

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**LAND APPEAL NO. 30 OF 2021**

*(Arising from Land Application No. 8 of 2020 in the District Land and Housing Tribunal of Lindi at Lindi)*

**ABUBAKARI ABDALLAH MELI..... APPELLANT**

**VERSUS**

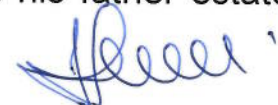
**FUAD ABDULRAHAMANI BAKARI & 2 OTHERS.....APPELLANT**

**JUDGMENT**

**Muruke, J.**

Abubakari Abdallah Meli being aggrieved by the decision of Lindi District Land and Housing Tribunal in Land Application No. 8 of 2020 preferred present appeal raising five grounds, articulated in the memorandum of appeal. On the date for hearing, both parties appeared in persons. On ground one appellant submitted that, the evidence that, 2<sup>nd</sup> respondent is the owner since 1990 is not true. It was not said how second respondent acquired the land. There was no evidence of inheritance, purchasing or allocation of the same by relevant authority. 1<sup>st</sup> respondent said was given by 3<sup>rd</sup> respondent in 2006, there is no any proof of any evidence that she was given land by 2<sup>nd</sup> respondent.

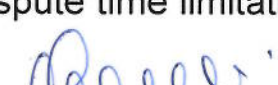
On the issue of jurisdiction, appellant submitted that, the case was within time as he started case at village level. So, trial tribunal was wrong to hold that, dispute was time barred. The disputed land was his father estate,



there are burial cemeteries for more than 200 years. Her mother is now estimated to be 96 years old, having inherited from his grandfather.

In replay, 1<sup>st</sup> respondent Faud Abdruhamani Bakari submitted that, he was given piece of forest by second respondent in 2006. Second respondent gave him small piece of shamba, that was bodering thick forest, he then cleared the disputed area. There was no any cemetery on the disputed area. He is still owning the disputed area after clearing the forest. The dispute was filed in 2019, while he owned the land since 2006. It is above 12 years prescribed by the law of limitation on land disputes.

Second respondent Said Nassor Omari (who appeared as representative of the 2<sup>nd</sup> respondent Fatuma Bakari Selemani) submitted that, Fatuma Bakari Selemani and Nassor Abdallah Ngalema were husband and wife having lived together for 55 years. In 1990 Nassoro Abdallah Ngalema had two farms he cleared from the bush. In 2005 he died. In 2006 Fatuma gave Clementina a place to cultivate vegetables. Clementina, was married to Faudi Abdaulhamani Bakari (first respondent). Later, Fatuma Bakari Selemani second respondent, asked first respondent to clear the bush nearby as there were animals around. First respondent did and is the one cultivating to date. Second respondent gave part of the forest and cleared shamba to 3<sup>rd</sup> respondent Abdalhamani Nassoro Abdallah (her son). Fatuma Bakari Selemani, she has been owning the shamba since 1990 with her husband until 2019 when appellant started to claim the disputed shamba. Abubakar Abdallah Meli is not the appellant, the one speaking is Ismail Juma Slim, who is just pushing case for his own benefit. Even power of Attorney said to have been given to him, is not proper, Abubakar Abdallah Meli is not sick. He is health doing fishing activities at Kilwa Kisiwani. Appellant case was filed out of time at tribunal. Since 1990 till 2019 when the case was filed it is long time. Land dispute time limitation





is 12 years and not more than that. Application at the trial tribunal was filed out of time.

Third respondent Abdalhamani Nassoro Abdallah submitted that, he was given piece of shamba by her mother in 2006 after death of his father. He is the lawfully owner having inherited from his father legally. Since 2006 when he was given land to 2019, when the dispute over the land started it is a period of more than 12 years. The case at trial tribunal was out of time.

In rejoinder appellant submitted on time limitation, that it is not true the dispute is time barred. He started with village leaders 2007. However, he filed dispute at Land and -Housing Tribunal of Lindi on 2020, land application No. 8 of 2020.

Having gone through both parties' submissions, trial court proceedings and evidence on record, there is one issues to be determine: -

**(i) Whether the suit in the trial tribunal was time barred?**

I have carefully reviewed the evidence on record. According to the records, second respondent started to cultivate the disputed land since 1990, together with her husband who later died in 2005. She gave third respondent piece of land as his inheritance. While at the same time applicant alleging to owned the disputed land since 2006. The appellant filed this dispute at the District Land and Housing Tribunal of Lindi on 2020. Counting from the date when the respondents started to cultivate the disputed land is over 15 years to 30 years. In plain meaning, respondent stayed on the disputed land for 30 years without any disturbance from any person. 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(1) 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 respondents for over 30 years. 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."*

Having that principle in mind, even if respondents were not the rightful owner of the disputed land, respondents' occupation and possession of the land for over 30 years without interruption was sufficient to grant ownership under the doctrine of adverse possession. I have settled view that, the suit was time barred and appellant had lost his right to recover the land.



  
**Z.G. Muruke**

**Judge**

**27/10/2022**

Judgement delivered in the presence of both appellant representative Ismail Juma Slim, first respondent, third respondent, and Said Nasoro Omari representative of the second respondent.



  
**Z.G. Muruke**

**Judge**

**27/10/2022**