

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

**AT SHINYANGA**

**MISC. LAND APPEAL NO. 21 OF 2021**

*(Arising from Land Application No. 65 of 2020 of the Maswa District Land & Housing  
Tribunal)*

**JOSEPH ALPHONCE & ANOTHER ..... APPELLANT  
VERSUS**

**MARIAMU MASANJA (The Administratrix**

**Of estate of the late Makula Masanja)..... RESPONDENT**

**JUDGMENT**

*17<sup>th</sup> May & 10<sup>th</sup> June 2022*

**MKWIZU,J:**

On 17<sup>th</sup> March 2021 the Maswa District Land and Housing Tribunal determined the Land Application No. 65 of 2020. The brief facts leading to this appeal decoded from the records are that: The Respondent, an administrator of estate of her brother's estate( The late Makula Masanja) filed a suit against the appellants at Maswa DLHT claiming *in te alia* for declaration that the suit premises, named Plot No 25 block L Nyalikungu Urban at Maswa district in Simiyu region is part of the estate of Makula Masanja (the deceased) and that appellants and their assignees be ordered to vacate the suit premises. Her claim was that the suit premises was built by her deceased brother in 1986. That her brother got sick and shifted to

Mwanza and left tenants on the suit premises. Respondent case was to the effect that, after the deceased's death, the Right of occupancy in respect of the suit premises went missing and their efforts to trace it from the land authority proved futile

On the other hand, appellants (original respondents at the trial tribunal) contested the claim. In their joint Written statement of defence, appellants said, at his death, the late Makula Masanja had already disposed the suit premises since 1994 to Gasper Samwel and that the later had sold it to John Daud Yenzela, 1<sup>st</sup> appellant's father in 1996 and that they have been in uninterrupted occupation of the suit premises since then. The trial tribunal decision was in favour of the Respondent where the late Makula Masanja was declared a lawful owner of the disputed premise. Appellants were not pleased by the said decision; they have lodged this appeal on 5 grounds of appeal that; -

- 1. That the honourable Chairman erred in both in law and facts for failing to evaluate evidence adduced by both parties correctly*
- 2. that the honourable Chairman erred both in law and facts without considering that there was improvement on the plot made by the appellant and the said activities like hiring tenants who stayed for almost 16 years, this was an implication that both parties were aware of the appellant occupation on the plot in dispute.*

3. *That the honourable Chairman erred both in law and facts for delivering judgment without considering that there was sale agreement between the deceased Makula Masanja who sold to the one Gasper Samwel and then was sold to John Daudi Nyenzela and therefore contract was furnished however the appellant when procuring title deed at the Land Office. He was instructed to bring the administrator/administratrix of estate of the late Makula Masanja for further steps of transferring title who was never found by them in vain.*
4. *That the Honourable Chairman erred both in law and facts by considering the weak evidence adduced by the respondent by failing to scrutinize evidence adduced by the applicant which was stronger than the evidence adduced by the Respondent especially the evidence on the ownership and transfer of Right of occupancy of the disputed house/plot, of which it was to be guided by another institution such as Land*
5. *That the Honourable Chairman erred both in law and facts by considering the doctrine of adverse possession in land to claim the house in the dispute plot of which the appellant had some ongoing activities such as, building toilets, hiring/renting whereby the tenants has stayed for almost 16 years without any disturbance, and so far there was no any disturbance before the demise of the deceased.*

When the appeal was called on for hearing, appellants appeared in person/unrepresented whilst respondent was represented by Mr. Dishon learned counsel.

Submitting in support of the appeal, 1<sup>st</sup> appellant faulted the trial tribunal for declaring the respondent owner while there is ample evidence proving that his father bought the suit house from Gasper Samwel, who bought it from Makula Masanja (the deceased). And that the sale agreement documents between Makula Masanja and Gasper Samwel were handed to John Daud during the second sale transaction with the original certificate of Title contending that a claim as to the loss of the original right of Occupancy is a lie.

First appellant blamed the trial court for failure to properly evaluate the evidence where it would have realized that the deceased Makula Masanja had sold the suit premise since 1994 to one Gasper Samwel had no problem with the said disposition. The dispute was brought about by the legal administrator after he had approached her in view of effecting transfer of the right of occupancy in respect of the suit property. He prayed the court to allow the appeal.

