

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND CASE NO. 19 OF 2022

SAIDI MWELOME.....APPELLANT

-VERSUS-

TEME SAIDI.....RESPONDENT

JUDGMENT

Date of last order: 11/10/2022

Date of last ruling: 17/10/2022

AGATHO, J.:

This is the second appeal since this matter originated from Sindeni ward tribunal. Before the trial ward tribunal there was a claim of the ownership of the piece of land. Being aggrieved with the decision of the ward tribunal. Land Appeal No. 34 of 2020 was filed at the District Land and Housing Tribunal for Korogwe, and the appellate tribunal decided in the favour of the Respondent, Appellant hence the present appeal before this court. The petition of appeal contained three grounds of appeal. For easy reference, I reproduce the said grounds of appeal as follows:

- 1) The Hon. Chairman erred in law and facts by entering judgement in favour of the Respondent herein without considering that the Appellant is the lawful owner of the disputed land.
- 2) That Hon Chairman erred in law and facts by entering judgement in favour of the Respondent without considering the strong evidence adduced by the Appellant considering the disputed land.
- 3) That Hon. Chairman erred in law and facts by entering judgment in favour of the Respondent without considering that the Respondent is an invitee to the disputed land.

In this appeal, the Appellant appeared in person, but his documents were prepared by Felister Deogratias Rugazia (Adv) from legal and Human Rights Center and the Respondent had a legal service from Kulwa Lucas (Adv). When this matter was scheduled for hearing, the parties agreed to dispose the appeal by way of written submission and effectively filed their submissions as scheduled.

In supporting his appeal, the Appellant submitted that he is the lawful owner of the land in dispute since he inherited it from his family, and it has been owned by the family for more than 40 years. He gave that

piece of land to Respondent to use it for the short period of time. The Appellate Tribunal misdirected itself by considering that it is a legal position that an invitee however many years will stay in suit land cannot become a lawful owner or acquire any better title over and above the original owner.

He reproduced testimonies of the Respondent's witness specifically first witness in the judgement of pg. 2 of the Ward Tribunal. He continued to argue that from that statement it is obviously that the disputed land belongs to the Appellant and there is no dispute on that, and it was even proved by the Ward Tribunal. Quoted part of the decision of the Ward Tribunal

"Baraza la kata sindeni limeenda kuona eneo lenye mgogoro na kuona ni kweli mgogoro upo na kutoa maamuzi sehemu ambayo ameilalamikia mdai sio ya kwao ni mali ya mdaiwa ambae ni bwana Said Mwelome na mdai ni Teme Saidi abaki kwenye sehemu yake ya makazi."

For that purpose appellant cemented his position by citing the case of **Musa Hassani Vs. Shedafa (Legal Representative of the late**

Yohana Shedafa) Civil Appeal No. 101 of 2018 CAT at Tanga
and the case of **Maigu E.M. Magenda Vs. Arbogast Mango**
Magenda Civil Appeal No. 218 of 2017.

It was the view of the Appellant, the Respondent is an invitee and not the real owner of that piece of land through adverse possession. He concluded his submission by praying this court to hear and entertain the appeal in his favour by quashing decision of the District Land and Housing Tribunal for Korogwe.

To respond on what has been presented by the Appellant, the Respondent submitted that the counsel for the Appellant did not make it clear when the respondent came to the village and asked for a place to stay for some time and not a permanent stay. He argued that there is no evidence which shows that the respondent was given a place to stay for a short period by the Appellant.

"Maelezo yangu mimi ni kwamba najua mipaka kwa msalawe ni Salehe Masaja, kusini ni waziri Mayungu, kusini ni Yahya Senkondo, Magharibi ni Samsembe eneo hilo ni la

*familia ya Bwendo Bakari, Abdala Mbwana, Kabelwa Bwedo,
mwisho wa maelezo ya mdaiwa."*

It is the submission of the Respondent's counsel that, from the above quotation the Appellant had never invited the Respondent to the disputed land. Since no evidence was adduced at the trial tribunal which justify the invitation. He continued to submit that, the disputed land does not belong to the Appellant as stated by his counsel but it belongs to the Respondent as he acquired from his father since 2000 and he has been using the land with his family for cultivation and for residence without any interference. It was in 2019 where the Appellant without any color started to interfere the Respondent herein.

