

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

HC LAND APPEAL NO.04 OF 2020

(Arising from Decision of District Land and Housing Tribunal for Chato
in Land Application No.46 of 2018)

JEREMIA BUSEGANO (Administrator of

Estate of the late Agatha Busegano) **APPELLANT**

VERSUS

JAMES SOKOLI **RESPONDENT**

JUDGMENT

Last order: 15.07.2020

Judgment Date: 27.07.2020

A.Z.MGEYEKWA, J

This is the first appeal. It emanates from the decision of District Land and Housing for Chato in which the appellant appealed to this court following his dissatisfaction with the decision of the District Land

and Housing Tribunal for Chato in Land Application No. 46 of 2018, which decided in favour of the respondent.

In order to appreciate the foregoing contending arguments in the instant appeal before this court, it may perhaps be fitting, at this juncture to set the factual background relevant to this appeal, is that Jeremiah Busengo stands as an administrator of the Estate of her late sister one Agatha Busengo sued the respondent one James Sokoli. The appellant lodged his complaints at the District Land and Housing Tribunal for Chato claiming for ownership over the suit land.

The appellant as an administrator of the Estate of the late Agatha Busegano sued the respondent complaining that the late Agatha bought the suit land from the respondent back in 1998, thus she was a lawful owner of the suit land located at Lusahunga Village within Biharamulo District and the appellant complained that the respondent trespassed the late Agatha land. The appellant urged the District and Housing Tribunal for Chato to find that the respondent is a trespasser thus the District Land and Housing Tribunal order him to vacate the suit land.

On the other hand, the respondent defended himself before the trial tribunal that he has never sold the suit land to the late Agatha instead the deceased leased the suit land for a while, and until she passed away the suit land was in his hands. The respondent tendered documents to prove that he is the lawful owner of the suit land.

At the conclusion of the evidence by both sides the District Land and Housing Tribunal decided in favour of the respondent. Aggrieved, the appellant filed a Petition of Appeal containing seven grounds of appeal as follows:-

- 1. That, the Trial District Land and Housing Tribunal erred in law and facts when it failed to believe that the suit land was in August 1998 sold to the late Agatha Busegano by the respondent for Tshs, 30,000/=.*
- 2. That, the Trial District Land and Housing Tribunal erred in law and in facts, when it failed to take into consideration the fact that, after the Deceased Agatha Busegano had purchased the said suit land from the Respondent, occupied it and or used it for cultivation as from 1998 up to 2011 without any disturbance from the Respondent, a period of 13 solid years a clear indication that she had legally purchased the said suit land from the Respondent.*

3. *That, the Trial District Land and Housing Tribunal erred in law and facts, when it failed to take into consideration the fact that Appellant's 13 years-long occupations of suit land created adverse possession of suit land on the part of the Appellant, notwithstanding it all that long period.*
4. *That, the Trial District Land and Housing Tribunal erred in law and fact, when it failed to admit, appellant's documents which were necessary for the just determination of this case namely; a letter, Copy of Judgment of Chato Appeal NO. 4720/20 and Proceedings of District Land and Housing Tribunal Land Case No. 24 of 2014 and High Court Appeal No. 10/2017 whose copies are appended hereto for ease of reference.*
5. *That, the Trial Tribunal erred in Law and facts, when it failed to take into consideration the fact that the Appellant had proved the suit against the Respondent on a balance of probability the standard of proof required in Civil Trials, that she purchased the suit land from Respondent for Tshs. 30,000/= in 1998 and occupied the same undisturbed upon 2011 a period of 13 years.*
6. *That, the Trial Tribunal erred in law to receive as exhibit Judgment of Lusahunga village DW2.*
7. *That, the evidence of the Appellant was supported by the evidence of AGNESS BUSEGANO and FITIA BENARD.*

The hearing was done by way of written submission whereas, the appellant filed the submission in chief as early as 18th June, 2020 and the respondent filed a reply as early as 8th July, 2020 and a rejoinder was filed on 10th July, 2020. Both parties complied with the court order.

In support of the first ground of appeal, the appellant opted to combine the 1st, 2nd, 3rd, and 5th grounds of appeal and argue them together. He also opted to drop the 4th, 6th and 7th grounds of appeal. The appellant argued that the respondent testimonial was given higher consideration conversely than the appellant evidence. He argued that the District Land and Housing Tribunal based its decision on the respondent's two witnesses, while their testimonies were based on the leased disputed space and ignored the appellant's testimonies. It was the respondent's further submission that the appellant has the right to claim that quarter acre of land was acquired through the doctrine of adverse possession.

He further submitted that since the respondent did not cross-examine on the sale of the disputed land then it is tacitly taken as an

admission. To support his submission he cited the case of **Paul Yustus Nchia v National Executive Secretary Chama Cha Mapinduzi and Another** Civil Appeal No. 85 of 2005 Court of Appeal of Tanzania at Dar Es Salaam. The respondent went on to submit that the adverse possession principle should have been operated against the respondent. He counted from 1997 when the parties entered into an agreement until 2011 when the respondent instituted a suit against one Agnes Busegano who was cultivating the suit land, the period of 12 years had lapsed. The appellant fortified her argumentation by referring this court to the case of **Registered Trustees Of Holy Spirit Sisters v January Kamili Shayo & 136 Others**, Civil Appeal No. 193 of 2016 (unreported).

