

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

**LAND APPEAL NO.19 OF 2021**

*(Arising from the decision of Maswa District Land and Housing Tribunal in Land  
Appl. No. 60 of 2020)*

**BALA KWILI.....APPELLANT**  
**VERSUS**  
**NGOLO NDULU.....RESPONDENT**  
**JUDGMENT**

*17<sup>th</sup> May & 24<sup>th</sup> June 2022*

**MKWIZU, J:**

The dispute between the parties here in is on the ownership of a piece of land measuring 30 acres located at Mondo hamlet, Paji village, Kimali Ward within Meatu district with a properly described boundary marks. The respondent, in his capacity as an administrator of his father's estate did file a land dispute before the trial tribunal claiming the suit land to belong to his father Ndulu Mbisa, (the deceased) who passed away in 1974. Alleging tress pass by the 2<sup>nd</sup> respondent in 2017 who illegally sold it to the 2<sup>nd</sup> respondent. He prayed for the declaration that the suit land belongs to his father's estate and that the sale between the respondents be declared illegal. Respondent's evidence before the tribunal was supported by two other witnesses, Abel Salimu and Mwalu ndulu.

Appellant was sued together with another person named Mkenya Sultan. They all denied the claims. Appellant who appeared by then as the 1<sup>st</sup> respondent claimed ownership of the suit land given to him by his stepmother Kabula Tenga, the deceased's (Ndulu Mbisa's) wife.

The trial tribunal's decision was in favour of the respondent, applicant by then. It declared the suit land party of the deceased's Ndulu Mbisa's estate with a declaration that respondent's sale agreement is illegal.

Dissatisfied, appellant has filed this appeal with a total of five grounds of appeal. However, during the hearing, his advocate, Majura Mafungo, chose to abandon four grounds that is 1,2,4 and 5 and argued ground 3 alone drafted thus:

*"That the learned chairman erred in law and fact by declaring that the sale of land done before the appointment of the administratrix between the first and second Respondent was illegal"*

Arguing the above ground Mr. Majura blamed the trial chairman for declaring the sale between the respondent illegal on the reason that the agreement was concluded well before the appointment of the administrator and that appellant had been in occupation of the suit property since 2007 which is 13 years to the time of the institution of the case. He said , appellant was at this time owner under the doctrine of adverse possession.

Mr Audax Constantine, for the respondent submitted in opposition. He said, the assertion that the appellant got the suit land in 2007 is not borne by evidence. It is only being submitted by the appellant's counsel. He on this, cited the decision in **Morandi Rutakyamirwa V Petro Joseph** 1990(TLR) 49 arguing that submissions are not evidence. Mr Audax contended further that, the evidence on the records does establish adverse possession and therefore the appeal is baseless. He finally prayed for the dismissal of the appeal with costs.

I have heard and considered the submissions of the parties. The dispute to be resolved is the ownership of the suit land. My close evaluation of the appellant's counsel brief submissions finds two issues for discussions. (i) the legality of the sale agreement of the suit land prior to the appointment of an administrator of the deceased's estate; (ii) applicability of the doctrine of adverse possession.

Mr. Majura suggests that the sale of the suit land by the appellant is valid because it was concluded before the appointment of the administrator of the deceased's estate. Could that proposition be valid?. It is my considered opinion that, sale of the deceased property does not become valid only because its administration is yet to be officiated and legally placed on the hands of the administrator.

It should be stressed here that neither death of the landowner nor the appointment of the deceased legal representative results into accrual of the cause of action in land matters rather, it is the dispossession of the land that gives one a right of action against the other. While it is certain that the right to claim land is restricted to 12 years period from the date of the accrual of the cause of action as per section 9 of the law of limitation Act, that period is reckoned from the date of dispossession of one's land. Section 9 (2) of the Law of Limitation Act read together with section 33 of the same act are specific to that point. Section 9 (2) provided: -

*(2) Where the person who institutes a suit to recover land, or some person through whom he claims, has been in possession of and has, while entitled to the land, been dispossessed, or has discontinued his possession, the right of action shall be*

*deemed to have accrued on the date of the dispossession or discontinuance”.*

And section 33.-(1) of the same Act reads:

*"33(1) A right of action to recover land shall not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as "adverse possession") and, where on the date on which the right of action to recover any land accrues and no person is in adverse possession of the land, a right of action shall not accrue unless and until some person takes adverse possession of the land."*

Though it is true that the deceased died long in 1974, his land remained intact and undisturbed to 2017 when the appellant was sported trespassing into it. The cause of action therefore began on that date and not any other period. According to the records, respondent was granted letters of administration in 2019 and filed the suit in 2020 just three years after the alleged encroachment by the appellant. The assertion that the appellant possession of the suit land began in the year 2007 is a statement from the bar which is not borne by the evidence by the parties as rightly submitted by Mr Audax. It goes therefore without saying that the land claim against the appellant filed by the respondent three years after the alleged encroachment was legally before the tribunal regardless on when the respondent was appointed the administrator. The sale by the respondents was for that reason properly declared illegal.

The second issue is on the applicability of the adverse possession doctrine. I think, Mr. Majura missed the concept of the doctrine because a mere long use of the landed property does not entitle a person or trespasser to ownership. In the case of **Registered Trustees of Holy Spirit Sisters Tanzania vs January Kamili Shayo and 136 others**, Civil Appeal No. 193 of 2016(unreported) the Court held: -

*"In our well- considered opinion, neither can it be lawfully claimed that the respondents' occupation of the suit land amounted to adverse possession. Possession and occupation of land for a considerable period of time do not, in themselves, automatically give rise to a claim of adverse possession..."*

Citing the English decisions- in **Moses v Loregrove** [ 1952] 2 QB 533; and **Hughes v. Griffin** [ 1969] 1 All ER 460., the Court in the above cited decision highlighted on the eight elements of adverse possession

*(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 consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of the land for purposes for which he intended to use it;*

*(e) That there was a sufficient animus to dispossess and an animus possidendi;*

*(f) That the statutory period, in this case twelve years, had elapsed*

*(g) That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*

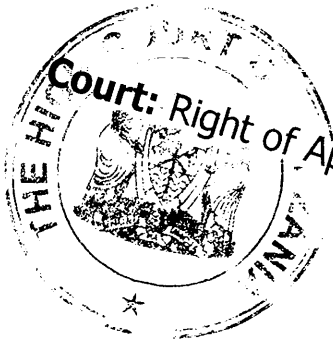
*(h) That the nature of the property was such that, in the light of the foregoing, adverse possession would result*

A person asserting the doctrine of adverse possession should have no colour of right over the suit land except his entry on the same without the owner's permission. In this case, the appellant evidence is to the effect that he acquired the suit land from his stepmother. Meaning that he legally acquired it, and not that he entered it without any colour of right.

And even if we were to agree that he entered the suit land without owners' permission, still the appellant failed to tell the court when he actually got into the suit land. The only evidence available on the record is that the respondent learnt of the encroachment in 2017 followed by the filing of the suit in 2020 only three years after the alleged trespass. This automatically defeats his claim of ownership through adverse possession as neither the nature of the entry nor the time of occupation supports the applicability of the doctrine.

All taken care of, I find the appeal without merit. It is dismissed on its entirety with costs to the respondent. Ordered accordingly.

Order accordingly.



day of June 2022.  
E.Y. MKWIZU  
JUDGE  
24/6/2022

E.Y. MKWIZU  
JUDGE  
24/6/2022