

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 21 OF 2018

(From the decision of the District Land and Housing Tribunal of Tarime at Tarime Land App. No. 67 of 2016 and Kitembe Ward Tribunal Rorya District Land Case No. 11 of 2016)

OKECH AKOMO APPELLANT

VERSUS

KONSILATA ADOYO RESPONDENT

JUDGMENT

25/09/2018 & 24/01/2019

RUMANYIKA, J.:

The 2nd appeal is against the 28/09/2017 judgment and decree of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT). Having reversed the 2016 decision of Kitembe Ward Tribunal (the wt) and held that Konsilata Adoyo (the respondent) lawfully owned the disputed land.

The two (2) grounds of appeal revolve around points as under:-

- (1) that the DLHT improperly evaluated the evidence on record.
- (2) that the DLHT erred in law and fact not holding that the respondent had been a mere leasee.

Mr. Cosmas Tuthuru learned counsel appeared for Okech Akomo (the appellant).The respondent appeared in person.

Mr. Tuthuru submitted that irrespective of her alleged long stay (since 1999) and other witnesses supported it, the respondent had been a leasee. That she could not therefore have title passed onto her. (Cases of **Swalehe Vs. Salim**(1972) HCD No. 140 and **Mkakofia Mchananga Vs. Asha Ndesia** (1969) HCD No. 204. Appeal be allowed. Stressed the learned counsel.

The respondent, on reply submitted that father having brought the land for her, she erected a house in 2001 then another two. That the appellant disturbed and sued her only three years after her father died. That is all.

A brief account of evidence on record reads as follows:

In as far as the appellant is concerned, that he leased the disputed land to the needy respondent in 2006. Just for her to erect a temporary shelter. But now turned hostile, claimed title and resisted to vacate. That is it.

The respondent on her part stated that having it been given to her by Ogouk Chunya, she occupied, utilized and therefore stayed on the disputed land since 2001. Thereby he erected three houses throughout not disturbed until three years after the father died. That is it.

The DLHT, it appears on balance of probabilities convinced, it held that the respondent had made out her case. Having occupied it for 15

years undisturbed and built three houses. That the appellant had no documentary evidence to substantiate the alleged lease agreement.

The pivotal issue is whether appellant had proved his case on balance of probabilities. The answer is no!

One may have had even orally leased the disputed land at the time to the needy respondent on terms and conditions that she builds only a temporary shelter/hut yes! But how temporary was temporary! Was a 15 years stay a temporary term? What about the 3 permanent structures without intervention being built ? I think once a leasee violated terms and conditions of agreement and paused in a manner to suggest ownership of the land, but considerably for quite long the time owner kept quite, title shall, by way of acquiescence deemed to have passed onto the leasee. Once a lease always a leasee yes! But for unreasonably long and undisturbed continued breach of the terms and conditions. A 15 years breach, if at all of the terms was a clear acquiescence. Hence a long established principle that courts will always be reluctant to disturb people who had occupied and utilized land for a long time uninterfered. Both land policy and common sense required that land should go to the effective occupier. There is no wonder as complained by her, that appellant did not disturb the respondent until immediately after the latter's father died.

I shall also have a commentary point to make on the trial tribunal's findings that the respondent had failed to show mode of having have had owned the disputed land. Through inheritance? Allocation by authorities or

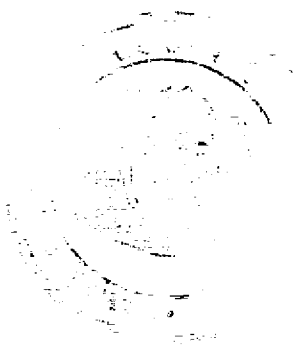

by way of purchase? The trial ward tribunal should have known that at times land was acquired only through adverse possession.

Having said all, I will, as hereby do uphold decision and orders of the DLHT. Appeal is dismissed with costs. Ordered accordingly.



S. M. RUMANYIKA
JUDGE
18/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of both appellant and respondent in person.



O.H. Kingwele
DEPUTY REGISTRAR
24/01/2019