil Appeal No. 49\93 which upheld the Mbagala Primary Court decision in Civil Case No. 4\93 has come to this court arguing that both courts below erred by failing to appreciate that he acquired the plot in question over 20 years ago when it was allocated to him through the 1974 operation villagization; and by refusing him chance to call his witness adding that as he (Respondent) is not the owner of the disputed shamba he had no locus standi. Both parties were represented by Counsel: Mr. Mtungwa and Mr. Raithatha, Advocates, for the Appellant and Respondent respectively. Arguments were made by written submissions.

Mr. Mtungwa for Appellant seems to have abandoned the rest of the arguments and concentrated on just one: that both courts erred in allowing Respondent to file a case which was time barred: that the Appellant having stayed in the acre disputed shamba the 12 year limit permissible under the Law within which to file a suit was legally violated.

In response Mr. Raithatha for the Respondent submitted that the evidence indicated that Appellant was given the disputed plot just for cultivation of seasonal crops in 1984 and not 1974 and

that therefore when the case was filed in 1993 only nine years had elapsed hence within time limit.

Both courts found as facts the following - that the disputed shamba belonged to Respondent's mother; that Appellant and Respondent being tribe mates the former requested the latter to allow him use the disputed land for growing seasonal or annual crops only; that however, the Appellant acted against those conditions on two occasions, 1989 and 1993 when he also started construction of vibanda for which they went for recourse before the CCM office without success; and that Respondent inherited the said shamba from her mother.

I have no ground to fault the above findings of both courts below. The Appellant concedes that the land in question belonged to Respondent but his only argument is that it was given to him by the village Council way back 1974. This argument was found, by both courts below, to be unsupportable as there is no evidence to that effect. I have no ground to fault that finding. On the facts found established by the lower courts Limitation of time cannot legally bar the relevant action because it was filed within less than 12 years - whether we count from 1984 when he went into possession of the shamba or 1989 when he started violation of the conditions, i.e. construction of a house instead of growing seasonal crops.

The Appeal is dismissed with costs.

(L. B. Kalegeya)

JUDGE

Delivered on.....31/8/98.....

(L. B. Kalegeya)

JUDGE