

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

**MISC LAND APPEAL NO. 10 OF 2020**

*(Arising from District Land and Housing Tribunal for Mtwara at Mtwara in  
Land Application No. 22 of 2017)*

**HEMEDI ABDALLAH MKADIMBA**

(Administrator of the estate of the late Abdallah  
Mkadimba).....

**APPELLANT**

**VERSUS**

**ASHA SAID MPUPA.....1<sup>ST</sup> RESPONDENT**

**ABDULSWANADU ALLY MNOMBA** (Administrator of the estate of the  
late Ally Mohamed Mnomba).....**2<sup>ND</sup> RESPONDENT**

**SALUM ABDALA CHILAMBO** (Administrator of the estate of the late  
Abdallha Ismail Mnaliukila@ Abdallah Katoto).....**3<sup>RD</sup> RESPONDENT**

**ALLY HAMISI AKACHAPA .....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

30<sup>th</sup> Sept. & 5<sup>th</sup> Oct., 2021

**W. P. DYANSOBERA, J.:**

The appellant herein lost his suit he had filed before the District Land and Housing Tribunal for Mtwara in Land Application No. 22 of 2017. The suit which was directed against the four respondents was for recovery of

pieces of land (measuring 12 acres-suit property) situated at Namtumbuka Shuleni in Nanyamba Township within Mtwara Region.

The appeal by the appellant is pegged on three grounds which are to the following effect:-

1. Failure to properly analyse, evaluate and appreciate the appellant's evidence which proved the case on balance of probabilities.
2. Disregarding of the fact that the appellant owned the land for more than 50 years since 1945 after inheriting it from his late father one Herick Likoto without interruption.
3. Upholding that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were among the rightful owners of the disputed land in the absence of evidence to prove the fact.

The appellant's case established that the suit property belonged to the late Abdallah Mkadimba who died intestate on 1.7.1984. The deceased had inherited it from his late father one Herick Likoto way back in 1945's as it was an ancestral farm being owned customarily.

The deceased planted cashew trees and enjoyed the suit farm uninterruptedly for more than fifty years. It is not until in 2012 when the suit property was invaded by the respondents. The appellant insisted that at the time of the demise, the deceased had not disposed of the property anyhow.

The appellant further argued that after the respondents had invaded the property they started tilling the land, cultivating seasonal crops including maize and manioc and illegally harvesting the cashew nuts

without the consent of legal owners leading to the respective successors fail to utilize the property. It was further argument of the appellant that the respondents disputed the claims. It seems, while the matter was in the hearing process, Ally Mohamed Mnomba and Abdallah Ismail Mnaliukila@ Abdallah Katoto, respectively, then 2<sup>nd</sup> and 3<sup>rd</sup> respondents, passed away and Abdulswanadu Ally Mnomba and Salum Abdallah Chilambo, in that order, stepped into their shoes.

As to whether or not the suit property was sold to the respondents, the appellant argued that he was not involved. He admitted to have been away all along arguing that he was in Mwanza, Kahama, Nguruka, Ugalla, Katumba, Mafia and Rufiji and was back in 2013.

Hemed Basha who testified as PW 2 told the trial Tribunal that he saw the suit property being used by respondents. He did not ask them any question because the suit land was not his property. He asserted that the suit farm had cashew nuts planted by respondents' parents. Further that when the respondents were cultivating the suit property some children of the late Abdallah Mkadimba were at Namtumbuka.

In their defence, the respondents denied the suit property to belong to the appellant. The 1<sup>st</sup> respondent Asha Said Mpupa recalled that in 1995 her step father one Shaliki Abdallah Mbani bought a piece of land in the suit property from one Hassan Abdalah Mkadimba in the bush land at the purchase price of Tshs 100,000/=which was paid in four instalments. The vendor had stated that their late father Abdallah Mkadimba had given to his children pieces of land in the suit farm. Then Hassan Abdallah Mkadimba sold the land so that he secured money for treatment. The 1<sup>st</sup>

respondent tendered a sale agreement to support her argument. It was admitted as exhibit R 1.

