

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC. LAND APPEAL NO. 26 OF 2019**

*(Arising from Land Appeal No. 235 OF 2018 of the District Land  
and Housing Tribunal for Dodoma. Original Land Case  
No. 27 of 2017 of Kigwe Ward Tribunal)*

**ISSA RASHID ALLY.....APPELLANT**

**VERSUS**

**GERARD TEMBA.....RESPONDENT**

**JUDGEMENT**

*Date of last Order: 04/08/2021*

*Date of Judgment: 12/08/2021*

**Dr. A.J. Mambi, J.**

This is a second appeal originating from the District Land and Housing Tribunal (the DLHT). Initially the appellant ISSA RASHID ALLY on 24/8/2017 sued the respondent, GERALD TEMBA before the Kigwe Ward Tribunal claiming a 37x35 paces piece of land. The appellant at the Ward Tribunal alleged that the suit land was given to the respondent by his grandmother in 1991 and in 1993 the appellant left the Village for a long time.

The records at the Ward Tribunal reveal that the respondent refuted all the appellant's allegations. He claimed that he was

allocated the suit land by the Village leadership between 1989 and 1990 without any condition. The respondent in his evidence further stated that he left the Village for three years and returned in 2003 where he sold the suit land to one Sele. The respondent claimed further that even in 2012 he came back to the Village and there was no any dispute over the suit land only to be sued in 2017 in the case subject of this appeal.

The trial Ward Tribunal having determined the matter and found that the appellant was not an administrator of the estate of his late grandmother. The Ward Tribunal also observed that 26 years had elapsed since the appellant gave the respondent the land in 1991 before the appellant instituted the matter in 2017. The Trial Tribunal made the decision in favour of the respondent.

Dissatisfied, the appellant appealed before the DLHT where he once again lost on ground that the respondent's evidence before the trial Ward Tribunal was stronger than that of the appellant which disfavored him. The DLHT observed that the respondent witnesses proved that the suit land was the property of his grandmother. The DLHT was also satisfied that the trial Ward Tribunal was properly constituted.

Aggrieved, the appellant stepped to this court for the second appeal by preferring three grounds of appeal as follows:

- 1) That, both lower Tribunals erred in law and in fact by disregarding strong evidence adduced by the appellant and his witnesses and went on relying on weak and unproved evidence adduced by respondent that the land in dispute was allocated to him by Village Government Authority.

- 2) That, appellate Tribunal erred in law and in fact by deciding in favor of respondent without considering the absence of signatures of two members of the Kigwe Ward Tribunal which made bias and irrational judgement.
- 3) That, appellate Tribunal erred in law and in fact by deciding that the lawful owner of the land in dispute is one SELEMANI SALEHE while he was not party to the case.

During the hearing, the appellant was unrepresented and the respondent was absent. The appellant prayed for an ex-parte hearing and upon the court's satisfaction on the record that summons were duly served to the respondent including substituted summons via "NIPASHE" newspaper dated 15/9/2020, the appellant's prayer was granted.

Addressing the grounds of Appeal, the appellant adopted his grounds and briefly argued that the DLHT erred in law and fact in its decision since he was the rightful owner of the disputed land. He argued that the evidence at the Ward Tribunal was clear that the Land belongs to him though the Ward Tribunal made the decision in favour of the respondents.

I have considerably gone through the grounds of appeal by the appellant, including records from both, the Ward Tribunal and the DLHT. Before addressing in detail the grounds of appeal, I wish to address the time limitation that was also a legal issue at the Ward Tribunal.

The Land belonged to his deceased grandmother.

The respondent was given Land and village Authority in 1991 and he later sold it in 2003 to one Selemani Salehe. The

records also received that the appellant is aware that the Land was already transferred through sale to one Selema Selehe who is now the owner of the disputed Court.

Having considerably perused the records from both two tribunals, it came to my mind that, it took a long to the before the appellant Instituted Ward Tribunal.

In this regard the issue is whether the appellant was time bared or caught by the principle of adverse possession in instituting the matter at the trial ward tribunal or not. My perusal from the records from the trial Ward Tribunal and DLHT reveals that the respondent has been in occupation of the suit land from (12 years) 1991 to 2003 before he sold to one Selemeni Salehe. He occupied it uninterruptedly for about 12 years. Again, Selemeni Salehe undisturbly occupied the Land from the appellant for about 14 years till 2017 when the impugned suit was filed in the trial Ward Tribunal. This means if we take 12 years plus 14 years we get 26 years total. These are the years when the land was out of the hands of the appellant. This means that the Land was undisturbly under the court of the respondent and one Selema Salehe.

