

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 37 OF 2020

(Originating from Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 104 of 2019 Original Land Dispute No. 07 Chala Ward Tribunal)

RESTUTA KIWALALA.....APPELLANT

VERSUS

EZEBIUS KIBELENGE.....RESPONDENT

JUDGEMENT

Date of last Order: 11/05/2022
Date of Judgment: 18/07/2022

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Chala Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the appellant herein unsuccessfully sued the respondent claiming ownership of piece of land (henceforth the disputed land). Dissatisfied the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa (henceforth the Appellate Tribunal) where the respondent was declared the rightful owner of the disputed land.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following grounds of appeal;

- 1. That the Appellate Tribunal erred in law for not setting aside the incorrect judgment of the ward tribunal without reasonable cause ever since if it applied a principle of adverse possession, it would award the respondent the whole disputed land and to divide it.*
- 2. That the Appellate tribunal misdirected itself on evaluation of evidence, it failed to observe the contradictory evidence between the respondent and his witness to prove how he owned the disputed land.*
- 3. That the Appellate tribunal failed to consider the fact that respondent did not prove how he got or acquired the disputed land compared to the appellant.*
- 4. That the appellate tribunal failed to direct itself on the constitution of the ward tribunal at trial of the case and judgment delivery.*

As this appeal was called on for hearing, the appellant appeared in person, unrepresented whilst the respondent had a legal service of Mr. Samwel Kipsha, learned advocate. The hearing proceeded orally.

In support of his appeal, the appellant prayed to argue the grounds one after another as follows.

As to the first ground, the appellant submitted that the appellate tribunal granted him 3 hectares out of 73 while the respondent has invaded the plot which belongs to his parents who had lived there since 1964. His father having died, they have inherited the dispute land.

As to the second ground, the appellant submitted that the evidence of the respondent and his witness contradicted in one way or another in proving how the respondent acquired land. The witnesses who testified for the respondent were not present when her parents acquired the land. Her parents acquired the disputed land by clearing te bush. The respondent had no any exhibit showing his ownership of the land.

As to the third ground, the appellant submitted that the respondent failed to establish the way he acquired the disputed land. No any evidence produced to prove the same. The respondent was adjacent to them thus invaded their land.

As to the fourth ground, the appellant submitted that, the disputed land was not deserted, thus she prayed for the appeal be allowed.

While Mr. Samwel Kipesha for the respondent resisted the appeal by the appellant.

Mr. Kipesha submitted that as regards the first ground that the appellate tribunal was right to declare the respondent the lawful owner. The appellant told the trial tribunal that her father had in 2000 shifted from the disputed land to Mtapenda village where he deserted the disputed land. The land case was filed in 2019, thus the trial tribunal

was right to find the respondent a lawful owner under adverse possession.

As to the second ground, Mr. Kipesha submitted that the appellant has failed to explain which witness's evidence has contradicted the evidence of the respondent.

As to the third ground, Mr. Kipesha was of the view that the respondent proved to the satisfaction of the trial tribunal the way he acquired the land. All five witnesses proved the respondent ownership of the disputed land.

As to the fourth ground, Mr. Kipesha submitted that though the ward tribunal was not composed as required by law, he prayed for the same be guided as per the case of **Yakobo Magoiga Gichele vs Penina Yusuph**, Civil Appeal No. 55 of 2017 and prayed for the appeal be dismissed with costs.

In rejoinder, the appellant submitted that it was the grandfather who left the disputed land and her father was at such land in 2000. She further submitted that Martin Masanuko told the trial tribunal that respondent rented the farms to her father while Edwin said the disputed land belonged to kiberenge (respondent). Alex told the trial tribunal that kiwalala was rented the farms in 2000, while Federico said the disputed

land was forest that her father was rented. All the witnesses no one gave an identity of the disputed land.

I have keenly followed the arguments of the appellant and that of the learned counsel for the respondent and I have read between the lines the appellant grounds of appeal and the entire proceedings of the tribunals below.

Let me, first start addressing the first complaint by the appellant. It is undisputed that the respondent has been in occupation of the land in dispute for a quite long time, thus he owned the land under adverse possession for the period of 19 years without disturbance.

In his very testimony at the trial tribunal, the appellant told the trial tribunal that her father used the disputed land since 1964. She further informed the trial tribunal that in a year 2000 her father shifted to Mtapenda village and left the disputed land to his son one Zuberi and other portion of the land he left to Masandiko. From 2000 the disputed land was cultivated by different people including the respondent.

However, Zuberi as alleged to have custodian of the disputed land was not called to testify before the trial tribunal.

