

**IN THE HIGH COURT OF TANZANIA
(MWANZA REGISTRY)
AT MWANZA**

MISCELLANEOUS LAND CASE APPEAL NO.134 OF 2015

(Arising from the decision of the District Land and Housing Tribunal of Ukerewe District at Ukerewe in Land Case Appeal No. 1 of 2014, Original Ward Tribunal of Ukerewe Ward in Application No. 12 of 2013.)

MPOLA MAKENE.....APPELLANT

VERSUS

ZEPHANIA MPOLA.....RESPONDENT

Last order: 13/12/2017

Judgment: 16/02/2018

JUDGMENT

MAKARAMBA, J.:

This is a second appeal in which the Appellant, **Mpola Makene** is appealing against the decision of the District Land and Housing Tribunal for **Ukerewe** at **Nansio** in **Appeal No. 1 of 2014** dated 30/12/2014 before **Hon. A. M. Kapinga Esq** Chairperson.

Briefly, in **2013** the Appellant lodged a suit before **Ilangala Ward Tribunal** in **Land Case No. 12 of 2013** against the Respondent, Zephania Mpola, for recovery of the suit land. The Appellant avers that, he allowed the Respondent, who is the Appellant's son, to use the suit land for fishing activities. The Respondent on his part claims that the suit land is his and strongly resists to return it to the true owner, the Appellant herein, on the ground that, the Respondent bought a part of the suit land from the

Appellant and another area forming part to the suit land from one **Elizabeth d/o Bigambo**. Before the Ilangala Ward Tribunal, the case ended on a win-win situation, in that, the Appellant was declared the lawful owner of the part of the suit land situated on the western part and the Respondent was declared the lawful owner of the suit land situated on the eastern part. The Respondent was also ordered to demolish all the houses he had erected on the western part of the suit land of which the Appellant was declared to be its lawful owner. The Respondent was also ordered to pay the costs of the suit.

Both the Appellant and the Respondent were dissatisfied with the decision of the Ilangala Ward Tribunal, and they both appealed against it before the District Land and Housing Tribunal for Ukerewe at Nansio in a **Consolidated Appeal No. 1 of 2014**. The appeal ended in favour of the Respondent. The Appellant's appeal was dismissed. The Respondent's cross-appeal was granted with costs and the Respondent was declared the lawful owner of the entire suit land. The Appellant dissatisfied with the decision and thence this second appeal on the following grounds, namely;

- 1. That, the learned Chairperson erred in law and fact to center her decision based on the law of limitation because in the circumstances of this case, the law of limitation can't apply.*
- 2. That, the learned Chairperson erred in law and fact for failure to evaluate and consider the evidence of Appellant's witnesses.*
- 3. That, the Honourable Chairperson erred in law and fact to upheld as true the purported Sale Agreement between Elizabeth Bigambo and Respondent without any proof to confirm the same.*

The Appellant prays this Court that the appeal be allowed with costs and any other relief/orders that it shall deem fit and just to grant.

In prosecuting the appeal, Mr. Mhingo, learned Advocate represented the Appellant. The Respondent has always been absent irrespective of summons duly served to him by way of publication in the ***Mwananchi Newspaper*** dated **5th October, 2017**. This Court upon prayer by the Appellant granted the Appellant leave to proceed *ex parte* against the Respondent and hence this Judgment.

On the evidence on the Court record, undoubtedly, originally the entire suit land belonged to the Appellant. The pertinent issue for determination is how the suit land came to be in the possession of the Respondent. At the trial Tribunal it was the evidence of the Respondent that, in the 1990's he was given the suit land by his father, the Appellant herein; a fact which the Appellant has vehemently disputed. According to the Appellant, he merely allowed the Respondent to use the suit land for fishing businesses and not otherwise. The evidence adduced before the Ward Tribunal by both parties, does not establish the fact of the Respondent being permanently given the suit land by the Appellant.

Furthermore, the Respondent alleged that in 1992 he bought another piece of land forming part of the suit land from one **Elizabeth Zephania Migambo**. The said Elizabeth Zephania Migambo stated that, she obtained the suit land by purchasing it from the Appellant. Both the Respondent and Elizabeth Zephania Migambo alleged to have executed a written Sale Agreement over the suit land. Rather unfortunately, neither the Respondent nor Elizabeth Zephania Migambo adduced in evidence the said

written Sale Agreement. This being the case therefore, the Respondent has failed to bring cogent evidence to the satisfaction of this Court on how he came to be in possession of the suit land. Since the fact of the suit land originally belonging to the Appellant has not been successfully disputed, and given absence of any cogent evidence to prove that the suit land was sold or given to the Respondent; and taking into account the fact that, the appeal has not been contested by the Respondent, this Court finds the appeal with merits. Accordingly the appeal must be allowed as I hereby do.

In the whole and for the above reasons, the appeal is hereby allowed with costs. The Appellant, Mpola Makene, is hereby declared to be the lawful owner of the entire suit land. It is so ordered.

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R.V. MAKARAMBA
JUDGE
16/02/2018