

IN THE HIGH COURT OF TANZANIA

AT TABORA

LAND APPEAL NO. 7 OF 2019

**(From the Decision of District Land and Housing Tribunal for
Tabora District at Tabora)**

PERPETUA MSENGI (*As Administratrix of
the estate of the late D.K Msengi*) **APPELLANT**

VERSUS

1. DANIEL PETRO DOBOGO **1ST RESPONDENT**

2. SERIKALI YA KIJIKI MWANZUGI **2ND RESPONDENT**

JUDGMENT

Date of Last Order: 09/07/2021

Date of Delivery: 19/07/2021

AMOUR S. KHAMIS, J.

The present appeal emanates from Land Application No. 55 of 2014 of the District Land and Housing Tribunal for Nzega District. Before the trial tribunal the appellant under the capacity of Administratrix of the estate of the late Daniel K. Msengi sued the respondents for trespass over a piece of land located at Mwanzugi Village Igunga District.

The applicant claimed that the disputed land belonged to her late husband who got the land in 1983 and used it, on the other hand the first respondent also as the administrator of the estate of

the late Petro Mbutu claimed that the land belonged to the late Petro Mbutu who used the land as Shamba darasa.

Before the trial tribunal, the appellant prayed for a declaration that, the suit land is the property of the late Daniel K. Msengi, a declaration that the respondents are trespassers on the suit land, general damages for trespass, an order of immediate eviction of the respondent from the suit land and lastly an order for costs.

Having heard the evidence as submitted from all disputing parties the learned Honourable Chairman of the Tribunal dismissed the appellant's application the decision that prompted the present appeal.

In this appeal the appellant was represented by Ms. Flavia Francis learned advocate whereas the 1st respondent appeared in person. The 2nd respondent did not enter appearance. The appeal was disposed of by way of written submissions.

Submitting for appellant Ms. Flavia stated that the learned trial Chairman did not consider the evidence that the appellant's husband owned the disputed plot since 1983 and the dispute arose in 2014 meaning that the dispute arose 31 years after the appellant's husband started using the land. Ms. Flavia referred this court to the Law of Limitation Act Cap 89 R.E 2019 which sets the limit of 12 years for recovery of land.

As to the second ground, she submitted that the chairman erred to determine the matter having the knowledge that the 1st respondent had no locus to be part of this dispute due to the fact that at page 18 of the proceedings stipulated that a plot in dispute

belong to his uncle Petro Mbutu who is was deceased at the time of hearing.

In discussing the third ground Ms. Flavia stated that the 1st respondent is not even the son of Petro Mbutu, he wants to forcefully take the land of the appellant with the help of the 2nd respondent.

She added that, the evidence from the appellant proved the case on balance of probabilities as it insisted that there was no shamba darasa in the time the chairman ruled instead Shamba darasa started in year 2006.

Lastly, Ms. Flavia submitted that, the trial Chairman erred by deciding on case whire there was no notice issued to the 2nd respondent before commencing the case before the trial Tribunal, the second respondent being a *Local Government Authority, section 106(1) and (2) of the Local Government (Urban Authorities) Act Cap 288 R.E 2019* a notice to commence a legal proceeding needed to be issued to the 2nd respondent.

In reply the respondents filed a joint written submission, in respect of 1st ground it is submitted that, the records vividly show as per memorandum of understanding between the Village Government and Petro Mbutu tendered as evidence states that the land belongs to the late Petro Mbutu and on 28/11/1983, the farm was let to the Village Government (2nd respondent) temporarily by the said Petro Mbutu.

That, there are no strong evidence to hold that the disputed land belonged to the appellant, they cited the case of *Moses v. Love grove* [1952] 2 QB 533 and *Hughes v. Griffin* [1969] All ER 460 where it was held that

"a person seeking to acquire title to land by adverse possession had to cumulatively prove

(a) that there had been absence of possession by the true owner through abandonment

(b) that the adverse possessor had been in actual possession of the piece of land

(c) that the adverse possessor had no color of right to be there other than his entry and occupation

(d) that the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes of which he intended to use it.

