

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

LAND APPEAL NO. 25 OF 2021

*(Arising from Land Application No. 30 of 2020 in the District Land and Housing
Tribunal of Lindi at Lindi)*

HASSAN JUMA KUMBULYA (*administrator*)

***Of the estate of Asumini Hassani Nachilapa*)..... APPELLANT**

VERSUS

TABIA CHINGWARU & 2 OTHERS.....APPELLANT

JUDGMENT

Muruke, J.

Hassan Juma Kumbulya, being aggrieved by the decision of Lindi District Land and Housing Tribunal in Land Application No. 30 of 2020 preferred present appeal, raising five grounds, articulated in the memorandum of appeal.

On the date set for hearing, both parties appeared in persons. On ground one and two, appellant submitted that, tribunal received the evidence in favour of respondent wrongly in that there was no any sale agreement. On ground three and four appellant, he submitted that, tribunal erred in law for not considering evidence of the appellant. On ground five, appellant submitted that, trial tribunal erred to consider relative evidence in favour of the respondent.



In response, 1st respondent (Tabia Chingwari) submitted that, she sold her mother Shamba, that originally having born there. Witnesses were relatives who witnessed the sale entered orally. Mzee Mpache was the first to sell the Shamba while alive. 2nd respondent (Omari Isumail Makota) submitted that, there is no any evidence to prove that appellant is the owner. It took over 10 years since Swalehe Chuma died. And since Asumini appellant's grandmother died it is almost 20 years. Dispute arose in 2018. Respondent arranged five (5) witnesses. Tribunal were satisfied with their evidence.

3rd respondent (Somoe Selemani Nangawile) submitted that, the area in dispute sold by Tabia Chingweru to her husband in 2007 and in 2009 her husband died. The shamba in dispute is among the properties she inherited. In 2018 the dispute arose. Appellant mother interfered with her shamba, she sold to someone else. Appellant mother has no right to sell the disputed shamba. 3rd respondent declared the rightful owner of the disputed shamba, but appellant filed present appeal, which lacks merits. In rejoinder, appellant submitted that, 1st respondent did not bring any evidence, is the one who inherited from his husband.

Having gone through both parties' submissions, grounds of appeal and the evidence on records, there are two issues to be considered.

1. Who is the lawful owner of the suit land.
2. Whether the 2nd respondent lawful purchased the disputed land from 1st respondent.

Starting with the first issue, who is the lawful owner of the disputed land. As the first appellate court had a duty to revise the evidence adduced at the trial tribunal to satisfy if the trial tribunal evaluated the evidence of both parties properly. This procedure was established by the Court of

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Appeal in the case of **Mapambano Michael @ Mayanga Vs. The Republic, Criminal Appeal No. 268 of 2015**(unreported) at Dodoma, where it was stated that:

“The duty of first appellate court is to subject the entire evidence on record to a fresh reevaluation in order to arrive at decision which may coincide with the trial court’s decision or may be different altogether.”

This requirement of the law was emphasized by the same Court in the case of **Leonard Mwanashoka Vs. R, Criminal Appeal No. 226 of 2014**(unreported) where the Court of Appeal held: -

The first appellate court should have treated evidence as a whole to a fresh and exhaustive scrutiny which the appellant was entitled to expect. It was therefore, expected of the first appellate court, to not only summarize but also to objectively evaluate the gist and value of the defense, and weight it against the prosecution case. This is what evaluation is all about.”

I have carefully reviewed the evidence on record. The evidence is very clear and self-speaking. According to the testimony of DW1 (1st respondent) the disputed Land belongs to her mother. She was born in the disputed land since 1952 and lived on the same land. Appellant mother (Asumini Hassani Nachilapa) has never been owner of the disputed land. During cross examination DW1 responded that: -

Eneo la mgogoro ni la kwetu kwa asili tuliacha mikorosho, mimi nimezaliwa hapo. Wakati tunauza mwaka 2007 tulikuwa wawili tu mimi na dada yangu.