He also went on submitting that, the record of proceedings reveal that the Respondent is not an invitee. There was ample evidence to show that the Respondent is not the invitee but the lawful owner of the suit land. The record of proceedings at the ward tribunal shows that on 5/12/2019 the Respondent testified as to how he came into occupation of the disputed land. Also, before referring the matter to the ward tribunal the Respondent had a case with the Appellant's family concerning the disputed land and the tribunal decided the case on the

Respondent's favor and the Appellants' family did not take any step against that decision. Although this is on record it suffice to point out that no record or case number was provided at the trial tribunal. Actually, PW2 - Hassan Mhina Mdashi testified that it was the village social welfare committee that handled the matter administratively. And the committee decided the Respondent had rightful owner of the land because he had lived for long time, 18 years. Under the Land Law (Land Act, the Village Land Act, and Land Court Act) of Tanzania, the village or ward social welfare committee is not a tribunal. Besides that, PW2 testimony shows that the Respondent told the village social welfare committee that he was not invited on the land, but he settled himself, built the cattle shed and later he built a grass roofed hut. When he started building permanent house Bwedo's family (in which the Appellant is a member) intervened. That is how the dispute started.

The Respondent counsel continued to submit that, this shows that the Appellant is also aware that the disputed land belongs to the Respondent, hence the Appellate tribunal was fair and just to say that the Respondent is a lawful owner of the disputed land under Adverse

possession as he stayed for more than 12 years without any interference from the Appellant as he was never invited by anyone but given by his father.

It was the reply of the Respondents Counsel about the evidence given by the first witness of the Appellant on the judgement of the ward tribunal. On the proceedings of the ward tribunal dated on 12/12/2019 the Appellant's first witness one Hussein Athumani Bwendo testifies that, "Huyu alipokuja kaja tu kuvamia". That means the Respondent was never invited by the Appellant as he claims, if he came and occupy the land and the Appellant was there but he did not do anything for a period of about 20 years that means there is no doubt that the disputed land belong to the Respondent. But the Court has looked at the testimonies of PW2, DW1 and DW2 that support the view that he was an invitee.

The Respondent submitted further that, on the allegation that he (Respondent) was invited by the Appellant, he said there is no any evidence which support that the Respondent was invited by the Appellant but also no witness among all the witnesses brought by the Appellant to the ward Tribunal who supported that fact. This is not

true I have looked at trial tribunal's records, PW2, DW1 and DW2 all testified that he was the invitee. The trial tribunal concluded that the Respondent should be left on the portion of the land where he built his permanent house only because he has been staying there for a long time. The remaining piece of land belongs to Bwedo's family.

To support the argument that the Respondent was not invited by the Appellant, the Respondent he cited the case of **Musa Hassani Vs. Shedafa (Legal Representtive of the late Yohana Shedafa) Civil Appeal No. 101 of 2018 CAT at Tanga** and the case of **Maigu E.M Magenda Vs. Arbogast Mango Magenda Civil Appeal No. 218 of 2017** and stated that the above authority does not apply simply because the doctrine of invitee is not applicable and this case follows under the doctrine of adverse possession of which the Respondent is protected by the Law of Limitation Act [Cap 89 R.E. 2019] 1st Schedule item 22.

It was the submission of the Respondent's counsel that, the Respondent adduced sufficient evidence to prove his ownership of the disputed land. And it is a settled law that a party with heavier evidence

always win the case as it was stated in **Hemed Said Vs. Mohamed Mbilu [1984] TLR 113.**

He closed his submission by praying to the court to dismiss the appeal and upheld the decision of the Appellate tribunal to the extent of the correctness with the deserved costs.

In considering what has been presented by the parties there is need to discuss on the issue of ownership of the piece of land in dispute. It is the position of the Respondent that, he acquired that through adverse possession and he was not an invitee as claimed by the Appellant. To prove adverse possession there are some conditions which must be tested. In citing the case of **Registered Trustees of Holly Spirit Sisters (T) Vs. January Kamily Shayo & 136 others. Civil Appeal No. 193 of 2016, CAT at Arusha at page 25** developed eight grounds of the adverse possession:

- 1. That there had been absence of possession by the true owner through abandonment;*
- 2. That the adverse possessor had been in actual possession of the peace of land;*

3. *That the adverse possession had no colour of right to be there other than his entry and occupation;*
4. *That the adverse possession had openly and without the consent of the true owner done act which were inconsistent with the enjoyment by the true owner of the land for purpose of which he intends to use it;*
5. *That there was sufficient animus to dispose and an animus possidendi;*
6. *That the statutory period, in this case twelve years, had lapsed;*
7. *That there had been no interruption to the adverse possession throughout the said statutory period; and*
8. *That the nature of the property was such that, in the light of the foregoing, adverse possession would result.*

From the above conditions the question of the applicability of the doctrine of adverse position will be answered clearly. Regarding the appeal at hand. It is clear from the records that one of the Appellant witness (Hosseni Athumani Bwendo) before Sinden tribunal stated that, " **huyu alipokuja kaja tu kuvamia.**" From that statement can

we conclude that, the Respondent owned that land under the doctrine of adverse possession?

