

**IN THE HIGH COURT OF TANZANIA**  
**AT DODOMA**

**(APPELLATE JURISDICTION)**

**LAND CASE APPEAL NO. 68 OF 2016**

*(From the Decision of the District Land and Housing Tribunal of Manyoni  
District at Manyoni in Land Case Appeal No. 22 of 2015)*

**JACKSON NKHANGU.....APPELLANT**

**VERSUS**

**BOYI YOWERI & 3 OTHERS.....RESPONDENTS**

**JUDGMENT**

**27/3 & 05/6/2017**

**KWARIKO, J.**

Appellant herein filed suit before the District Land and Housing Tribunal of Manyoni claiming about fifty (50) acres of land from the respondents herein. In his evidence before that tribunal appellant said that he was given that land by his uncle one WILSON HEMA in 1979 and has been using it until 2011 when one Antony Mbasha trespassed into the

same where he sued him at the Village Land Council of Mbugani but Mbasha won whereas first and second respondents herein were his witnesses. That, upon being dissatisfied with that decision he successfully appealed before the Ward Tribunal.

However, thereafter the first respondent trespassed into that land where the Village Land Council decided in favour of him (the first respondent). When he (the appellant) referred the matter to the Ward Tribunal he was directed to take the matter to the District Land and Housing Tribunal as he was told that the suit had already been decided.

It was the appellant's further evidence that he found the third and fourth respondents using the disputed land and said it was the first respondent who sold it to them.

Additionally, while the said WILSON HEMA, PW2 supported appellant's version that he gave him disputed land in 1979 but he said he (the appellant) had used it until 1985 when he relocated to Mgandu area and that the disputed land measured about sixty (60) acres. PW2 also gave evidence that he had given land to the second respondent in 1971 to use which land borders that of the appellant herein. PW3 LUCAS SAMUEL said the disputed land belongs to the appellant as he has been living in the material village since 1983.

In his defence the first respondent testified that he was born in 1973 and in 2008 his father, the second respondent herein gave him the

disputed land which was formerly being used by the third respondent since 1997. That, he has been using that land until 2015 when this dispute arose. He also said that the disputed land is different from the one the appellant was claiming from Antony Mbasha. This evidence was supported by DW1's father DW2, YOWERI BOYI, the third respondent STANLEY MUSSA, DW5 and JOSEPH DOTO, DW6. Whereas, the third and fourth respondents denied to have ever bought any land from the first respondent.

At the end the trial tribunal found that the disputed land belongs to the first respondent after he was given by his father (the second respondent). And that the claim that the disputed land is the one which was subject matter of the case between the appellant and Antony Mbasha has no base since the appellant lost that suit.

On being aggrieved by the trial tribunal's decision appellant brought this appeal upon the following five grounds of appeal;

- 1. That the Trial Tribunal erred in law and fact when it did not provide any remedy over the 3<sup>d</sup> and 4<sup>th</sup> respondents.*
- 2. That, the Trial Tribunal erred in law and fact when it decreed in favour of the 1<sup>st</sup> respondent basing on very weak evidence.*
- 3. That, the Trial Tribunal erred in law and in fact when it failed to consider the strong evidence of the appellant and decided against his favour.*

*4. That, the Trial Tribunal erred in law and in fact when it did not visit locus in quo to assure itself of the land in dispute.*

*5. That, the Trial Tribunal erred in law and in fact when it decided against the appellant without considering the doctrine of long possession.*

During hearing of the appeal the appellant's submission essentially reiterated the grounds of appeal. Whereas, the first and second respondents said their evidence as regards the disputed land is in the case file and the third and fourth respondents maintained that they did not buy land from the first respondent hence the trial tribunal decided fairly.

Now, this court is required to decide whether this appeal has merit. To do that the court will decide the grounds of appeal seriatim as follows;

As regards the first ground of appeal this court finds that since the trial tribunal decided that the disputed land belongs to the first respondent it means all others are excluded. And it is not the third and fourth respondents who were claiming disputed land from the first respondent but the appellant herein. Hence, it is the third and fourth respondents who are better placed to complain, if at all, in that respect and not the appellant. After all the third and fourth respondents denied to have bought land from the first respondent. The first ground of appeal thus fails.

