

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**MISC. LAND APPEAL NO. 2 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal for  
Kondoa at Kondoa in Land Appeal No. 40 of 2019 which originated from  
Kisese Ward Tribunal in Land Case No. 08 of 2019)*

**MWANAIIDI MATANGA.....APPELLANT**

**VS**

**HAMIRI M. MATANGA.....1 RESPONDENT**

**ZAINABU M. MATANGA.....2 RESPONDENT**

**JUDGEMENT**

*Date of Last order 17/09/2021*

*Date of judgement 30/11/2021*

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

This judgment emanates from an appeal filed by the appellant challenging the decision of the District Land and Housing Tribunal. The matter originated from Kisese Ward Tribunal in Land Case No. 08/2019 whereby the appellant herein was claiming 20 acres of land of her late father one **MATANGA SUNA** who died in 1970. The facts from the trial Ward Tribunal also reveal that the respondents also claimed that the land belonged to them as they inherited from their late father **MOHAMED**



**MTANGA** who died in 1995. The Ward Tribunal made the decision in favour of the appellant.

The respondents thereafter appealed to the District Land and Housing Tribunal where the appellate tribunal reversed the decision of the trial tribunal based on the procedural irregularities. Having aggrieved by the decision of the District Land and Housing Tribunal In his appeal, the appellant stepped to this court by preferring four related grounds of appeal as follows:

- 1) That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts to pronounce the decision without considering the facts that the appellant has locus stand to institute the matter.*
- 2) That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts to pronounce decision without considering the facts that the appellant herein was appointed as administrix (sic) of the estate of the one named **MATANGA SUNA** under the probate no. 2/2019 at Bereko Primary Court,.*
- 3) That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts by not considering the weight of the credible evidence adduced by the appellant's witness at the trial instead considered the evidences adduced by respondent's which were weak and contradictory.*

- 4) *That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts since it failed to consider that the respondents' father was only a care taker of the land in dispute thereto.*
- 5) *That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts to pronounce decision without considering the facts the land in dispute belongs to the appellant's family herein thereof.*
- 6) *That, the District Land and Housing Tribunal for Kondoa at Kondoa erred in law and facts to pronounce irrational decision thereof.*

When this matter came for hearing both parties appeared in person where each submitted briefly. The appellant on her part sought to rely on her grounds of appeal and prayed this Court to allow this appeal. On the other hand, the respondents as well sought to rely on their reply to the grounds of appeal and briefly submitted that they are the legal owners of the disputed land.

I have considerably gone through the grounds of appeal by the appellant inline with reply by the respondents. I had also an opportunity to review the records from both the Ward Tribunal and the DLHT. My perusal from the records suggests two issues to be determined. The main issue is whether the applicant (appellant) was time barred in instituting the matter at the Ward Tribunal or not. The other issue is whether the DLHT made a proper decision in ruling that those procedures of the Ward Tribunal was tainted by irregularities or not.

Before I address the main issue, I wish to first highlight as to whether it was proper for the DLHT to order the matter be determined by the Ward Tribunal de novo or not. It is on the record that the District Land and Housing Tribunal ordered that the matter be determined de novo by the trial tribunal on the ground that the appellant had no letters of administration to represent her father. In my view this was wrong since the appellant had letters of administration which means that the DLHT was just required to determine who was the legal owner of the disputed land instead of remitting the matter to the ward tribunal. The records reveals that there were photocopies and an original copy of the letters of administration issued by the Bereko Primary Court on 25/01/2019 appointing the appellant herein as the administratrix of the estate of the late MATANGA SUNA.

The other issue from the records, is, whether the appellant was time bared 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 disputed land was being used by the respondents' father (Mohamed Matanga who died in 1995) since 1970. This means that the respondents have been un-disturbedly using the land they inherited from their father for more than twelve years before the appellant starting to claim the land in 2019. The records reveals that the appellant father died in 1970, but the appellant just stayed quite without showing any interest in the land if it belonged to her father until 2019 (almost 40 years) when she applied for a letters of administration. The evidence on the records from the trial ward Tribunal indicate that the land was under the use and ownership of the respondents