The second appellant informed the court that he has been occupying the suit house as a tenant since 1996 where together with his landlord, John Daudi Yenzela, 1<sup>st</sup> appellant father constructed a toilet before he was in 2020 summoned to appear before the District Land Housing tribunal.

In response, Mr. Dishon resisted the appeal. Submitting on the 1<sup>st</sup> ground of appeal, he said, the tribunal did properly evaluate the evidence in respect of who is the legal owner of a house on Plot No. 25 Block L Nyalikungu Maswa and concluded that, (i) until the date of the institution of the suit, the owner of the plot was the late Makula Masanja as evidenced by the details of the title deed and that the administrator was paying for the land rent, (ii) no transfer by the purchaser/seller during the deceased's lifetime and (iii) that there is no proof of the sale. Referring the court to page 12 of the trial tribunal's decision, Respondent counsel argued that, Gasper Samwel was identified as a material witness alleged to have bought the suit premises from the deceased Makula Masanja and sold it to the 1<sup>st</sup> appellants father, but 1<sup>st</sup> appellant failed to bring him to court to prove the alleged disposition of the suit premises and could not show any legal interest attached to the suit premises. He on this, relied on the decision of **Yusuph Juma Sadiki & another vs Nuru Mohamed Kihyo & 2 Others** Land case No. 26 of 2008 (unreported)

Arguing grounds 2 and 5 of the appeal together, Mr Dishon, submitted that application of the doctrine of adverse possession on a registered land is not an automatic. Citing the case of The **Hon. Attorney General vs Mwabezi Mohamedi (Administrator of the Estate of the late Dolly Maria Eustace) & others**, Civil Appeal No. 39 of 2019 CAT (unreported), **Mukuye Malila & Thadeo vs Luinanga** (1972) HCD 4 and **Moses vs Lovegrove** (1952) 2 QB 533 he said, a long usage of the suit premises does not by itself justify ownership by the 1<sup>st</sup> appellant and that an invitee to the land cannot claim ownership.

Regarding the 3 and 4<sup>th</sup> grounds of appeal, Mr. Dishon submitted that the tribunal did what it was required to by the law, and it correctly declared the respondent owner because respondent managed to prove the claim in the balance of probabilities. The case of **KMM Saving Credit cooperative Society Limited vs Peles Yeleje Mhebo (As Administratrix of John Shege Mataba) & Others** Land Case No. 367(unreported) was cited followed by his prayer for the dismissal of the appeal with costs.

In rejoinder, the court was invited by the 1<sup>st</sup> appellant, to consider the sale agreement between Gasper Samweli and John Daudi Yenzela. He queried the claim of ownership by the administrator of the deceased deceased of the estate of the Late Makula Masanja wondering why the deceased, Makula Masanja, kept quiet since 1994 without disputing the occupation of the suit premise by the appellant.

Speaking on the payment of land rent by the respondent, 1<sup>st</sup> appellant argued that the payment was done after he had approached the administratrix for the proposed transfer of the suit house. The rest of his submissions were reiteration of his submission in chief.

On his party, 2<sup>nd</sup> appellant was clear that he is not the owner rather a tenant and his landlord was John Daudi Yenzela.

I have keenly considered the grounds of appeal by the appellants, parties' rival submissions as well as the records. The main issue is on the ownership of the suit premise. Determination of this issue will involve the analysis of the validity of the alleged disposition of the suit property

from the initial owner to the first and second alleged buyer and the applicability of the doctrine of adverse possession in favour of the 1<sup>st</sup> appellant.

I have revisited the entire records. There is no doubt that the suit property is registered in the name of Makula Masanja (the deceased). This fact is exhibited by exhibit P1 and exhibit D2, the original certificate of Occupancy in respect of the suit premise tendered in court by the 1<sup>st</sup> appellant. As correctly observed by the trial tribunals' chairperson, there is no evidence showing disposition of the suit property by the owner, Makula Masanja, the deceased. Though, in his evidence, 1<sup>st</sup> appellant suggested that the deceased, Makula Masanja had, before his death sold the suit premises to Gasper Samwel in 1994 who again sold it to his father John Kuzenza Masanja in 1996, the document evidencing such a disposition by the owner Makula Masanja was not produced in evidence. The sale agreement tendered in court relates to the sale transaction between Gasper Samwel and John Kuzenza Masanja which again is silent on how the suit property moved from its original owner, Makula Masanja to Gasper Samwel. This evidence is lacking in this case making it questionable whether there was such a sale or not.

