

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 11 OF 2020

(Arising from the decision of the High Court of Tanzania at Mwanza Hon. U. Madeha, J dated 6th January, 2020 in Land Appeal No. 26 of 2019)

FELICIAN SELESTINE.....APPELLANT

VERSUS

MASHAURI MISUNGWI..... 1ST RESPONDENT

SIMEO NYALA.....2ND RESPONDENT

FAUSTINE NTUNGWA.....3RD RESPONDENT

NG'WANA MASHALA.....4TH RESPONDENT

SELEMAN KAHEGI.....5TH RESPONDENT

SIMEO SHINGE.....6TH RESPONDENT

MUSA JOHN.....7TH RESPONDENT

PETRO MANGASHINE.....8TH RESPONDENT

RULING

Date of Last order: 23/6/2021

Date of Ruling: 02/07/2021

F. K. MANYANDA, J.

This is an application for leave to appeal to the Court of Appeal made under section 47(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019]. This Court is asked to grant leave to the Applicant to appeal against the



leha, J in Land Appeal No. 26 of 2019 which emanated
n No. 47 of 2017 of the Geita District Land and Housing

ost in the DLHT to the Respondent and he also lost in
a notice of appeal on 21/01/2020. This application is
amber summons supported with an affidavit sworn by
plicant) which gives the grounds for leave to appeal as

able Judge erred in law to rule out that the application
rred whilst in fact in regard to evidences (sic) on record
n time.

- (b) The Honourable Judge failed to nullify the decisions of the Trial
Chairperson on the basic that it contravened section 24 of the Land
Disputes Courts Act, [Cap. 216 R.E 2019].

The Respondents in their counter affidavits responded against the
Applicant's affidavit averring that the grounds are unfounded because there

is no any part of the judgment held the application time barred, but it said that the Respondents acquired the land under adverse possession.

Equally the Respondent averred that the trial Judge did not anywhere hold that section 24 of the Land Disputes Court Act was violated by the trial Tribunal.

At the hearing the Applicant, been a layman had nothing useful to add than to adopt his chamber summons and affidavit contending that there are illegalities concerning assessors.

The Respondents simply argued that the judgment of the High Court is correct and it correctly analyzed the evidence and came to a right decision that the dispute land belonged to them. They argued also that the trial chairman sat with two assessors who correctly gave their opinion which was considered by the trial Chairman.

They prayed the application to be dismissed for want of merits.

I have dispassionately gone through the records of this matter and find that this application is prone to fail. I will give the reasons hereunder.

One, the Appellate Judge dully analyzed the evidence adduced at the trial Tribunal as far as the question of adverse possession is concerned. The Appellate Judge at page 7 of the Judgment rightly found that the Applicant moved out of the shamba in dispute in 1978 until in 2011 when they alleged to contest ownership of the same with the Respondent who had occupied the same after been vacated for so long. The Appellate Judge properly applied the law in the case of **Registered Trustees of Holly Sprit Sisters Tanzania vs January Kamili and 136 others**, Civil Appeal No. 193 of 2016 where the Court of Appeal set 8 testes for the doctrine of adverse possession to apply namely:-

1. That there had been absence of possession of the true owner through abandonment.
2. That the adverse possessor had been in actual possession of the piece of land.
3. The adverse possessor had no colour of right to be there other than his entry and occupation.

4. That the adverse possessor had openly and without consent of the true owner done acts which were inconsistent with the enjoyment of the true owner of the and for the purposes for which he intended to use it.
5. That there was sufficient *animus* to dispossess and *amino possident*.
6. That the statutory period, in this case twelve years had expired.
7. That had no interruption to the adverse possession through the aforesaid statutory period, and
8. That the nature of the property was such that, in the right to the foregoing adverse possession would result.

I have gone through the proceeding and the judgment in fact I don't see anywhere the Appellate Judge left a stone unturned.

The question of acquisition of the disputed land by the Respondent to their entitlement as owners was adequately addressed. There is no triable issue worthy of determination by the Court of Appeal as far as ownership of the disputed land is concerned.

Two, as regard to the second ground concerning assessors, it is a contention by the Applicant that there is a triable issue, that is whether the trial Magistrate failure to nullify the proceedings and judgment of the trial Tribunal for violation of section 24 of the Land Disputes Courts Act is correct.

In her judgment the Appellate Judge adequately analyzed the evidence and records of the trial Tribunal and found that there was no violation of section 24 of the Land Disputes Courts Act. At pages 6 and 8 of her judgment after citing the provisions of section 23(2) of the same Act she found that there were two assessors who participated throughout the proceedings namely Ms. Roda Kinuno and F. S. Kahabi. Both of them gave written opinion which was read out to the parties.

The Appellate Judge failed to see any violation of either section 23(2) or 24 of the Land Dispute Courts Act.

The Applicant contends that there is a triable issue stated above, this Court finds the same was adequately addressed by the Appellate Court.

In the result I don't find any ground warranting an issue worthy for consideration by the Court of Appeal.

Therefore, this application has no merit. I do hereby dismiss it for want of merit with costs. It is so ordered.




F. K. MANYANDA
JUDGE
02/07/2021