

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

(APPELLATE JURISDICTION)

**LAND APPEAL NO. 80 OF 2016**

(Arising from Land Application No. 91 of 2014 of Maswa District Land &  
Housing Tribunal (M.T. Ilanga, Chairman))

**LISWA MBUSI NG'WAJE.....APPELLANT**

**VERSUS**

**NDITU NG'WAJE** (Administrator of the  
Estate of the Late **NG'WAJE NKINDA**).....**RESPONDENT**

Date of Last Order: 16.10.2018  
Date of Ruling: 14.12.2018

**JUDGMENT**

**V.L. MAKANI, J**

The appellant in this case is LISWA MBUSI NG'WAJE. He is appealing against the decision of Maswa District Land and Housing Tribunal in Land Application No. 91 of 2014 (M.T. Ilanga, Chairman).

The suit land is located in Mwashata village, Mwabuna Ward in Meatu District and it is about 50 acres. The appellant alleges that the suit land belonged to his father Mbusi Ng'waje who acquired the land in 1964. His father then invited his sister one Nshoma Ng'waje who was separated from his husband and she lived in the said suit land with her children. In 1968 his father passed away and the appellant and his siblings lived in the area with their mother and aunty and

when he got married in 1972 he left the area and moved to Mwasegela village leaving his aunty behind. Their mother died in 2001 and when he asked for the land Ngw'aje Nkinda refused. He called the clan meeting which resolved that the suit land ought to be divided but Ng'waje Nkinda refused. On the other hand, Ng'waje Nkinda the father of the respondent said the land belonged to him as he inherited it from his father who cleared the forest way back in 1960. He said his grandmother passed away in 2013 and his father remained the heir and he applied for customary right of occupancy to the Village Council but his father died in 2015 before he could get the said customary rights but the sketch plan for the said land was completed and admitted in the Tribunal as DE3 and the minutes of the Village Council as DE2.

The Tribunal found that the suit land belonged to the Nkinda family as they had been using the suit land for a long time. The Tribunal also found that the appellant had never used the suit land since 1968 and his first wife and family live about two kilometres away from the suit land.

The appellant was dissatisfied with the decision of the Tribunal hence this appeal. In the first place the respondent in the appeal was the late Ng'waje Nkinda but with leave of the court the Memorandum of Appeal was amended to reflect the respondent as Nditu Ng'waje the administrator of the late Ng'waje Nkinda. The amended Memorandum of Appeal had six grounds of appeal, which are reproduced hereinbelow as follows:

1. *That the trial Chairman erred in law and fact to entered judgment in favour of the respondent because, it is not true that, the land in dispute was in Ng'waje Nkinda's family since 1965 and the appellant avers that, at that time the same was in Nshoma Ng'waje's possession the sister of Mbusi Ng'waje till her death on 2013.*
2. *That the said late Nshoma Ng'waje was possessed the land (sic) in dispute because the clan agreed the same to remain under her custody till her death.*
3. *That the trial Chairman erred in law and fact when it failed to evaluate the evidence, which was tendered by the appellant side.*
4. *That the trial tribunal erred in law and fact to enter judgment in favour of the respondent because, the appellant is right to inheritance and the argument raised but the trial tribunal that, the was shifted to Mwasegela village is not fatal and not a bar to restrain him to inheriting the property of his late father.*
5. *That the trial tribunal did not recorded some of the testimony, which I was adduced before the tribunal (sic!).*
6. *That the copy of judgment, which I supplied contravened from the words which the Chairman was altered when he was reading the said judgment (sic!)*

During hearing of the appeal the appellant and the respondent appeared in person. The parties were very brief and the appellant adopted the grounds of appeal stating that he was not satisfied with the decision of the Tribunal as the land belonged to his father and he was claiming it, as it was his inheritance.

The respondent stated that he was the administrator of the estate of his late father Ng'waje Nkinda. He said he came to court to protect the properties of his father and he said the decision of the Tribunal was proper because he found his late father and grandmother on the suit land.

The appellant did not have anything to add as a rejoinder.

I have listened to the parties herein and I have also gone through the petition of appeal and the records before the Tribunal. The main issue for determination is whether this appeal has merit. I will consider the grounds of appeal generally.

The evidence at the Tribunal is very clear that the appellant and his family left the suit land when he got married in 1972 and moved to Mwasegela village. It was the appellant's evidence that when they left, the suit land remained in the hands of his aunty the late Nshoma Ng'waje who was the mother of the late Nkinda Ng'waje. It is also on record that Nshoma Ng'waje and her family lived in the said suit land until the death of Nshoma Ng'waje in 2013. It is also on record that during the time from 1972 to 2013 the family of Nshoma Ng'waje lived peacefully without any interference from the appellant or anyone else. Moreso, Exhibits DE2 and DE3 proved that the respondent had been on the suit land for a long time and DE2 a letter from the Village Executive Officer dated 18/05/2009 with the attached Minutes of the Village Council, stated that the suit land did

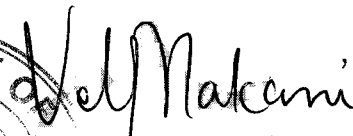
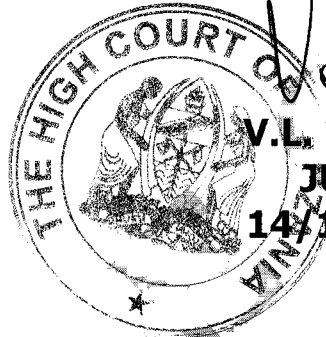
not have any dispute and the Village Council agreed that Nkinda Ng'waje be granted customary rights to the said suit land. The appellant claimed that the clan allowed Nshoma Ng'waje to be on the land until her death but he did not substantiate this allegation with any evidence.

Even if truly the land belonged to the appellant, but as was found by the Chairman of the Tribunal, the respondent's family were in occupation in the said suit land for more than 12 years without interruption. The respondent's family have been on the suit land since 1968. The appellant and his family left the suit land to Mwasegela village in 1972 and the application by the appellant was filed in the Tribunal in 2014. This means calculating from the time the appellant left the suit land in 1972 the respondents were on the suit land for 44 years without interruption from the appellant. And even if we calculate until the death of the grandmother of the respondent Nshoma Ng'waje in 2013, the respondents were on the suit land for 41 without any interruption whatsoever from the appellant. It is the law that where a person moves into a land, occupies it and develops it for 12 years or more with no interference whatsoever from the true owner of that plot, then that person who has occupied it for the 12 years or more acquires adverse possession. This position was well elaborated in the case of **Nassoro Uhadi vs. Musa Karunge [1982] TLR 302**. This means the appellant acquiesced to the occupation of the suit land by the respondent's family and he cannot now claim ownership.

The appellant in his amended petition of appeal claimed that the Chairman did not evaluate the evidence properly. But this court finds this allegation to have no support as the Chairman as evident from the judgment evaluated the evidence and arrived at a reasoned decision.

For the reasons above, I do not find any fault in the decision of the Tribunal. In that respect, the appeal is dismissed with costs for want of merit.

It is so ordered.

  
The seal of the High Court of Botswana is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF BOTSWANA" and a star at the bottom.  
**V.L. MAKANI**  
**JUDGE**  
**14/12/2018**