The appellants could have cleared this doubt by summoning Gasper Samwel the mentioned purchaser of the suit house from Makula Masanja, to explain to the tribunal how he got the suit property from the deceased. This witness was however, not called to the witness box without explanation leaving the trial tribunal without evidence on how the property changed hands from the deceased Makula Masanja to Gasper Samwel .

It is a settled position of the law that, land register information's presents a conclusive proof of the title of an individual over a registered land. Citing the book by Dr. R.W. Tenga and Dr. S.J. Mramba on Conveyancing and Disposition of Land in Tanzania: Law and Procedure, Law Africa, Dar es Salaam, 2017, at page 330: The Court of Appeal in **Leopold Mutembei Vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development & Another**, Civil Appeal No. 57 of 2017 (unreported)

*"... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect or terminate that ownership or interest. **Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title.**"*(Emphasis added)

And "Owner" is under section 2 of the Land Registration Act, (Cap 334) defined to mean means:-

*"the person for the time being in whose name that estate or interest is registered.*



I understand that the transactions under scrutiny was executed in the year 1990's . However, I have come across the decision in Salum **Mateyo v. Maohamed Mathayo** (1987) TLR 111 where the Court had even before 1990's endorse the above position of the law that :

*"It seems to me clear that in law, the appellant in whose name the suit premises were registered was the owner. I am fortified in this view by section 2 of the Land Registration Ordinance, chapter. 334 which defines "owner" in relation to any estate or interest as the person for the time being in whose name the estate or interest is registered."*

In addition to that, the provisions of the Land Registration Ordinance, existed by then, provided for the registration of the disposition of the land as a mandatory requirement. Section 41 (2) of the Land Registration Cap 334 (Ordinance by then) read:

*"No disposition unless registered shall be effectual to create, transfer, vary or extinguish any estate or interest in any registered land".*

In this case, there is no single evidence adduced to show such a registration by either the first purchaser, Gasper Samwel or the second one John Kuzenza Masanja. Now since the Right of Occupancy bears the name of Makula Masanja, (the deceased) and in the absence of any valid registration of the disposition, then the suit premises is by law, the property of Makula Masanja and that the sale agreement between the

appellant's father and Gasper Samwel could not at any standard earn him a better title over the respondent's Registered Title as John Kuzenza Masanja's purchase was from a person without a transferable right. See for instance the decision in **Farah Mohamed Said vs. Fatuma Abdallah** [1992] TLR 205. The trial tribunals decision was therefore deserving. The 1, 3 and 4 grounds of appeal are for the foregoing reasons devoid of merit.

Next, is the issue on the applicability of the doctrine of adverse possession. In grounds 2 and 5, appellants contended that they had been in a long uninterrupted occupation and has performed substantial improvements on the suit property qualifying 1<sup>st</sup> appellant owner under the doctrine of adverse possession. I find this assertion without merit because a mere long use of the landed property does not entitle a person or trespasser to ownership of the landed property. 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*

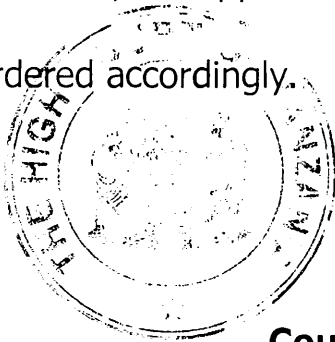
*(h) That the nature of the property was such that, in the light of the foregoing, adverse possession would result*

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 1<sup>st</sup> appellant claim is pegged on the purchase agreement. This automatically defeats his claim of ownership

through adverse possession. The 2<sup>nd</sup> and 5<sup>th</sup> grounds of appeal are as well of no value. The first appellant is neither a legitimate purchaser nor adverse possessor of the suit premises. The only right open for him, is under the given circumstances, to claim his interest if any against the alleged vendor, Gasper Samwel from whom his father is alleged to have purchased the suit property.

That said, the appeal is devoid of merit. It is dismissed with costs.

Ordered accordingly.



  
**E.Y. MKWIZU**  
**JUDGE**  
**10/06/2022**

**Court:** Right of Appeal explained

  
**E.Y. MKWIZU**  
**JUDGE**  
**10/06/2022**