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

MISC. LAND APPEAL NO.35 OF 2020
(ARISING FROM LAND APPEAL NO. 93 OF 2019 AT IRAMBA DISTRICT LAND AND HOUSING
TRIBUNAL, ORIGINAL LAND CASE NO. 63 OF 2019)

YUMBU SAI CHIYOYO.....APPELLANT

VERSUS

TAGALA MBOJE..... RESPONDENT

JUDGEMENT

Date of JUDGEMENT- 02/10/2020

Mansoor, J:

The Appellant Yumbu Sai Chiyoyo filed a suit before Mgongo Ward Tribunal against Tagala Mboje, claiming that Tagala Mboje had trespassed into his land. The parties herein are neighbors, their respective land is boarding each other, and they have a dispute over the borders. The Mgongo Ward Tribunal visited the locus in quo and made a decision that permanent borders be fixed at the points they had identified to resolve the dispute amicably. The Ward Tribunal however

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adjudicated on borders while the parties were disputing over the ownership of the land, but the size, measurements, and description of the land in dispute was never stated.

The Appellant was dissatisfied, he appealed before the Iramba District Land and Housing Tribunal, Land Appeal No. 93 of 2019. He lost the appeal; hence this is the second appeal.

The appellant filed the Petition of Appeal which has four grounds, to wit:

1. The Chairman of the District Tribunal failed to analyze the law and the evidence tendered at the Ward Tribunal.
2. The Chairman of the District Tribunal erred to confirm the decision of the Ward Tribunal of

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dividing the land and giving part of the land to the respondent.

3. The Chairman of the District Tribunal erred to declare the respondent the owner of the disputed land by adverse possession.

4. The Chairman failed to make proper analysis of the evidence produced by the appellant.

The appeal was argued by written submissions. The Appellant was represented by Counsel Theonest Conrad while the respondent was represented by Counsel Christopher Malinga.

Counsel Conrad Theonest argues that there was evidence presented at the Trial Tribunal by the Appellant that the appellant's father bought the land from Yegela Jilala, and the agreement was reduced in writing. The consideration of the sale was five cows.

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That one Kwai Sai gave evidence for the Appellant and confirmed before the Ward Tribunal that the appellant's father purchased the land in 1984. The appellant's counsel argues that the District Chairperson did not consider the evidence presented before the Ward Tribunal by the appellant. The Counsel submits as if the sale agreement between the appellant's father and Yogela Jilala was submitted at the Ward Tribunal and that the District Chairperson failed to consider it.

Submitting on the second ground, Counsel Theonest Conrad says that it was wrong for the District Court to agree with the decision of the Ward Tribunal that the land in dispute be divided between the parties herein. He submits that the respondent was simply an invitee and the doctrine of adverse possession cannot apply to an invitee. He referred to the case of **Mussa Hassan vs Barnabas Yohana Shedafa (legal representative of Yohana Shedafa), Civil Appeal No. 101 of 2018**, Court

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of Appeal sitting at Tanga, in which it was held at page 13 of the judgement that:

“we do not think continuous use of the land as an invitee or by building a permanent house on another person’s land or even paying land rent to the city council of Mwanza in his own name would amount to assumption of ownership of the disputed plot of the land by the appellant.”

The Counsel submits that the fact that there was proof that the land was purchased by the appellant’s father from one Jilala Yegela in 1984, then the land belongs to the appellant and this also proves that the respondent was an invitee.

Regarding the third ground of appeal, the counsel repeats the submissions of ground No. 2, and adds that the respondent failed to give evidence as to how he became the owner of the land. He argues that the sale

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agreement should have been admitted as evidence by the District Land and Housing Tribunal as an additional evidence. On this he referred the court to the case of **Ismail Rashid vs Mariam Msati, Civil Appeal No. 75 of 2015**, in which the appellate court was allowed to receive the additional evidence provided that the evidence must be such that if given would probably have an important influence on the result of the case, although it need not be decisive. He concedes that the sale agreement was not tendered or admitted before the Trial Ward Tribunal as evidence.

On forth ground, the counsel argues that the District Court failed to single out the points for determination in its judgement, it failed to evaluate the evidence tendered by both sides before the Ward Tribunal.

In opposing the appeal, Counsel Malinga for the respondent argues that the respondent proved his ownership of the land at the Ward Tribunal, and since

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the Appellant failed to produce the sale agreement at the Ward Tribunal, he failed to prove that his father purchased the land from one Yegela Jilala in 1984 in exchange for five cows. That the appellant did not give proof at all that the respondent was a mere invitee to the land. He also submits that the appellant never tendered the sale agreement at Trial Tribunal and never applied to add it as an additional evidence during the appeal at the District Tribunal.

I have carefully evaluated the records and considered the arguments of the counsels representing the parties herein.

It is on record that the appellant herein was the complainant before the Ward Tribunal, and he claimed to be the owner of the land which is occupied by the respondent. He claims that his late father purchased the land from one Yegela Jilala in 1984. In fact, in his claims he says “us” in Kiswahili “sisi”, which means he

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was suing for himself and on behalf of others without mentioning the others. He was also suing as the representative of others, but he filed a suit in his name solely leaving out the others, and without obtaining leave to represent the others. Again, he claims to claim for the land which belonged to his father without obtaining the letters of administration to be able to file the suit as the legal representative of his father. He also did not give clear size, measurements, or clear description of the land he claims to be the property of his father and which was trespassed by the respondent. The Ward Tribunal misdirected itself for instead of adjudicating on the claims of ownership of the land it gave a judgement which is contrary to the pleadings. The parties were not in dispute over the borders, but each was claiming ownership of the land. Thus, the question in dispute was not adjudicated by the Ward Tribunal. There is also a confusion as to what is the size of the land in dispute, one party alleges that the total land in dispute is 129 acres, and if this is true then, as


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opined by one of the assessors at the District Tribunal, the Ward Tribunal lacked jurisdiction as the value of 129 acres or hectares exceeded the pecuniary jurisdiction of the Ward Tribunal.

That being the case, the proceedings and Judgement of the Ward Tribunal of Mgongo in Land Case No. 63 of 2019 , and that of the District land and Housing Tribunal for Iramba at Kiomboi in Land Appeal No. 93 of 2019 are quashed and set aside. Parties are at liberty to file a fresh case at the Tribunal or Court vested with competent jurisdiction. Each party shall bear his costs of this appeal.

DATED at DODOMA this 02ND day of OCTOBER 2020




L. MANSOOR
JUDGE,
2ND OCTOBER 2020