Abdulswanadu Ally Mnomba testified that his late father had been tilling the land since 1981 when it was still a bush land. In 2012 the appellant lost the suit at Namtumbuka Ward Tribunal where he had sued the late Ally Mohamed Mnomba. On appeal to the District Land and Housing Tribunal, the appellant was advised to first apply for letters of administration. He did so and then filed a suit, the subject of this appeal.

Defending the suit, Salum Abdallah Chilambo 3<sup>rd</sup> respondent said that in 1995 Chivihi Abdallah Mkadimba sold the suit land to Abdallah Ismail Mnaliuka @ Abdallah Katoto at a consideration of Tshs. 100,000/= and by the time, it was a bush land. The vendor had stated that he had inherited the suit property. He was supported in this by his brother Hassan Abdallah Mkadimba.

As to how the transaction was conducted, the 3<sup>rd</sup> respondent explained that Chivihi Abdallah was paid two sacks of paddy worthy Tshs. 40,000/=. Then the purchaser gave him *kongoo nyeupe za kujengea nyumba* worthy Tshs. 30, 000/=. Chivihi Abdallah Mkadimba was given by the purchaser a goat valued at Tshs. 30, 000/= and then the sale agreement was executed before two leaders, who are Hamis Mkauka, the Kitongoji chairperson and Mohamed Linyasa, Kitongoji secretary. The same sale transaction was witnessed by Hemed Bashanjagale (DW 4) and Laisi Mussa Chilambo (DW 5).

The 4<sup>th</sup> respondent gave his defence as well. He recalled that in 2010 he bought a piece of land from Hemed Abdallah Mkadimba and his

relatives as per the sale agreement (exhibit R 4). He also bought a piece of land which was a bush measuring three acres from the same Hemed Abdallah Mkadimba as evidenced by Exhibit R. 5. Then Fatu Abdallah Mkadimba sold him a land which had three cashewnuts and the sale agreement was reduced in writing-exhibit R 6. It was his further testimony that after some years had passed, the appellant and his relatives unsuccessfully sued him over the said piece of land before Namtumbuka Sokoni Ward Tribunal. The 4<sup>th</sup> respondent then applied for execution-exhibit R 7.

The assessors who sat with the Hon. Chairperson were unanimous that the pieces of land in dispute were legally sold to the respondents and, in that respect, the respondents are lawful owners thereof.

The Chairperson analysed the evidence with assiduity as evidenced on page 13 of the typed judgment of the Tribunal. He carefully applied the principles of burden of proof and bonafide purchaser and what trespass is and agreed with the assessors that the appellant had failed to prove his claims on preponderance of probabilities.

Having considered the trial Tribunal's judgment, the grounds of appeal and the evidence as a whole, I am satisfied that the trial Tribunal's decision is impeccable.

First, it was amply established by the appellant himself that he was not present at the time of the death of his father.

Second, the appellant was clear in his evidence that the heirs had divided all the deceased's estate arguing that the suit land was only accepted.

Third, he admitted that he was informed of the invasion of the suit property and that the invaders were Ally Hamis Akachapa, Asha Said Mpupa, Ally Mohamed Mnombwa and Abdallah Katoto. This evidence was hearsay and inadmissible.

Fourth, it was the appellant's argument that if his siblings sold the suit farm, he was not involved. It was his admission that all along he was not present as he was staying in Mwanza, Kahama, Nguruka, Katumba, Ugalla, Mafia and Rufiji and was back in 2013. He said that he was a fisherman.

With this glaring evidence, it was reasonably expected that he could not be involved in the sale as he was not present and he could not tell with certainty that his siblings did not sell the pieces of land to the respondents. Indeed, the sale agreements which were reduced in writing and proved in court were witnessed by leaders and these sale transactions were not controverted by the appellant. The respondents sufficiently proved to have legally bought the suit property and the appellant failed to disprove this fact.

With this cogent and compelling evidence, there is no material on which the decision of the District Land and Housing Tribunal can be faulted.

In the final analysis and for the reasons stated above, I find this appeal devoid of any merit.

The appeal fails and is dismissed with costs to the respondents.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W. P. Dyansobera**

**Judge**

**5.10.2021**

This judgment is delivered under my hand and the seal of this Court on this 5<sup>th</sup> day of October, 2021 in the presence of both the appellant and all respondents.

Rights of appeal explained.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**