The appellant in his application before the trial Ward Tribunal stated that the respondent was given the suit land in 1991 with condition to use it and when he leaves, he should hand it back. But he sold it in 2000. The appellant argue that all these years he was in a manhunt, only to find the respondent in possession. The appellant's witnesses also echoes the appellant's assertions. That left the had to the respondent a 1991.

It is on the records that the appellant did not use the suit land for about 26 years, and its being used by others (the respondent) for more than twelve years (beyond limitation as provided by the Law of Limitation Indeed Act) the appellant failed to prove that the respondent was just an invitee on the land. It is clear according to our legal position, that the law provides that where a person occupies unclaimed land for more than twelve years without any claim that person is deemed to be the legal owner of that land. It is well settled legal principle that, the limitation period for suit to recover land is **twelve years** this court finds that the appellant was time barred in instituting the case at the Ward Tribunal as correctly held by the trial Ward Tribunal and the DLHT. It is clear from these facts and evidence that the appellant instituted his case beyond time limit (26 years) contrary to the law. In my considered view since the appellant filed the case against the respondent after 12 years the suit was time barred according to the law.

Reference can also be made to the decision of the court in **ERIZEUS RUTAKUBWA v JASON ANGERO 1983 TLR 365** where it was held that:

*"The period of limitation for redeeming a shambas is 12 years as governed by the Law of Limitation Act 1971"*

It follows therefore that the period of limitation for redeeming the land or suit to recover land is 12 years as provided under the Law of Limitation Act, 1971 under item 22 of the Schedule (Section 3). Indeed, there is no any document showing that the appellant gave the respondent the said suit land. Since the respondent has continuously used the land to use it for a while for more than twelve years that is 26 years without claim from any one then the

question of adverse possession can be invoked in this matter. I wish to re-emphasize that the principle of adverse possession is based on the fact that where someone who is in possession of land owned by another can actually become the owner if certain requirements are met for a period of time defined in the statutes of that particular jurisdiction.

The doctrine of adverse possession is to the effect that a person in possession of land owned by someone else may acquire valid title to it. This means that one can acquire title of over the land so long as certain common law requirements are met, and the adverse possessor is in possession for a sufficient period of time, as defined by a statute of limitations. However in many cases, this depends on whether the occupation was a result of trespassing without any legal right or if it was done under a good faith mistake in which the trespassers believed they were justified in their occupation. Conversely, the common law principle of adverse possession applies where the person claiming has been in adverse possession for twelve years. This legal principle is enacted in the Law of Limitation of our country for bringing actions on land. In our country, this doctrine is found under the Law of Limitation Act Cap. 89 [2019].

Easing on my observation and above reasoning, I am of the settled view that since the respondent had undisturbedly and continuously used the land in dispute for such a long time, this court finds and hold that the possession of the respondent became adverse from 2003 and so, they continued, when the suit was first filed in 2017 at the trial Ward Tribunal, the limitation period had already expired. The records shows that the adverse

possessors (respondent) maintained the continuous possession of the land in dispute.

Conversely, since adverse possession emanated from the common law principle, I wish to refer some authorities from other common law jurisdiction. I thus wish to make reference the persuasive decision where Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** [1966] 1QB 380 at 400-1 had once observed that:

*"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

In another persuasive decision, the Similar position was observed and laid down by Lord Justice James, a distinguished English Judge in the ***Ex P. Sidebotham case (Supra) [1880] 14 Ch D 458. [1874-80] All ER 588*** to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights.

It appears also the appellant had no locus standi on the land in dispute since he failed to show his ownership apart from just claiming that it belonged to him without proof. The appellant has failed to show if he has any interest to the disputed land and if he has, how such interests have been affected by what has been done by the respondent. Reference can also be made to the appellant's testimonies who testified as follows;

*'Mwaka 1991 alikuja kuomba eneo la kuweka mashine ya kusaga nafaka wakiwa na marehemu Sanya(Joel Lungwa) bibi yangu aligoma ila tulimsihi akakubali na tulimuonyesha eneo la 37x35hatua''*

The appellant's testimony is corroborated by his witness one Joha Mohamed who testified as follows;

*".....ilikua mwaka 1992 alifika Gerard waka (sic) na marehemu Sanya. Shida yao ilikuwa kutafuta eneo la mashine ya kusaga, msimu huo ulikuwa masika kulikuwa na mimea ya mahindi bibi yangu alimuonyesha Issa ayalime...."*

Reading between the lines from the above quoted paragraphs that contain the testimony by the witnesses, it is clear that the appellant had no locus standi on the disputed land.

