

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

**MISC LAND APPLICATION NO. 42 OF 2020**

(Arising from Geita District Land and Housing Tribunal in Land Appeal No. 5/2020, Originating from Igalula Ward tribunal in Land Dispute No. 5/2019)

**BULENGANIJA NUBI..... APPELLANT**

**VERSUS**

**LUCAS BUDEBA..... RESPONDENT**

**JUDGMENT**

**9<sup>th</sup> & 22<sup>nd</sup> April, 2021**

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is with respect to the concurrent judgment and decrees dated 10/01/2020 and 22/10/2020 of Igalula ward tribunal (the wt) and the District Land and Housing Tribunal for Geita (the DLHT) respectively. It is from the outset worth noted that with respect to the parcel of land, Lucas Budeba (the respondent) having sued successfully, all the way Bulenganija Nubi (the appellant) lost the war and battle. He is not happy, and here he is.

The 3 grounds of appeal revolve around points as under: -

1. That in terms of market value of the disputed land, the DLHT erroneously failed to hold that the wt lacked jurisdiction.

2. That the DLHT erroneously failed to hold that at the wt the respondent's claims we time barred.
3. That with regard to the respondent's title, the DLHT improperly evaluated the evidence on record.

Messrs Erick Katemi and Maria Mashimba learned counsel appeared for the appellant and respondent respectively much as through mobile numbers 076562753 and 0755838567 respectively, the appeal was heard by way of audio teleconferencing on 09/04/2021.

Having abandoned the 1<sup>st</sup> ground, Mr. Erick Katemi learned counsel submitted on the remaining 2 grounds seriatim: **One;** that with an undisputed fact that the appellant had occupied the disputed land say for 37 years until 2016 undisturbed therefore according to Section 3(1) of the Law of Limitation Act Cap 89 RE 2019 beyond the 12 years limit, the DLHT chair should have held that from the beginning the respondent's claims were time barred but on that one, contrary to the rule in the case of **Masalu Busopole v. Shidonge Bujilima**, Misc. Land Case Appeal No. 76 of 2016, HC at Mwanza (unreported) the DLHT chair parted company with the assessors without reasons on record. **Two;** that at the appeal level the purported vendor having had been dropped, and on that one the DLHT



chair ordered no additional evidence, only the long in possession and undisturbed **bonafide** purchaser appellant should have been declared lawful owner of the disputed land save for the improperly evaluated evidence on record. That is all.

Ms. Marina Mashimba learned counsel submitted: **(1)** that the appeal lacked merits because with respect to the disputed land and issue of limitation period the appellant had even in evidence not proved title the land also having had charged several hands before and the appellant did not establish when exactly the time began to run **(2)** that unlike in the distinguishable case of **Masalu Busopole** (supra) where no assessors' opinion was recorded at all, in the present case the opinion was there much as the DLHT chair was not bound by the opinion so was the cited case of **John Chuma** (supra). That the issue of innocent purchaser it should not even have been raised. That is all.

A summary of the evidence on record would read thus;

Sm1 Lucas Budeba on behalf of Budeba clan he stated that as they had assigned one Suki Kaliwa the sixty (60) as the licensee but now encroached by the appellant, when, after sometime they came back, he (Sm1) found the said licensee having had sold it to the appellant.

Sm2 Suki Kaliwa is on record having stated that upon death of father and having had left the place but long at last now back, on behalf of Budeba he purchased it for five (5) heads of cattle but say 36 years previously the land was in absence of any other witnesses sold to the appellant. That is all.

Su1 Bulenganija Nubi stated that he purchased the suit land from Ng'wanakaliwa for some heads of cattle (number forgotten) and one Stephano Wana witnessed it that upon application more than 30 (thirty) years previously he had the land duly allocated to him by the local leaders. That is all.

The appellant's counsel having had abandoned a ground on pecuniary jurisdiction, the central issue is whether the respondent's case was on balance of probabilities proved. The answer is for the two main reasons yes:

**One;** the appellant may have had orally purchased the disputed land say 36 years previously or even much earlier yes, but not only he did not have the respective vendor or the said witness in court and did he not substantiate the latters' failure to appear, but also according to himself he strangely enough could not even remember the actual price. There is no



wonder, like he was now at loss, at the same time, and contrary to the trite law in his evidence the appellant told the trial tribunal that on application he had the disputed land dully allocated to him by local authorities much as if at all the two sources of title couldn't have co-existed. It is either one acquired land by way of purchase or in the present case allocated to him by local authorities notwithstanding the issue of 30 plus years undisturbed occupancy. The means justified the end. In fact the respondent's evidence weighed heavier than the appellant's. Grounds 2 and 3 are dismissed.

**Two;** it is trite law, and the appellant did not even attempt to assign reasons why shouldn't this court vacate the long established and accepted legal principle that unless there were some peculiar circumstances, very seldom than not an appeal reversed concurrent factual findings of the two courts bellow suffice, in favour of the respondent, the two points to dispose of the appeal.

The appeal is dismissed with costs. It is so ordered.

Right of appeal explained.



**S. M. RUMANYIKA**

**JUDGE**

**21/04/2021**

The judgment delivered under my hand and seal of the court in chambers this 22/04/2021 in the parties' absence.



  
**S. M. RUMANYIKA**

**JUDGE**

**22/04/2021**