

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND CASE APPEAL NO. 10 OF 2020**

(From the Decision of the District Land and Housing Tribunal of Mtwara District at Mtwara in Land Case Appeal No. 224 of 2019 and Original Ward Tribunal of Mihambwe Ward Application No. 315 of 2019)

**SELEMANI ATHUMANI MANDUTA.....APPELLANT**

**VERSUS**

**HAMISI ATHUMANI NAVANGA.....1<sup>ST</sup> RESPONDENT**

**ALI SALUM CHIPOTI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

15 July & 10 August, 2021

**DYANSOBERA, J.:**

The Appellant Selemani Athman Manduta successfully sued the respondents before Mihambwe Ward Tribunal in a claim of four farms, the former property of the late Athman Manduta who passed away between 1978 and 1979. The respondents' appeal before the District Land and Housing Tribunal at Mtwara was allowed. Aggrieved, the appellant has appealed to this court.

The evidence of the appellant which was supported by Rabia Athman Manduta (PW 2), Ahmad Athman Manduta (PW 3), Athman Athman Manduta (PW 4), Fatu Athman Manduta (PW 5) and Sophia Athman Manduta (PW 6) established that the suit land in dispute comprising of four farms belonged to their late father one Athman Manduta. It was claimed on part of the appellant that the two respondents grabbed the said farms and used them. The appellant and his relatives denied the farms to have been lawfully sold to the respondents.

On their part, the respondents contended that they bought the said farms from the deceased's widow and the appellant's young brother.

The trial Ward Tribunal was satisfied that the appellant had proved his case on balance of probabilities. The respondents were not satisfied with the decision of the Ward Tribunal and decided to appeal to the District Land and Housing Tribunal which reversed the decision of the Ward Tribunal and declared the respondents as owners of the disputed farms having legally purchased them.

This finding of the District Land and Housing Tribunal aggrieved the appellant who has filed this appeal on a total of four grounds of appeal substantively challenging the failure by the District Land and Housing

Tribunal to evaluate and analyse the evidence unfurled at the trial Tribunal.

Having considered the records of the lower Tribunals and the grounds of appeal together with the submissions in support and in opposition of the appeal, I think the judgment of the District Land and Housing Tribunal is impeccable.

In the first place, it was amply proved that the 1<sup>st</sup> respondent bought the farms from Samli Athman Manduta after he had paid a total sum of Tsh. 6500/= by instalment. The purchase agreement was concluded on 23.8.1989. The purchase money was received by Ahmad Athman Manduta who also signed. This evidence was not only supported by Ahmad Athman Manduta who testified for the appellant as PW 3 but also PW 5, Fatu Athman Manduta was clear in her evidence that after the death of their father in 1978 or 1979, the farms were left unattended. In replying to the question posed that 'Alipofariki baba yenu hayo mashamba yalikuwa chini ya nani? PW 5 replied, 'tuliyaacha tu, baba amefariki mwaka 1979. The evidence is overwhelming that the farms were sold to the 1<sup>st</sup> appellant in the presence of Rashid Ally Malembuka (DW 3), then Katibu Tawi. With regard to the 2<sup>nd</sup> respondent it was amply proved by him that he bought the farms from the deceased's widow Zainab Issa Hemedwho was in company of her

two daughters including Esha Athman Manduta, the appellant's sisters. This evidence was fully supported by one Zainab Ahmad Makelele (DW 4), the appellant's sister and wife of the 2<sup>nd</sup> respondent. The dispute arose in 2017 and the matter was filed before the Tribunal in 2017. The evidence shows that the 1<sup>st</sup> respondent has been in occupation from 23<sup>rd</sup> August, 1989 while the 2<sup>nd</sup> respondent has been in occupation of the said farms from 5<sup>th</sup> July, 1987; only in 2017, the appellant came forth and started claiming that the farms were the property of their late father. As rightly pointed out by the Hon. Chairman, it would be injustice and contrary to law and laid down principles to disown the respondents who not only legally bought the farms but also have been in uninterrupted occupation from 1987 and 1989 to 2017. The decision of the District Land and Housing Tribunal was proper in law and justified in evidence as the Hon. Chairman properly analysed and evaluated the evidence and came to the right conclusion. There is nothing wrong in his finding.

This appeal fails and is dismissed with costs to both respondents here in this court and in the Tribunals below.



  
**W. P. Dyansobera**

**Judge**

**10.8.2021**

This judgment is delivered under my hand and the seal of this Court on this 10<sup>th</sup> day of August, 2021 in the presence of appellant and the two respondents.



**W.P. Dyansobera**

**Judge**