In the second and third grounds of appeal this court finds that the trial tribunal was right to decide that the disputed land belongs to the first respondent who gave straight evidence that he was given the same by his father in 2008. His evidence was supported by his father - DW2, DW5 and DW6.

On his part the appellant said the disputed land is the same that was subject matter of the case between him and Antony Mbasha but did not prove that. If that was the case he ought to bring evidence to show that otherwise the record shows that he lost the suit between him and Antony Mbasha and if he was not satisfied by that decision he ought to appeal. Also, his witness WILSON HEMA, PW2 who said was the one gave him land said appellant used that land until 1985 when he relocated to Mgandu. He said he (the appellant) did not know what transpired thereafter. PW2 also said he had given part of his land to the 2<sup>nd</sup> respondent for use and then for his personal use. And he also said the land he gave the appellant boarded the second respondent's land. Hence, even though PW2's version is believed it means the appellant abandoned the disputed land since 1985 hence it was about thirty (30) years in 2015 when he started claiming it back. Therefore, he was time barred to claim it as twelve (12) years had elapsed within which to claim land.

For the foregoing, if the two versions in respect of ownership of the disputed land are compared it is not difficult to see that it is the first respondent's evidence that is heavier and straight that the disputed land was formerly owned by the second respondent where in 2008 he gave it to

his son, the first respondent. Thus, the trial tribunal correctly decided in favour of the first respondent. This ground of appeal fails.

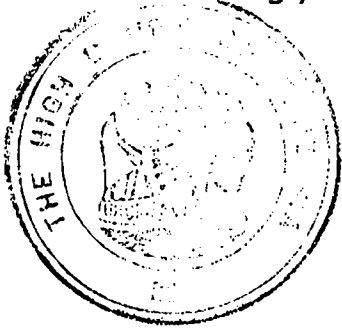
The appellant's complaint in respect of the fourth ground of appeal is that the trial tribunal erred when it did not visit the locus in quo. This court is of the considered view that it is not in every case that visit of the locus in quo is necessary. The visit of the locus in quo depends on whether the court trying the case finds it necessary to do so in accordance with the evidence adduced thereat. [***See also TANZANIA FISH PROCESSORS LIMITED VS. CHRISTOPHER LUMANYULA Civil Appeal No. 21 of 2010 Court of Appeal of Tanzania at Mwanza (unreported)***]. This ground of appeal has no merit.

Lastly, in the fifth ground of appeal and since this court has found that the first respondent's evidence is heavier than that of the appellant's as regards ownership of disputed land, the question of long possession by the appellant lacks leg to stand.

Consequently, this court is settled in mind that while the appellant claims that disputed land belongs to him but he has failed to prove the same as required under section 110 and 111 of the Evidence Act [CAP 6 R.E 2002].

Finally, this appeal has no merit and it is hereby dismissed with costs.

Order accordingly.



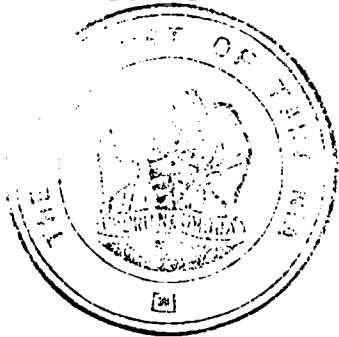
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**M.A. KWARIKO**

**JUDGE**

**05/06/2017**

Judgment delivered in court today in the presence of both parties and Ms. Judith court clerk.



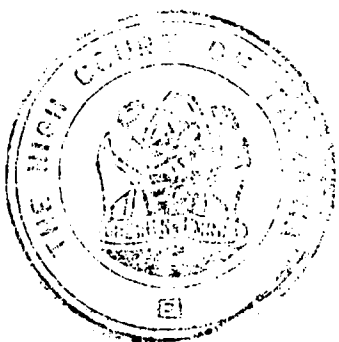
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**M.A. KWARIKO**

**JUDGE**

**05/06/2017**

**Court:** Right of Appeal Explained.



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**M.A. KWARIKO**

**JUDGE**

**05/06/2017**