

**IN THE HIGH COURT OF TANZANIA
AT TABORA**

MISC. LAND APPEAL NO. 17 OF 2019

*(Arises from decision of District Land and Housing Tribunal for
Tabora in Land Appeal No. 13 of 2018 and Original Application No.
BK/MWN/01/TB of 2016 of Mwinyi Ward Tribunal)*

HASSAN MOHAMED MKONDE APPELLANT

VERSUS

MAIMUNA RAMADHANI KALENGA RESPONDENT

JUDGMENT

Date of Last Order: 17/9/2021

Date of Delivery: 24/9/2021

AMOUR S. KHAMIS, J.:

In the Mwinyi Ward Tribunal, the appellant herein, Hassan Mohamed Mkonde, lodged a complaint against the respondent, Maimuna Ramadhani Kalenga, over a piece of land located at Mwinyi area, Tabora Municipality.

The respondent alleged to have bought the said piece of land from one Iddi Juma (now deceased). On his part, the appellant advanced that the said disputed piece of land belonged to his late father who died in the year 1971.

Upon hearing of both parties, the trial tribunal was satisfied that the land in dispute belonged to the respondent, Maimuna Ramadhani Kalenga on ground that she has been utilizing it undisturbed over 15 years since 1998 till 2003 when the dispute arose.

Aggrieved by the decision of the Ward Tribunal, Hassan Mohamed Mkonde unsuccessfully appealed to the District Land and Housing Tribunal for Tabora which upheld the decision of the Ward Tribunal.

Still aggrieved with the 1st appellate tribunal's judgment, the appellant filed this appeal advancing six (6) grounds of appeal namely: -

1. That the appellate tribunal grossly erred in law and fact(s) to uphold the decision that failed to join all necessary parties to the suit to wit the seller one Iddi Juma Mdeka or his legal representative in case he demised hence reached at the wrong decision.
2. That, the appellate tribunal grossly erred in law and fact(s) to uphold the decision without due consideration of proper interpretation of the limitation of the time and the doctrine of adverse possession.

3. That, the appellate tribunal grossly erred in law and fact(s) by making decision of an adverse possession over the disputed land without due re-evaluation of the testimony of the appellant's witness and evidences and exhibits tendered during the trial proceedings as a first appellate court duty hence arrived at the very wrong decision.
4. That, the appellate tribunal grossly erred in law and fact(s) for failure to properly record the evidences procured during the visit on locus in quo, hence arrived at unjust decision.
5. That the appellate tribunal grossly erred in law and fact(s) to uphold the trial Tribunal decision that the respondent instituted a suit against the appellant as Hassan Mohamed Mkonde without being sued as legal representative of Mohamed Mkonde on behalf of his late father, hence arrived at the wrong decision.
6. That, the appellate tribunal grossly erred in law and fact(s) to uphold the trial decision which was total against the weight of evidence.

In this appeal, Mr. Hassan Kilingo, learned advocate represented the appellant Hassan Mohamed Mkonde whereas the respondent, Maimuna Ramadhani Kalenga, fended for herself.

Pursuant to the order of this Court, the appeal was disposed of by way of written submissions. I am grateful to both parties for complying with the schedule set by this Court and timely filing their respective submissions.

Arguing on the first ground of appeal, Mr. Hassan Kilingo contended that since the respondent claimed to have acquired the disputed land from one Idd Juma, she was expected to sue the appellant together with the Said Idd Juma or his legal representative in case he was demised. He argued that the said Iddi Juma was neither sued in the Ward tribunal nor in the appellate District Land and Housing Tribunal.

Consolidating the second, third and sixth grounds of appeal Mr. Kilingo contended that the 1st appellate tribunal grossly erred in law and facts(s) to uphold the trial tribunal's findings without considering proper interpretation of the law of limitation and the doctrine of adverse possession.

Mr. Kilingo challenged the appellate tribunal for failure to re-evaluate the evidence of both parties regarding adverse possession as reflected in the testimonies given at the trial tribunal, he alleged that the appellate tribunal jumped into conclusion using one sided testimony.

As to the fourth ground of appeal, Mr. Kilingo faulted the appellate tribunal for visiting the locus in quo on 12/09/2018 and omitting to record in the proceedings as to what transpired at the place. He submitted that, mere recording of the tribunal's observations at the locus in quo was not only a demonstration of biasness but also against the law.

Arguing on the fifth ground of appeal, Mr. Kilingo contended that, the respondent claimed against the appellant over a family land in which the appellant was appointed by the Tabora Urban Primary Court as an administrator of estate of the Late Mohamed Mkonde on 4th October 1996. He argued further that, it was wrong for the appellate tribunal to uphold the trial tribunal's decision where the appellant was sued on his own capacity instead of being administrator of the estate of his late father.

In reply, the respondent Maimuna Ramadhani Kalenga maintained that, the respondent could not have sued the person who sold the disputed plot because he was not a necessary party to be joined in the case. She contended that the seller's wife testified during trial and confirmed that her husband had sold the disputed land to her.

She asserted further that, before his death, Iddi Juma utilized the land uninterrupted up to 1998 when he sold it to her and further that, upon purchase of the said land, she constructed two bedrooms foundation which both the trial and appellate tribunal observed at the locus in quo and that, all the time the foundation was erected the appellant was silent.

Maimuna Ramadhani Kalenga asserted that the lower tribunals properly analysed and evaluated the evidence before them and that the appellant failed to produce any evidence to prove the alleged ownership over the disputed land.

She added that, in absence of omission to take into consideration of any material evidence or irregularities and/or illegalities, the appellate tribunal's judgment

cannot be disturbed. She urged this Court to dismiss the appeal with costs.

Having examined the entire record, I am satisfied with the finding of the trial tribunal and the appellate tribunal which declared the respondent as lawful owner of the suit land.

In respect of the evidence given, it is clear that the trial tribunal properly analysed the evidence before it and after visiting the locus in quo was satisfied that the respondent was the lawful owner of the disputed land.

Upon scrutiny of the record of the case, I find that the first appellate tribunal carefully re-assessed and re-evaluated the evidence of the Ward Tribunal and the additional evidence tendered before it. To ensure that it arrives at a fair decision, it re-visited the locus in quo and endorsed the findings of the Ward Tribunal.

Further analysis of the evidence on record reveals that, the Court would not have arrived at a different conclusion. Moreover, the trial tribunal was better placed to assess the demeanour of the witnesses who appeared before it.

Guided by the decision of the Court of Appeal in **ALI ABDALLAH SAID VS SAADA ABDALLAH RAJAB [1994] TLR 132**, I am certain that the relevant law and procedures were observed by the lower tribunals. In the referred case the Court of Appeal held that: -

“Where a case is essentially one of fact, in the absence of any indication that the trial court failed to take some material point or circumstance into account, it is improper for the appellate court to say that the trial court has come to an erroneous conclusion”

The Court further held that: -

“Where the decision of a case is wholly based on the credibility of the witnesses then it is the trial court, which is better placed to assess their credibility than an appellate court, which merely reads the transcript of the record”

Having highlighted all relevant issues for determination, I am of the view that this being a second appeal, it is not a fitting occasion for me to interfere with the trial tribunal's findings made upon its impression of witness accounts given at the trial. I therefore endorse the decision of the lower tribunals to be perfect.

The above said, I find that this appeal lacks merit and accordingly it is hereby dismissed with no order for costs.


AMOUR S. KHAMIS

JUDGE

24/09/2021

ORDER:

Judgment delivered in chambers in the presence of both parties in person.

Right of Appeal explained.




AMOUR S. KHAMIS

JUDGE

24/09/2021