(e) that there was a sufficient animus to dispossess and an animus possidendi

(f) that the statutory period had elapsed

(g) that, there had been no interruption to the adverse possession throughout the aforesaid statutory period

(h) that the nature of the property was such that in the light of the foregoing adverse possession would result

As to the issue of locus, the respondents submitted that the tribunal's record reveals that the disputed land belongs to the Late Petro Mbutu and one Daniel Peter Dobogo is suing under the shoes of the late Petro Mbutu as an administrator of estate.

I have painstakingly read the proceedings of the trial tribunal and I was pleased by the appellant's decision to add a necessary

party (2nd respondent) to her application since the core of the dispute is largely concentrated in the office of the 2nd respondent.

Upon extra perusal of the trial tribunals file, I came across a believable evidence of one Abel Chunwa who stated that he was at Mwanzugi village since 1974 and further that, the disputed land belonged to Petro Mbutu who cleared it and subsequently taken by the village council as a shamba darasa in the year 1983 the time when Daniel Msengi was Bwana Shamba.

During cross examination by the applicant, this witness stated further that Mzee Daniel Msengi was brought to the village to teach them farming of horticulture crops.

As to whether the 1st respondent had locus to prosecute the application, the records are clear that, the 1st respondent appeared under the capacity of administrator of estate of the late Petro Mbutu. Also, in the evidence of DW3 Joseph Gunda reinforced that he attended the burial of Mzee Petro Mbutu and through a clan meeting, the 1st respondent was appointed to make follow ups on the deceased's estate.

Both parties extensively submitted on the issue of adverse possession. I have carefully read the fundamentals of the principle of adverse possession set forth in the cases cited. However the circumstances of this case does not fall within the ambits of the principle stated. The record of the trial tribunal show clearly that the 2nd respondent had prior information that the land though stood unused for a while was temporarily let to by Petro Mbutu.

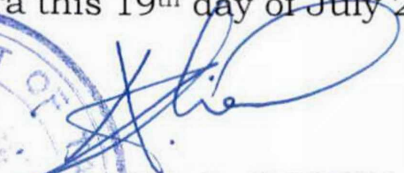
Ms. Flavia raised the issue of notice to commence legal proceedings against the 2nd respondent before commencing the case in the trial Tribunal. She cited Section 106 (1) and (2) of the

Local Government (Urban Authorities) Act Cap 288 R.E 2019. I think I should not waste time on this for two reasons, first the cited law is not among the laws that were revised in 2019 and published via GN. No. 140 of 2020 as the learned advocate submitted, and second the cited law does not apply to the suit at hand because the 2nd respondent is not the subject of the cited law, being a village authority the 2nd respondent is established under the Local Government (District Authorities) Act.

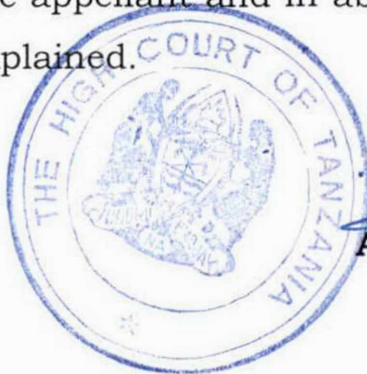
On the basis of the above stated reasons, I accordingly dismiss the appeal and uphold the decision of the District Land and Housing Tribunal.


Dated at Tabora this 19th day of July 2021.




AMOUR S. KHAMIS
JUDGE

Judgment delivered in open Court in presence of Mr. Kanani Chombala holding brief of Ms. Flavia Francis, learned advocate for the appellant and in absence of the respondents. Right of Appeal explained.




AMOUR S. KHAMIS
JUDGE

19/07/2021