

IN THE HIGH COURT OF TANZANIA

AT MBEYA

(PC) CIVIL APPEAL NUMBER 19 OF 2001

(From the decision of the District Court of
Mbeya District at Mbeya in Civil Appeal No.47
of 2000 and Mbalizi Primary Court Civil Case
Number 49 of 2000)

JAMSON MWAHANDE:::::::::::::::::::::::::::::::::APPELLANT

VERSUS

1. BUNGE MWANGOKA	0	
2. JUMANNE MWASAMBO	0	
3. RANGSON MWANGOKA	0	:::::::::::::::::::::::::RESPONDENTS
4. ZABU SAID	0	
5. PINDUZI BOMU	0	
6. GEORGE BOMU	0	

JUDGMENT

MACKANJA, J.

The appellant unsuccessfully sued the respondents claiming an area covering fifty acres. The Mbalizi Primary Court which heard the case dismissed the claim, holding that he was entitled to no more than one ^{acre} like everyone else in the village. He went on to lose the first appeal before the Mbeya District Court. He is still aggrieved.

According to the trial court's record of proceedings, Jamson Mwangoka testified that the appellants had encroached on his land measuring some fifty acres since 1997. He claimed that the respondents were occupying it wrongfully because it was his clan land. Mwasembe Mkulima (PW2) supported the appellant's claim.

The respondents denied the claim. It is in their evidence that Jumanne Mwansembo (DW2) was the Igale Village Chairman; he swore that the appellant is an immigrant in the village, having been born elsewhere. Then in protest against participating in village communal activities he and several others founded their own village which they named Changamoto. The appellant self-

appointed himself charman of the Changamoto village. Complaint against the appellant's activities was ultimately lodged with the District Commissioner as a result of which criminal proceedings were initiated against the appellant and his group on a charge of criminal trespass c/s 299(1) of the Penal Code. They were convicted and were sentenced to a conditional discharge. As well as that the trial court visited the locus in quo at which they interviewed over twenty people who had gathered there. The trial court also found that the suit parcel of land had been re-allocated during Operation Vijiji between 1974 and 1975. It also found that the appellant's entitlement was a parcel of land measuring 70 x 70 paces. The land having been re-allocated in 1974/75 the appellant was barred by both prescription and the law of limitation when he instituted his claim in 2000, twenty five years later. He could have done so in time if the suit was instituted within twelve years from 1974/75.

So apart from the strength of the respondent's evidence which the two lower courts found that it vindicated the respondents' title, the appellant's title, if he had any, has been extinguished by operation of the law. The appeal would fail as a result.

The appeal is dismissed with costs to the respondents here and in the two courts below.

The judgment shall be delivered by the Registrar on 3/12/2001. Parties be notified of change of date of judgment.

sgd: J. M. MACKINJA

JUDGE
20/11/2001

3/12/2001

Coram: M.G. Mzuna, Ag. DR

Appellant }
Respondent }Both absent/unsewed.

C/C: Kosam

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Order: Judgment reserved till 11/12/2001


sgd: M.G. Mzuna, Ag. DR

3/12/2001

Date: 11/12/2001

Coram: M.G. Mzuna, Ag. DR

For Appellant:  Both Absent

For Respondent: 

C/C: Kasubiri, S

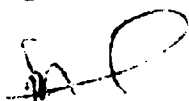
Court: Judgment delivered this 11th day of December 2001 in the absence of the parties.

sgd: M. G. Mzuna, Ag. DR

11/12/2001



Certified true copy of the original Judgment.


DISTRICT REGISTRAR

MREYA