undisturbed for a long time that is almost forty years which is more than twelve years (beyond limitation as provided by the Law of Limitation Act, Cap 89) and the appellant failed to show that the respondents were just invitees 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. Assuming that the appellant father could have been the owner of the land and the respondent could be the beneficiary of her father's property but she could be caught by the principle of adverse possession since she never claimed the land for more than 40 years since her father died. In this regard, I am of the considered view that the appellant was time bared in instituting the case at the Ward Tribunal. It is clear from these facts and evidence that the appellant instituted the case to claim the land at the ward tribunal beyond time limit (40 years) contrary to the law. Indeed, the ward tribunal could have considered the time passed before the appellant instituted the matter before making its decision. In my considered view since the appellant filed the case against the respondents at the ward Tribunal after 12 years the suit was time bared 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 Cap 89. This is clearly stipulated under item 22 of the Schedule (Section 3) of Cap 89 [R.E.2002]. Indeed there is no any document showing ownership of the land by the appellant as claimed. Since the respondents have continuously used the land for more than twelve years that is 40 years without claim from any one then the question of adverse possession arises in this matter. It should be noted the principle of adverse possession is based on the fact that where someone who is in possession of land owned by another can become the owner if certain requirements are met for a period of time defined in the statutes of that particular jurisdiction. It is the cardinal principle of law that adverse possession is a legal principle which gives right to the adverse possessor who has been in possession for a sufficient period of time, as defined by a statute of limitations. Indeed the common law principle of adverse possession applies where the person claiming has been in adverse possession for twelve years. The principle is enacted in the Law of Limitation for bringing actions on land.

The main contention of the respondents herein in the DLHT who in the DLHT were the appellants was that the Ward Tribunal erred in holding that the appellant herein who was the respondent was the rightful owner of the suit land when it was their family land since 1970 and after the demise of their father in 1995, they continued using it together with their mother for growing crops without any disturbance for a period of about 20years.

There is ample evidence from the appellant's side proving that the owner of the suit land was the appellant's father. For

instance, one witness namely ISMAIL ALLY testified at the ward tribunal that after the demise of MOHAMED MATANGA (the father of the respondents) in 1995 the suit land has been in the ownership of the respondents. It was this witness who when examined by the Ward Tribunal members replied that, the late MOHAMED MATANGA was trusted with his relatives after the death MATANGA SUNA to take care of the suit land for his young siblings who were minority.

On the other hand, the respondents and their witnesses, maintained that the suit land was in use by their father from 1970 until his death in 1995 where upon the respondent have been using it undisturbed. The respondents testified that the suit land is the property of their late father MOHAMED MATANGA as he got it by clearing a virgin land. Indeed, there is clear evidence from both sides that the respondents are the owners who have been using the suit land undisturbedly since 1995 to date. The argument that the disputed land was put under trust of the respondents' father as the appellant is untenable. Therefore, since the appellant was claiming that the land belonged to her and the respondents are not the owners of the land, it was the duty of the appellant to disclose all the facts as to why she abandoned the land for such a long time (40 years) but she did not do so at the trial Tribunal.

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and are hereby dismissed. In the premises and from the foregoing reasons, I find it proper to quash and set aside the decisions of both the District Land and Housing Tribunal (DLHT) and the Ward Tribunal. In this regard,

this court finds and hold that the respondents to be the lawful owners of the suit land. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. In the event I make no orders as to costs. Each party to bear its own costs.




**A.J. MAMBI,**

**JUDGE**

**30/11/ 2021**

Judgment delivered in Chambers this 30<sup>th</sup> day of November, 2021 in presence of both parties.

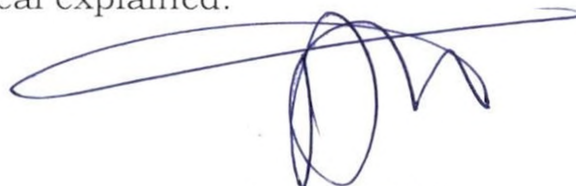


**A.J. MAMBI,**

**JUDGE**

**30/11/ 2021**

Right of appeal explained.



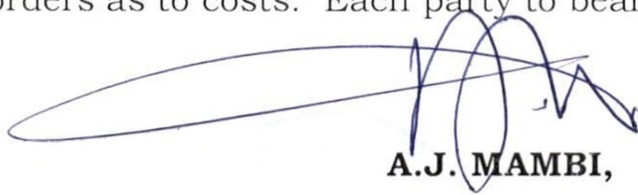
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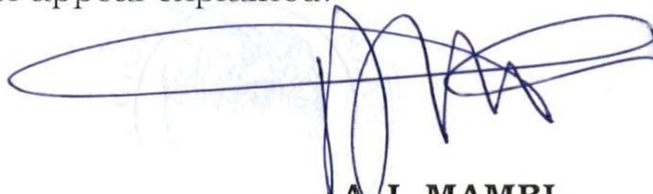


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