Therefore, since the appellant was claiming that the land belonged to him and the respondent are not the owners of the land, it is the duty of the appellant to disclose all the facts as to why he abandoned the land for such a long time (26 years). The appellant and his witnesses merely stated he gave the land to the appellant on condition that the respondent can only it and for a while. However that claim was not proved at the Ward Tribunal. As the DLHT found, this Court concurs with its findings that the appellant's evidence was weak. This is what Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** (Supra) was referring as mere busy bodies in which courts should not listen.



From my analysis and observations, I find the appellant's first and third grounds of appeal are non-meritorious and I hold so.

Coming to the second ground of appeal which concerns lack of signatures of two members of the trial Ward Tribunal, the issue is whether failure for two members to sign vitiated the proceedings. In his submission the appellant argued that since the two members did not sign then there was no quorum of the trial Ward Tribunal. In this regard I wish to refer to the relevant provisions on the quorum of the members of the Ward Tribunal. The most relevant provisions are section 4(1) of the Ward Tribunals Act [Cap 206 [R.E 2019] and S.11 of the Land Disputes Courts Act Cap 216 [R.E 2019]. The two provisions are clearly related to the creation or establishment of the Ward Tribunals and as a matter of policy in establishing or creating Ward Tribunals gender must be observed during decision making. The provisions provide that every tribunal must consist not less than four and nor more than eight other members to which three must be women.

More specifically, section 4(3) and 4(4) of the Ward Tribunals Act Cap 206 [R.E 2019] which deals with the quorum as follows

*"4(3) The **quorum** at a sitting of a Tribunal shall be **one half of the total number of members.***

*4(4) At any sitting of the Tribunal, **a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an***

***equality of votes the Chairman shall have a casting  
vote in addition to his original vote'.***

I have gone through the proceedings and judgement of the trial Ward Tribunal, in all the sitting days, five members attended including the Chairman except in two days where four members attended and a Chairman. The cords show that in all the sittings, all members and a Chairman signed their attendance in the list of their names. The records show that a list of four members and Chairman are the ones who appears under in the judgment. The records further reveal that the Chairman and two women members signed, but other members didn't sign. In my view this was not fatal and it did not affect the decision of the Tribunal. I have perused the entire Ward Tribunals Act the Land Disputes Courts Act I have found no provision which require members of the tribunal to sign. Under S. 15(1) of the Ward Tribunals Act the tribunal is not bound by any rules of evidence or procedure and in terms of sub-section 2 of the same section, it has powers to regulate its own procedure. See the decision of the court in ***Yakobo Magoiga Gichere vs Peninah Yusuph (Civil Appeal No. 55 of 2017)***. The Court of Appeal observed that

*"Courts should not read additional procedural technicalities into the simple and assessable way Ward Tribunals in Tanzania conduct their daily business"*

Indeed the provisions of the laws are clear. For instance section 4(4) of the above cited law provides that at any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal. The law further provides that in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote. In my view since hand two members signed and two including the Chairman, the decision of the tribunal was not affected by the absence of the signatures of the two members.

In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Land and Housing Tribunal and the trial Ward Tribunal rather than upholding their decisions. In the event I find that this appeal is non-meritorious hence dismissed.



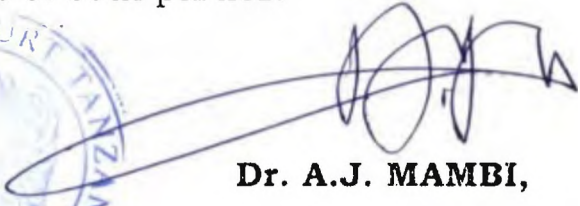
**Dr. A.J. MAMBI,**

**JUDGE**

**12/08/2021**


Judgment delivered in Chambers this 12<sup>th</sup> day of **August, 2021**  
in presence of both parties.



  
**Dr. A.J. MAMBI,**  
**JUDGE**  
**12/08/2021**

Right of appeal explained.



  
**Dr. A.J. MAMBI,**  
**JUDGE**  
**12/08/2021**