

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND CASE APPEAL NO. 33 OF 2019

(From the Decision of the District Land and Housing Tribunal of Mtwara District at
Mtwara in Land Case No. 9 of 2019)

SOFIA MUSSA MWIKUMBA.....APPELLANT

VERSUS

HAWA PAKIAMU MKOBA.....1ST RESPONDENT

ABDELEHEMANI KATAMBO.....2ND RESPONDENT

JUDGMENT

14 April, 24 June, 2021

DYANSOBERA, J.:

By a petition of appeal filed on 26th day of November, 2019, the appellant herein is challenging the decision of the District Land and Housing Tribunal for Mtwara District at Mtwara in Land Application No. 9 of 2019 on the following grounds:-

1. That the District Land and Housing Tribunal erred in law and fact by delivering judgment in favour of the respondents by ordering that the second respondent is the rightful owner of the disputed plot while it is not true.

2. That the District Land and Housing Tribunal erred in law and fact by entertaining the matter while was previously being heard and finally determined by the Mnavila Ward Tribunal and the appellant was declared the owner.
3. That the District Land and Housing Tribunal erred in law and fact by establishing the adverse possession to land which was given to use it and also though I was living in Lindi but my mother was present at home and not to sale the same.
4. That the District Land and Housing Tribunal erred in law and fact by establishing that one Abdelehemani Katambo as he uses the farm for a long time while he is my relative and uses the same as the relative by being given.
5. That the District Land and Housing Tribunal erred in law and fact by declaring one Abdelehemani Katambo planted permanent crops from long time while it is not true.
6. That the District Land and Housing Tribunal erred in law and fact by establishing that one Abdelehemani Katambo started using the disputed area since 1967 while it is cooked evidence.

A brief background of the matter is that parties are wrangling on suit plot located at Manyuli village, Mnavila Ward in Masasi District estimated to be valued at Tshs. 10,000,000/=, hereinafter called the suit land. Before the District Land and Housing Tribunal, the 1st respondent successfully sued the

appellant and 2nd respondent for recovery of the suit land she had bought from the 2nd respondent but which was invaded and trespassed by the appellant. The case for the 1st respondent was that on the 4th day of December, 2015 she purchased the suit land from the 2nd respondent at Tshs.1, 500,000/=. The sale agreement was made before Sadam Mohamed Nyambi (PW 2), then village government chairman and the sale transaction witnessed by Mwajuma Saidi (PW 3) and Fadhili Omary (PW 4). Before purchasing the suit land, the 1st respondent had assured herself that the suit land belonged to the 2nd respondent and it had no any encumbrances. She then cleared it and planted some crops. However, on 19th July, 2017, the 1st respondent was served with a stop order. She referred the matter to the police and later to the Ward Tribunal.

The 1st respondent was supported in her evidence by PW 2, PW 3 and PW 4. According to PW 2, the sale transaction between the 1st and 2nd respondents was conducted in his office and he wrote the sale agreement. PW 3 and PW 4 were witnesses to the sale transaction and payment of the purchase price. It was established on part of the 1st respondent that part of the sold suit land had cashewnuts while the other was a forest. PW 4 swore that he had not seen the appellant using the suit land.

In her defence, the appellant asserted that she got the suit land from her late father Mussa Abderehman Mwikumba and tilled it after the latter divided it to his three children. The appellant then left for Lindi where she

was married and stayed there for twenty four years. When leaving, the suit land was in the hands and care of the 2nd respondent who was married to her (appellant's) young sister one Salima Mussa Abderehman Mwikumba who after her death, the 2nd respondent decided to sell the suit land to the 1st respondent. The appellant, however, admitted that she could not recall when her late father gave it to her. She swore that for the last time, she used the land in 1980 and from there on, she has not used the same. She further admitted that if her young sister were still alive, she, the appellant could not have reclaimed back the suit land.

The witness the appellant called told the trial Tribunal that the 1st respondent is the owner of the suit land. He explained that the 2nd respondent who sold the suit land was married to the appellant's young sister

The 2nd respondent affirmed that he was the owner of the suit land which he sold to the 1st respondent. He admitted that when using the said suit land he was married to the late Salma Mussa, the appellant's young sister. It was in his testimony that he sold the said suit land even before the death of the said Salma Mussa and that after the sale, neither Salma Mussa nor her brother one Issa Mussa raised any complaint or claim over the same property. He contended that for all the times, the appellant was at Lindi in her marriages.

In its judgment, the District Land and Housing Tribunal was of the unanimous finding that the 1st respondent was the rightful owner of the suit land having legally purchased it from the 2nd respondent who had been in occupation since 1967. The appellant was, thus, ordered to give a vacant possession and hand it over to the 1st respondent. The appellant was, in addition, condemned to pay costs of the suit to the 1st respondent.

The hearing of this appeal was conducted ex parte after the respondents defaulted appearance despite their being duly served.

Having perused the trial Tribunal's record and after taking into account the grounds of appeal, I am in no doubt that the appeal is devoid of any merit.

First, it was amply proved that the appellant was not the owner of the suit land at the time it was sold by the 2nd respondent to the 1st respondent. Indeed, the appellant herself admitted that from 1980 she left to Lindi where she was married and stayed there for twenty four (24) years and it is not until in 2017 when she raised a claim on the suit land. Her assertion that she was given the suit land by her father was not supported anywhere. In actual fact, the appellant admitted that she could not recall when her father gave her that land. The fact that the appellant was not the owner of the suit

land was supported by PW 4 who categorically told the trial Tribunal that he had not seen the appellant using that land.

Second, there was ample evidence that the 2nd respondent had been using the suit land for quite a long time. It was not disputed that the 1st respondent was using the land with his wife Salam Mussa, the appellant's young sister. The evidence is clear that after they divorced, Salma Mussa fled to Mozambique and the 2nd respondent decided to sell the suit land to the 1st respondent. There was no complaint raised by either Salma Mussa or their brother. In her evidence, the appellant admitted that had the said Salma Mussa been alive, she would not claim the suit land from the respondents. This means that she had no any existing interest in the suit land. This is clear from Juma Issa Chilanga, DW 2, the witness the appellant called at the trial who informed the trial Tribunal that it is the 1st respondent who was the owner of the suit land.

Third, the 2nd respondent, the former owner of the suit land legally sold it to the 1st respondent before a local leadership (PW 2) and in the presence of the two witnesses that is PW 3 and PW 4. The 1st respondent was clear in her evidence that she purchased the suit land after she was assured by the villagers and other people that the 2nd respondent was the owner of the suit land.

Fourth, the District Land and Housing Tribunal was of the unanimous view that the 2nd respondent was the rightful owner of the suit land and he

legally sold it to the 1st respondent. It came to that finding after evaluating the evidence and applying the relevant land and case laws. Its finding is, in the circumstances of the case, impeccable. I find nothing to fault it.

For those reasons, the appeal fails and is dismissed with costs to the respondents.

It is so ordered.



W.P. Dyansobera

Judge

24.6.2021

This judgment is delivered under my hand and the seal of this Court this 24th day of June, 2021 in the presence of the parties.

Rights of appeal to the Court of Appeal explained.



W.P. Dyansobera

Judge