It was the argument of the Appellant that, he acquired that land from his father through inheritance and it will be unfair to ask him how and when he inherited that piece of land while there is evidence that the disputed land belong to his family (Bwedo's family). There was no dispute over administration of estate of his father. Therefore, the case of **MGENI SEIF V. MOHAMED YAHAYA KHALFANI, Civil Application No. 1 I 2009, Court of Appeal - Dar es Salaam (unreported) cannot apply because in that case** at page 14, it was held:

"we have said earlier, where there is a dispute over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership".

It is clear that the above case dealt with dispute over the estate of the deceased. That is distinguished from the case at hand. It will be erroneous to reason that at the trial tribunal the Appellant failed to show how he inherited that piece of land from his father as that was

non-issue at that tribunal. There was not an issue of probate and administration raised at the trial tribunal. The Appellant was asked how did he acquire the land in dispute, and he responded that he inherited it from his father. And from that the land was clan land and that is some of member of Bwedo' family (for instance DW2 – Hossemi Athumani Bwedo) testified before the trial tribunal. It cannot be said that the Appellant failed to prove his case. The trial tribunal also received evidence of PW2 – Hasani Mhina Mdachi, PW3 – Musa Salimu Dimwe, DW1 and DW2 who all testified about the land being owned by Bwedo's family.

It is the position of the law that the one with heavier evidence to win the case as provided in the case of **Hemed Said Versus Mohamed Mbilu [1984] TLR144**, where the court stated:

"A party to the case whose evidence is heavier than that of the other is the one who must win."

Regarding the issue of the Respondent to be an invitee there is no doubt that, an invitee cannot own land under the principle of adverse possession. An invitee to own land under adverse possession is not

allowed as there are number of the decision of the court which prohibit adverse possession to have effect to an invitee. In the case of **Musa Hassani v. Barnabas Yohanna Shedafa & Another Civil Appeal No. 101 of 2018 (unreported) the Court of Appeal held**, inter alia at page 5 that:

"As far as we are 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"

In a humble clarification, it does not matter how long a person has stayed in the disputed land, as long as s/he is an invitee and refused to vacate the disputed land when so demanded by the host then the host can claim it and time limitation does not work on circumstance of host-invitee relationship. From the records at hand (testimonies of PW2, PW3, DW1, DW2 and the fact that the matter had gone to village office after the Respondent started building a permanent house, on the balance of probability proves that the Respondent was indeed an invitee to the disputed land. That was cemented further by the observations of the trial tribunal who had an opportunity to visit locus

in quo but also see the demeanor of witnesses. The Ward tribunal concluded that the land belongs to Bwedo's family (that is the Appellant), and the Respondent should remain with a portion of land where he had built his house because in their wisdom it would be unfair to order him to vacate the premise as he had stayed for a long time.

This appeal ought to be allowed because the Respondent was an invitee. The evidence of PW2 – Hasani Mhina Mdashi, PW3 – Musa Salimu Dimwe, DW1- the Appellant, and DW2 – Hossemi Athuman Bwedo all pointed to the fact that the Respondent was the invitee. The land belongs to Bwedo's family. The village social welfare committee visited the land in dispute and came to conclusion that the land belongs to Bwedo's family and left Respondent only with the portion of land occupying his house and cattle shade. And in its wisdom, the trial tribunal held that the Respondent should be left with the portion of land where he built his residential house only.

It will be unfair to hold that the land belongs to the Respondent under the principle of adverse possession while there was a dispute referred to the village office when the Respondent started building a permanent


house. There is also strong evidence in the record of proceedings of the trial tribunal that the Respondent was the invitee. And initially he was allowed to build temporal house (he did build a grass thatched hut) and the shade for his livestock. When he started building a permanent house, Bwedo's family reminded and warned him not to continue doing so. That is when this dispute arose. The Respondent went to the Ward tribunal where the decision was in favour of the Appellant. He was dissatisfied and appealed to the DLHT where the decision of the Ward tribunal was in my view unjustly overturned.

In the end I find the appeal to have merits, the decision of the DLHT is reversed and I uphold the decision of the trial tribunal. The Appellant shall have his costs.

It is so ordered.

DATED at TANGA this 17th Day of October 2022.




U. J. AGATHO
JUDGE
17/10/2022

Date: 17/10/2022

Coram: Hon. Agatho, J

Appellant: Present

Respondent: Present

B/C: Zayumba

JA: Ms. Husna Mwiula

Court: Judgment delivered on this 17th day of October, 2022 in the presence of the Appellant, and Advocate Kitundu for the Respondent.




U. J. AGATHO

JUDGE

17/10/2022

Court: Right of Appeal fully explained.




U. J. AGATHO

JUDGE

29/09/2022