

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPEAL NO. 15 OF 2021**

*(Arising from the Land Appeal No. 63 of 2020 of the District Land and Housing Tribunal for Mwanza at Mwanza)*

**PIMILE FABIAN.....APPELLANT**

versus

**NJILE MAHANYA.....RESPONDENT**

**JUDGMENT**

22<sup>nd</sup> Sept & 18<sup>th</sup> October, 2021

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is against judgment and decree dated 19/02/2021 of Mwanza District Land and Housing Tribunal at Mwanza (the DLHT) in favour of Njile Mahanya (the respondent) the latter having had reversed decision of Nyigogo ward tribunal of 11.06.2020.

When, by way of audio teleconference the appeal was called on 22/09/2021 for hearing, Pimile Fabian (the appellant) had service of Ms. Leticial S. Lugakingira learned counsel. Mr. M. Joseph learned counsel

appeared for the respondent. I heard them through mobile numbers 0766 022 673 and 0655 586 209 respectively.

The appellants' three grounds of appeal essentially revolved around points as under;-

1. That actually the respondent had no locus standi but the DLHT failed to hold as such.
2. That the respondent's case was time barred and the DLHT should have held so.
3. That as between the parties with regard to the alleged contract of sale the DLHT improperly evaluated the evidence on record.

Ms. L.S. Lugakingira learned counsel submitted that appearance of the respondent contravened provisions of S.100 of the Probate and Administration of Estates Act Cap. 352 RE. 2019 therefore the latter had no locus standi (case of **Petro Zabron Sinda v. Zabron Mwita**, Civil Case No. 176 of 2017, Hc at Dar es Salaam (Mruke, J), unreported).

Second, that the DLHT chair should have held and ordered that the respondent's claims were time barred because the appellant had occupied

the disputed land since 2002 far beyond 12 years limitation period (Item 22 Part I of the Schedule to the Law of Limitation Act Cap. 89 RE. 2019).

Three, that the DLHT erroneously held that there was a sale agreement between the parties if anything, shs. 3.0m was parting gift/recognition for inheritance over the disputed land much as the respondent wasn't administrator of the estate in such capacity capable to dispose of the estate.

Having adopted contents of the counter affidavit, in his reply Mr. Joseph learned counsel submitted, **one**, that as for the alleged time bar actually the cause of action arose in 2020 when the appellant encroached and cultivated the disputed land.

**Two**; that with respect to the disputed land and shs 3.0m sale agreement the contract was valid save for the appellant's failure to perform therefore an avoidable contract such that there was nothing upon which to fault the DLHT. That is all.

The evidence on record but very briefly it reads thus;-

The respondent is on record having had testified that as the appellant desired to, before some clan members they agreed each other

that the former purchase the disputed land for shs. 3.0m but for no reasons at all she did not pay she simply encroached it and built a house foundation. That he complained to local authorities successfully.

Sm1 one Malambo, at the time care taker of the disputed land he supported the respondent's case. Partly though Sm2 Zakaria Masona also did. That is all.

The appellant stated that historically the disputed land belonged to his grandmother one Malulu Yegela but as the couple died, the land was bequeathed to Yuga his mother in 2002 and later to him therefore he occupied and enjoyed it undisturbed until 2020. That is all.


The issue is whether the disputed land belonged to the respondent. At least it was undeniable fact that essentially each party claimed title only as survivor granddaughter or grandson of true owners therefore with greatest respect either way the issue of locus standi it should not have raised in the first place.

If anything, the central point could be whether the alleged shs. 3.0m earlier on 22/09/2016 promised by the appellant was, with respect to the disputed land a sale price or, with respect to inheritance a parting gift/gold

shaken hands as the case may be. Actually the money wasn't a sale price. Now that for some reasons she did not receive the money, the issue of one offering to purchase the disputed land it should not have raised much as the respondent did not sufficiently dispute the appellant's allegations that for a couple of years the latter had occupied the land undisturbed far beyond 12 years limitation period. It is settled law that the doctrine of adverse possession also had it that land only goes to the effective occupier (case of **Bhoke Kitang'ita v. Makuru Mahemba**, Civil Appeal No. 222 of 2017 (CAT) Unreported).

Had the DLHT considered all this it should have upheld decision of the trial ward tribunal the decision and orders of the DLHT are quashed and set aside respectively and the appeal is allowed with costs. It is so ordered.

Right appeal explained.



**S.M. RUMANYIKA**  
**JUDGE**  
**04/10/2021**

The judgment delivered under my hand and seal of the court in chambers this 18/10/2021 in the presence of Ms. L.S. Lugakingira learned counsel and the respondent online.



**S.M. RUMANYIKA**  
**JUDGE**  
**18/10/2021**