In conclusion, the appellant urged this court to allow the appeal with costs and declare that the appellant a lawful owner of the disputed land.

In reply thereto, the respondent argued generally that the principle of adverse possession has no room in the nature of the matter at hand. He went on to state that the appellant's sister one Agatha

Busengano never showed interest to continue to possess the suit land which she leased in her lifetime *animus possidendi*, she leased the suit land for 3 months and when the time lapsed she left the land in possession of the respondent, the owner of the suit land.

He went on to state that Agatha Busengano never trespassed the respondent's land. The respondent further argued that in that case time started to run against the respondent when the late Agatha Busengano returned the suit land to the landlord.

The respondent continued to submit that pertaining to the court proceedings and judgment it is not disputed that the suit land is owned by the respondent because the Village Council allocated the said suit land to the respondent. He further argued that the appellant was required to prove whether there was any transfer from the respondent to the late Agatha Busegano. He went on to argue that

It was the respondent further submission that the appellant did not produce any title deed or purchase agreement instead she claimed that she witnessed when her sister was purchasing the suit landform

the respondent. He added that the appellant failed to prove the case on a balance of probability. To support his submission he referred this court to section 110 (1) of the Evidence Act, Cap.6 [R.E 2019].

In conclusion, the respondent urged this court to dismiss the appeal with costs and sustain the trial tribunal decision.

After a careful perusal of the court record of and final submission of both parties, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113, which requires, "*the person whose evidence is heavier than that of the other is the one who must win*" and that propounded in the case of **Jeremiah Shemweta v Republic** (1985) TLR 228, thus; "*where doubts are created in evidence, the same should be resolved in favour of the opposite party.*"

In determining the appeal, I will address the first and second grounds of appeal cumulatively, the appellant's grounds are related to ownership of disputed plot whereas the appellant claims that the appellant's sister bought ¼ acres from the respondent and he urged

this court to find that the appellant occupied the disputed land since 1997 when the two entered into an oral agreement.

Having analysed the evidence on record, I am unable to find any fault with the decision of the trial tribunal to reject the appellant's case. In record, each party had an opportunity to adduce evidence in the trial court. The appellant's contention is based on Sale Agreement between the appellant and the respondent. The appellant claimed that his late sister Agatha bought the suit land from the respondent in 1998 and they used the said land until 2011 when the respondent claimed that the suit land belongs to him.

Additionally, the trial Tribunal allowed each party to summon witnesses to testify before the Court whereas, the appellant's witnesses testified to the effect that their late relative bought the suit land from the respondent and PW3 added that the late Agatha used the suit land for 13 years although she left no WILL. Reading, the evidence on record, it is shown that the respondent and his witnesses did not prove their allegations. Their claims were not supported by documentary evidence which was necessary to enable the trial tribunal

to find that the deceased and the respondent entered into an agreement. The Land Act, Cap. 113 [R.E 2019] under section 64 (1) it is provided unequivocally that disposition of right of occupancy must be in writing.

On his part, the respondent testified to the effect that the Village Council allocated the suit land to him on 28th day of March, 1995. The respondent argued that in 1999 the late Agatha leased the suit land and in 2000 one Peter also leased the same suit land. To substantiate his argumentation he tendered a customary certificate of occupancy which was admitted at the trial tribunal as Exh.DE1. He also tendered a Mediation document which was admitted as Exh.DE2. The records reveals that apart from tendering the said documentary evidence, the respondent's witnesses one Elisha Melchory (DW1) proved that in 1995 the land allocation committee allocated the suit land to the respondent and later he was issued with a customary right of occupancy.

In a situation where a party has produced a documentary evidence and the other party failed to prove his allegations as stated under section 110 of Evidence Act, Cap.6 [R.E 2019], the court has to

place more weight on a party who produced a relevant document and who proved his case on the preponderance of probabilities. As it was held in the case of **Lamshore Limited and J. S. Kinyanjui V Bazanje K. U. D. K** [1999] TLR 330 it was held that:

" he who alleges a fact has the duty to prove it"

The standard of proof is always on the preponderance of probabilities.

Borrowing a leave from the above authorities, I find that the appellant is the one who alleged, therefore, he had a duty to prove that the late Agatha bought the suit land from the respondent.

Having considered the above grounds, it is evident that the issue of adverse possession cannot stand because the respondent has proved his ownership over the suit land, therefore, I find no any justifiable legal reasons to deal with the third ground of appeal, as it will not reverse the decision made above.

Subsequently, I am satisfied that in the instant appeal the respondent's evidence outweighed the appellant's evidence.

Therefore, I proceed to hold there is no reason for this court to fault the decision of the District Land and Housing Tribunal for Chato in respect to Land Application No.46 of 2018. I accordingly dismiss the entire appeal without costs.

Order accordingly.

Dated at Mwanza this date 27th day of July, 2020.


A.Z.MGEYEKWA

JUDGE

27.07.2020

Judgment delivered in the chamber this 27th day of July, 2020 via audio teleconference, and both parties were remotely present.




A.Z.MGEYEKWA

JUDGE

27.07.2020

Right to appeal full explained.