DW1 evidence was corroborated by the testimony of DW2(Omary Ismail Makota), who proved that the disputed land belongs to DW1 parents by

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origin. DW1 inherited disputed land after her parent's death. At page 14 of the trial tribunal proceedings his evidence record as follows: -

Mimi ni msimamizi wa mirathi ya marehemu Swalehe Chuma aliyefariki tarehe 2/7/2009. Baada ya msiba kikao cha familia kiliniteua mimi kuwa msimamizi wa mirathi. Kikao cha familia ziliorodheshwa mali za marehemu zikiwemo shamba la mgogoro. Shamba la mgogoro tayari nilikuwa na taarifa kuwa lilinuliwa mwaka 2007 kutoka kwa mjibu maombi namba moja. Kwenye kikao cha familia eneo hili nilimkabidhi mjibu maombi namba tatu akiwa ni mrithi wa mme wake. Mipaka ya shamba siku namkabidhi kulikuwa na shahidi wa muombaji aitwae Hamisi Sijaona (PW2) ndiye aliyeonyesha mipaka.

I have also perused the trial tribunal file. The dispute started on 2018 appellant logged this dispute at the District Land and Housing Tribunal of Lindi on 27/8/2020 and he appointed to be administrator of the estate on 2002 while 1st respondent sold the disputed land to 2nd respondent in 2007.

Counting from the date when the 1st respondent sold the disputed land to 2nd respondent is over 13 years. In other words, the 2nd respondent stayed on the disputed land for 13 years without any disturbance from any person. In my considered opinion it is not easy for a person to stay in the land for such long if the said land does not belong to him/ her. Why appellant kept quiet for such long looking at 2nd respondent using the disputed land for 13 years. Under the law of limitation, he is barred from filing a suit for the recovery of the land. The period of limitation to recover land is 12 years in terms of section 3(i) of The Law of Limitation Act, Cap. 89 R.E 2019, read together with part I item 22 of the schedule of the same Act.



Even by invoking the doctrine of adverse possession, appellant has no right to recover the land that has been in occupation by the 2nd and 3rd respondents for over 13 years.

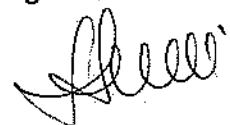
This principle of the law stated in the case of **Boke Kitang'ita Vs. Makuru Machemba, Civil Appeal No. 222 of 2017**(unreported) CAT at Mwanza, where the Court of Appeal of Tanzania stated that: -

"It is a settled principle of law that a person who occupies someone's land without permission, and the property owner does not exercise his rights to recover it within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession."

Now, based on the above position of the law, even if 1st respondent was not the rightful owner of the disputed land, 2nd respondent's occupation and possession of the land for over 13 years without interruption was sufficient to grant ownership under the doctrine of adverse possession. Without clarifying more, the suit was time barred and appellant had lost his right to recover the land. 1st respondent was the lawful owner of the disputed land, before selling second respondent.

Coming to the second issue, Whether the 2nd respondent lawful bought the disputed land from 1st respondent. The answer of this issue depends on the findings of the first issue. 1st respondent is the lawful owner of the disputed land, she had all the legal right to sale or make transfer to any person. The law is settled clear that, no one can transfer a better tittle than the person who has the said tittle. This position of the law was stated in the case of **Farah Mohamed Vs. Fatuma Abdalla [1992] TLR 205** where it was held that: -

"He who has no legal tittle to the land cannot pass good tittle over the same to another."



Plain meaning of the above principle is that; no person can transfer a title to another than the one who had legal title. The rationale of this principle is to protect the interest of the true owner from unfaithful person(s) who could transfer the title to another person illegally without the consent of the owner. In the case at hand, the record reflects that the 2nd respondent lawfully bought the disputed land from 1st respondent.

More so, DW1 testified that at the time of selling the disputed land, to PW2(Hamisi Bakari Sijaona) PW1's witness was among of the person who witnessed the sale and showed the 2nd respondent boundaries. This proves that the 2nd respondent bought the disputed land legally and procedurally. In totality this appeal has no merits. It is dismissed with costs. 3rd respondent is the lawful owner of the disputed land. Appellant to give vacant possession of the disputed land to 3rd respondent immediately. Order accordingly.



Handwritten signature of Z.G. Muruke in blue ink.

Z.G. Muruke
Judge
08/09/2022

Judgement delivered in the presence of appellant and 3rd Respondent both in persons.



Handwritten signature of Z.G. Muruke in blue ink.

Z.G. Muruke
Judge
08/09/2022