

**“ORIGINAL”**

**IN THE HIGH COURT OF TANZANIA/  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**MISC. LAND APPEAL NO. 61 OF 2016**

*(Land Appeal No, 15 of 2016, DODOMA District Land and Housing Tribunal,  
ORIGINAL MPUNGUZI WARD TRIBUNAL)*

**PAULO LYASWEYE ..... APPELLANT**

**VERSUS**

**MOSHI MUSTAFA ..... RESPONDENT**

**JUDGEMENT**

**Date of JUDGEMENT- 14/08/2017**

**Mansoor, J:**

Moshi Mustafa filed a Case at Mpunguni Ward Tribunal against Paulo Lyasweye. She claims that the land which is about 2 acres belongs to her. She said she moved to Nkubi Village in 1958 but left her mother at the land. She said her mother and sister left the land and moved to Mpunguzi, but they continued farming the land. She



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said there are mango trees on the land, and the graves of her grandparents. She said Paulo Lyasweye trespassed into the land and built a house, and he is now constructing a second house. That she tried stopping him but Paulo Lyasweye did not stop.

Paulo Lyasweye stated that he was informed by the Chairman of the Village on 08.06.2015 that he constructed a house at the land belonging to someone else. He states that he was given the land by the Government since 1977 “Vijiji vya Ujamaa”. He said they were moved to that area from highlands by the Government. The Ward Tribunal visited the locus in quo and found the houses of the family of Lyasweye on the land. The Ward Tribunal found that although originally the land belonged to Moshi Mustafa, but the land was abandoned for a long time from 1989 to 2015 almost 26



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years. The Ward Tribunal also found that Paulo Lyasweye had been in occupation and use of the land since 1977 undisturbed, almost 38 years. Thus the Ward Tribunal declared Paulo Lyasweye the owner by adverse possession.

On appeal, the District Land and Housing Tribunal reversed the decision of the Ward Tribunal saying the following at page 3 of the judgement:

*“I am of the view that the absence of the Appellant for such a long period alone does not make the Appellant lose the suit land. Because there is a physical evidence that the Appellant developed the Suitland including burying her grandmother’s body thereat.”*



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From the judgement of the District Land and Housing Tribunal, the Chairperson of the Tribunal acknowledges that Moshi Mustafa abandoned the land from 1989-2015, but he says abandonment of land has no any adverse to Moshi Mustafa. This is wrong.

From the proceedings of the Ward Tribunal it clearly shows that the land was abandoned by the Respondent or the Respondent’s ancestors, and that when the Ward Tribunal visited the locus in quo they found that the land was occupied and used by the Appellant and his family. It was established before the Ward Tribunal that the Appellant and his family started occupying the land since 1977 during Ujamaa Village operationalization; when they moved into the Land the Land was unused and unoccupied. The Respondent or his parents have relinquished the land. The relinquishments have been



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manifested by absence over this long period of time. Non-use of property or land for over 26 or 38 years is sufficient to prove abandonment.

There is evidence of long and unexplained non-use and this is admissible as to intent of abandonment of land. Even if it was established that, the Respondent had rightfully acquired this land through inheritance from his father or that there was a grave of her grandmother, the Land title is lost by abandonment. The Land Act and the Village Land Act give the power to the Village Council to repossess the land for reasons of abandonment or non-development of the land for a certain period of time. It has been established that the Appellant has been in possession of this land from 1977 and he has built houses on the land and have been in occupation and use of this land since then.



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Again, this is a suit relating to ownership of land held under native tenure and the members of the Ward Tribunal had exclusive knowledge of the history of ownership of this land, and the members of the Ward Tribunal were satisfied that the land belonged to the Appellant. Unless the contrary is shown, the decisions of the Ward Tribunal on this matter which is peculiarly within the knowledge of the members of the Ward Tribunal, arrived at after a fair hearing on relevant evidence, the District Land and Housing Tribunal should not have disturbed that decision of the Ward Tribunal without very clear proof that they were wrong.

Consequently, on the above reasons, this appeal is allowed, and the decision of the District Land and Housing Tribunal is hereby quashed and set aside. The



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decision of the Ward Tribunal is hereby restored and confirmed.

*Appeal allowed with costs.*

DATED at DODOMA this 14<sup>TH</sup> day of AUGUST, 2017

  
**L. MANSOOR**

**JUDGE**

**14<sup>TH</sup> AUGUST 2017**

