

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 16 OF 2013

(From the decision of the District Land and Housing
Tribunal of Iringa District at Iringa in Land Case Appeal
No. 58 of 2008 and Original Ward Tribunal
of Magulilwa Ward in Application No. 3 of 2008)

CHRISTINA MBARUKA ----- APPELLANT

VERSUS

PETER MPALANZI ----- RESPONDENT

28/04/2015 & 19/05/2015

JUDGMENT

KIHWELO, J.

The appellant herein Christina Mbaruka preferred this appeal following his dissatisfaction from the decision of the District Land and Housing Tribunal in Land Appeal No. 58 of 2008 which allowed the appeal and set aside the decision of Magulilwa Ward Tribunal.

The petition of appeal was primised on three main grounds which may be crystallized as follows:-

1. The District Land and Housing Tribunal erred in deciding in favour of the respondent despite the fact that the suit land was given to the appellant by her husband out of love and affection.
2. The District Land and Housing Tribunal erred in deciding in favour of the respondent despite the fact that the appellant has developed the suit land.
3. The District Land and Housing Tribunal erred in deciding in favour of the respondent despite the weak evidence presented by the respondent.

Before this court as the District Land and Housing Tribunal the appellant was not represented whereas the respondent was under the services of Mr. Kingwe, learned counsel.

As directed by the court this appeal was argued by way of written submissions which were dully filed by the parties as per the schedule proposed and ordered by the court.

Arguing briefly in support of the first ground of appeal the appellant contended that, the appellant was given the suit land by

the appellant's husband who was the rightful owner at the time he gave the same to the appellant.

In support of the second ground of appeal the appellant valiantly argued that the respondent has no legitimate claim against the land which was given to the appellant's husband who has developed it after enjoying occupation for uninterrupted period of time with the respondent's acquittance.

On the third ground of appeal the appellant argued briefly that the District Land and Housing Tribunal ignored the appellant's strong evidence that the suit land was permanently given to the appellant and her husband.

In reply submission Mr. Kingwe contended that the respondent rented the appellant's husband the house in the suit land for TShs. 3,000/= per month in addition to supervising the said disputed farm. Mr. Kingwe forcefully argued that the contention that there was change of ownership from the respondent to the appellant's husband is frivolous, vexatious and patently not tenable as the appellant has failed to prove that she and her husband acquired title over the suit land either by purchase, allocation or as a gift inter vivos.

Mr. Kingwe further submitted that the appellant had no locus stand to institute this matter before this court since she is a mere third party who does not even know what transpired between the appellant's husband and the respondent. Mr. Kingwe invited this court to refer to the case of **Constantino Mhaluka V Pius Lupala**, PC Civil Appeal No. 1 of 1999, High Court of Tanzania at Mbeya (unreported) which with all due respect I did not find its relevance.

Mr. Kingwe also cited **Order 1 Rule 8** of the Civil Procedure Code, Cap 33 RE 2002 as well as the case of **Lujuna Shubi Balonzi Senior V Registered Trustees of Chama cha Mapinduzi** [1992] TLR 214 to drive home and cement his arguments.

Replying to the second ground of appeal Mr. Kingwe strenuously submitted that the appellant and her husband were not given the disputed land for good and that the fact that the appellant and her husband made some unexhaustive improvements is not good enough to enable them acquire title.

As regards to the third ground of appeal Mr. Kingwe valiantly replied that the said ground did not raise anything new except to raise in a vague manner the fact that the appellant had strong evidence at the appellate tribunal.

I have carefully gone through the record of both lower tribunals as well as the Petition of Appeal and the rival submissions by the parties and I have come to the conclusion that the central issue for determination is whether or not the appellant legally occupied the suit land.

It is on record that the appellant and her husband in 1983 were invited into the respondent's clan land so that they can stay there and look after 100 acres of land belonging to the respondent's clan. Out of that 100 acres the appellant and her husband were allocated 4 acres which they made unexhaustive improvements by building two houses and planting some trees plus cultivating. Sometimes in 2008 the respondent out of trivial and very minor reasons sought to evict the applicant in the said 4 acres of land which the appellant has stayed for an uninterrupted period of 25 years.

I am inclined to agree with the contention by the appellant that since they cultivated the virgin forest in the 4 acres of land which fact was not disputed by the respondent and because the appellant has been in occupation of the suit land for uninterrupted period of 25 years the appellant occupation was legitimate.

I don't buy the argument by the counsel for the respondent that the appellant rented the suit land for 3,000/= as there was no

evidence to prove that nor did I buy the assertion that the appellant has no locus standi which seems to be an objection sneaked through back doors as the same was never formally raised through a notice and worse still the respondent did not raise at the lower tribunals.

In my opinion the doctrine of adverse possession is applicable in the present case where the appellant has been in uninterrupted occupation of the suit land for more than 12 years as stipulated under the Law of Limitation Act, Cap 89 RE 2002 in particular Part I of the Schedule to the Act, Item No. 22 which relates to suit to recover land.

In the case of **Anania Munuo V Adolf Kimaro**, Miscellaneous Land Case Appeal No. 10 of 2008, High Court of Tanzania, Land Division at Moshi (unreported) Fikirini, J faced with a scenario of a party who failed to take action against the purported trespasser for more than 12 years her Ladyship stated inter alia;

“If the respondent had been in uninterrupted occupancy for all years, even if the plot was not allocated to him as it is being alleged still he would have been the owner of the said plot legally by way of adverse possession.”

In the light of the foregoing and for the reasons stated above I allow the appeal, quash the decision of the District Land and Housing Tribunal, set aside the order and uphold the decision of the Magulilwa Ward Tribunal with costs.

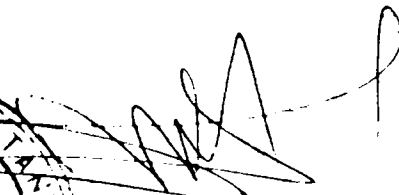
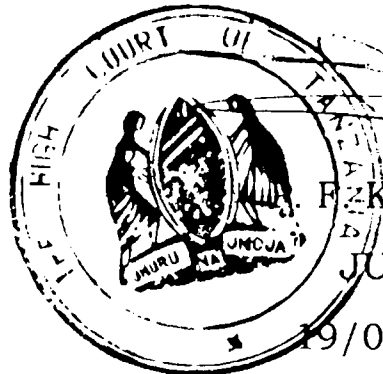


P. F. KIHWELO

JUDGE

19/05/2015

Right of Appeal is fully explained.

P. F. KIHWELO
JUDGE
19/05/2015