Now the crucial point for me to determine is whether the respondent possession of disputed land since 2000 without interference

renders the respondent's claim over the same land to be time barred by the of limitation period under **item 22** in the First Schedule to the Law of Limitation Act which gives a limitation period of twelve (12) years. This being the main ground of complaint by the appellant.

It is undisputed fact from the proceedings in the Trial Tribunal, and of the Appellate Tribunal had concurrent findings of fact that the appellant's was invited to the disputed land since 1964. That he was rented the land for cultivation only. However, in a year 2000 the disputed land was abandoned. The appellant in his ground of complaint asserted that the appellate court erred in law for not setting aside the findings of the trial tribunal for the fact that he possessed such land for 19 years undisturbed before the appellant's claim in 2019.

As hinted above, the appellant testified at the trial tribunal that her father was invited to occupy disputed land from one Mzee Matutu. He occupied the disputed land until he abandoned it.

The appellant has failed to bring evidence which established that her father had exclusive over the disputed land and not an invitee. It is trite law that whoever desires any court to give judgment as to any legal rights or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **section 110 (1) of the Law of Evidence Act**, Cap 6 RE 2019. Failure by the appellant to prove her

assertion to my view drew adverse inference that her father was mere an invitee to the disputed land.

It is my strong consideration that use of land as an invitee, or by planting trees or building a permanent house on another person's land or even paying land rent to the relevant authorities in his own name would not amount to ownership of the disputed land by the appellant. See the case of **Maigu E. M. Magenda vs Arbogast Maugo Magenda**, Civil Appeal No. 218 of 2017, CAT Mwanza, unreported.

Further, it is the position of the law as far as am aware no invitee can exclude his host whatever the length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited. See the **Mussa Hassani vs Barnabas-Yohanna Shedafa (Legal Representative of the late YOHANNA SHEDAFA)**, Civil Appeal No. 101 of 2018, unreported, **Samson Mwambene vs Edson James Mwanyingili** [2001] TLR 1, **Makofia Merpianaga vs Asha Ndisia** [1969] HCD No. 204.

For the avoidance of doubt, let me make it clear that as regard the principle of adverse possession that a person who does not have a legal title to land may become owner of that land based on continuous or occupation of the said land, however, the principle cannot apply where

the possession derived from the permission or agreement as appears in the circumstances of this case.

The assertion that he the appellant possessed the disputed land for such period of 39 years prior to respondent occupation cannot said to qualify the possession under adverse possession as the same is derived from the respondent's permission. See the case of **Registered Trustees of Holy Spirit Sisters of Tanzania vs January Kamili Shayo & 136 Others**, Civil Appeal No. 193 of 2016, CAT, Unreported.

Am also aware that it is on very rare and exceptional circumstance s the Court will interfere with the findings of fact of a lower court. See the cases of **Materu Laison and Another vs R. Sospeter** [1988] TLR 102 and **Amratlal Damodar and Another vs H. Jariwalla** [1980] TLR 31. In the case of **Amratlal Damodar and Another vs H. Jariwalla** [supra], the Court of Appeal held that: -

"Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been misapprehension of evidence, a miscarriage of justice or violation of some principles of law or procedure."

Having carefully perused the records of this appeal, I have not seen any circumstances that necessitated this court to interfere with the concurrent findings of fact that of the two tribunals below that the

respondent had been in a long and uninterrupted occupation of the disputed land. That the court has been also reluctant to disturb persons who have occupied land and developed it over a long period. The respondent has been in occupation of the disputed land for a minimum of 19 years which is quite a long time. It would be unfair to disturb him. See also the case of **Shaabani Nassoro vs Rajabu Simba** [1967] H.C.D 233.

In view of the foregoing, I find this appeal has no merit. Thus, it is hereby dismissed.

I make no orders as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

18. 07. 2022

Date - 18/07/2022

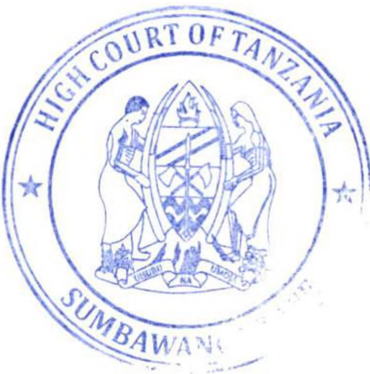
Coram - Hon. K.M. Saguda – Ag, DR

Appellant - Present

Respondent - Present

B/C - Zuhura

Mr. Kipesha – Advocate for Respondent: The matter is coming for judgment we are ready for it, we pray to proceed to hear it.




SGD: K.M SAGUDA

Ag, DEPUTY REGISTRAR

18/07/2022