

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISCELLANEOUS LAND CASE APPEAL NO. 19 OF 2020

(From the decision of the District Land and Housing Tribunal of Tabora District at Tabora in Land Case Appeal No. 14 of 2019 and Original Ward Tribunal of Usagari Ward in Application No. 9 of 2018)

SYLVESTER A. BUGUMBO ----- APPELLANT

VS

MARRY MOSES ABRAHAM ----- RESPONDENT

JUDGMENT

Date: 15/07 & 6/08/2021

BAHATI,J.:

On 29th November, 2018 the appellant one **Sylvester A. Bugumbo** filed a complaint at Usagari Ward Tribunal alleging an existing misunderstanding over land ownership between him and the respondent, **Marry Moses Abraham**.

The trial Ward Tribunal having heard both parties; visited *locus in quo*, and found in favour of the appellant that the respondent Mary Moses Abraham had trespassed into the appellant's piece of land, and

for that reason; the Ward tribunal declared the disputed land to be a lawful property of the appellant.

Dissatisfied, the respondent appealed to the District Land and Housing Tribunal for Tabora which overturned the decision of the Ward tribunal by declaring the respondent a lawful owner of the disputed land on account of adverse possession.

Aggrieved, the appellant filed this second appeal on the following grounds:

1. *That, the District Land and Housing Tribunal erred in law for ruling out that the respondent had stayed in the disputed premise for over 13 years.*
2. *That, District Land and Housing Tribunal erred in law for not realizing that the respondent had not tendered any evidence whether oral or documentary, or any witness to confirm that the respondent had stayed on the disputed premise over 13 years.*
3. *That, the District Land and Housing Tribunal erred in law for disregarding the testimony of the appellant and other witnesses who elaborated that the disputed premise has been under the ownership of the appellant and that he was even leasing the same to people including one Selemani.*

4. *That, the District Land Tribunal erred in fact for not reaching that the land which the respondent was occupying since 1993 to 2006 is not the disputed premise but land which is close to the disputed premise.*
5. *That, the District Land and Housing Tribunal erred in law for departing from the decision of the Ward Tribunal which is conversant with the history of the disputed premise and its boundaries and who visited the locus quo and satisfied themselves that the disputed premise belongs to the appellant and on top of that the chairman did not assign the reason as to his departure.*

Basing on the above-listed grounds the appellant prays this Court to allow the appeal, the decision of the District Land and Housing Tribunal be quashed, the decision of Usagari Ward Tribunal be sustained and Costs be provided for.

When the appeal was called up for hearing on 15th June, 2021 both the appellant and the respondent appeared in person.

Submitting in support of the appeal the appellant stated that, he started cleaning the land since 1985 and in 1993 he had a neighbour called Zakaria who moved to another place then the respondent took over his place. That, in 2005 a boundary dispute arose between the appellant and the respondent and it was dealt with by hamlet

chairman, however, the dispute then moved to Ward Tribunal where the respondent was asked to bring Zakaria but she said Zakaria is dead but she brought a letter from Zacharia's wife the letter which stated that the land belonged to them but to date, she is nowhere to be seen to show the boundaries.

As to the second ground the appellant stated that there is no evidence whether oral or documentary to show that the respondent has occupied the disputed land for 13 years.

On the 3rd ground, the appellant submitted that the District Land and Housing Tribunal believed the evidence of the respondent. The appellant lastly submitted that the evidence from Ward Tribunal was concrete.

Replying to the appeal, the respondent stated that she bought the disputed land in 1993 and she started to work on it until 2008 when the appellant came to claim the area to be his. She reported the dispute to the hamlet chairman.

In 2010 the appellant started working on that land, he introduced one Selemani and he built a house in that area, he stayed there until 2013 and he left. In 2017 she claimed back the land and started using it then the appellant came with a summons from the Ward Tribunal.

Having dispassionately examined closely the five grounds of appeal leveled by the appellant, the issue for determination is whether the grounds have merit.

It is clear that all the five grounds of appeal are contesting the DLHT chairman's decision regarding the respondent being an adverse possessor of the disputed land, therefore, my task for consideration and determination is to see whether the doctrine of adverse possession was properly invoked by the 1st appellate tribunal Chairman.

The doctrine of adverse possession allows a person who is in possession of a piece of land for an uninterrupted given period, which according to section 3(1) of the law of Limitation Act, Cap. 89 [R.E 2019] read together with Part I item 22, Part I of the Schedule of the same Act is twelve years. To become the owner of the land if the prescribed period coupled with other conditions lapses.

It is a settled principle of law that a person who occupies someone's land without permission and the property does not exercise his right to recover it within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession. As pointed out by the learned Chairman, a mere uninterrupted possession in itself is not the sole factor for adverse possession; the possession must be subject to the conditions magnified in the case of **Registered**

Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 Others, Civil Appeal No. 193 of 2016, CAT (unreported) which quoted with approval the Kenyan case of **Mbira v. Gachuhi [2002] E.A. 137** (HCK) in which again, reliance was made on the cases of **Moses v. Lovegrove [1952] 2 QB 533** and **Hughes v. Griffin [1969] 1 All ER 460**. It was held that:-

"On the whole, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following: -

- a) That there had been the absence of possession by the true owner through abandonment;*
- b) that the adverse possessor had been in actual possession of the piece of land;*
- c) That the adverse possessor had no colour of right to be there other than his entry and occupation;*
- d) That the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;*

- e) *That there was a sufficient animus to dispossess and an animus possidendi; that the statutory period, in this case, twelve 12 years, had elapsed;*
- f) *That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
- g) *That the nature of the property was such that in the light of the foregoing/adverse possession would result."*

Now the question that comes in this court is, did the respondent prove the above-listed conditions before the District Land and Housing Tribunal? Basing on the above-listed conditions it is apparent that the nature of the dispute between the appellant and the respondent did not qualify for the doctrine of adverse possession to be invoked. In the absence of cumulative proof of the factors listed hereinabove on the part of the respondent, it was unjustifiable for the appellate tribunal to reverse the decision of the Ward Tribunal.

The records make it clear that the appellant's claim at the trial tribunal was on boundary issues between him and the respondent.

The appellant confirms that the respondent has a piece of land that she bought from one Zacharia and it is adjacent to the disputed land but the respondent states contrary that the disputed land is part of the land she bought from Zacharia.

Lastly, since the trial tribunal visited the locus in quo and questioned neighbours about the ownership of the disputed land it would be pleasant for the 1st appellate tribunal to give reasons for departing from the decision reached by the trial tribunal, in that regard I agree with the appellant that the District Land and Housing Tribunal Chairman ought to have given reasons for his departure.

For the foregoing reasons, I allow the appeal; the District Land and Housing Tribunal's decision and orders are here set aside. The decision of the Trial Tribunal is upheld. No orders as to costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "A.A. Bahati".

A.A. BAHATI

JUDGE

06/8/2021

Judgment delivered under my hand and seal of the court in the open court, this 6th day August, 2021 in the presence of both sides

J. KATTO
For DEPUTY REGISTRAR
06/8/2021

Right to further appeal is explained.



J. KATTO

For DEPUTY REGISTRAR
06/08/2021

