

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

MISCELLANEOUS LAND APPEAL NO. 98 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Mara
at Musoma in Land Appeal No. 289 of 2019)*

BETWEEN

STEPHANO MATIKU MTATIRO APPELLANT

VERSUS

CHACHA NYAMBETE RESPONDENT

JUDGMENT

24th March & 10th May, 2022

A. A. MBAGWA, J.

This is a second appeal from the decision of the District Land and Housing Tribunal for Mara at Musoma (the DLHT) in Land Appeal No. 289 of 2019. The respondent herein initially instituted the case against the appellant and another person one Michael Kitabuka before the Ward Tribunal of Nyankanga (the trial Tribunal). He claimed that the appellant sold his piece of land (the disputed land) to Michael Kitabuka illegally. The respondent further claimed that he acquired the disputed land through inheritance.

In contrast, the appellant contested the respondent's claims to the effect that he possessed the land in dispute since 1991. Upon hearing the evidence of both sides, the trial Tribunal decided in favour of the respondent. Being aggrieved by the decision of the trial Tribunal, the

appellant unsuccessfully appealed to the DLHT as it upheld the decision of the trial Ward Tribunal. Again, the appellant was unhappy with the decision of the DLHT hence he lodged the appeal at hand. The appellant advanced five grounds as follows;

1. That the Honourable appellate tribunal erred in law to affirm the ward tribunal decision while the suit was time barred before it and the same was meet (sic) the legal requirement of adverse possession because the appellant started occupying the disputed land since 1991 till 2013 when the dispute between the parties arose for over 22 years later.
2. That the learned trial chairperson erred in law and fact to agree the issues raised by the learned counsel for the respondent while in fact, the land in dispute was abandoned by the respondent and his parents during operation vijiji in 1974 and all the times the respondent's family were not living (sic) or cultivating on the suit land.
3. That the appellate tribunal erred in law and fact to consider a new issue raised by the learned counsel for the respondent, that the respondent's family living in the suit land since 1974 while it was not among the issue which was either pleaded or raised in the ward

tribunal or in reply to petition of appeal that were filed in the District Land and Housing Tribunal.

4. That the learned trial chairperson erred in law and fact when he failure (sic) to observe the general principle that the appellate court cannot consider or deal with issues that were not canvassed, pleaded and raised at the lower court.
5. That the learned trial chairperson erred in law and fact by his failure to evaluate and scrutinize the whole evidence in records of the ward tribunal thus made a wrong decision of the suit land.

When the matter came for hearing, the appellant appeared in person while the respondent had the service of Ms. Mary Joakim, the learned advocate.

Being a layperson, the appellant had no much to submit rather he prayed the court to consider the grounds raised in his petition of appeal and allow the appeal.

Responding, Ms. Mary condensed the 1st and 2nd grounds into one and submitted that the dispute arose in 2012 after the appellant had encroached the suit premises and sold it to Michael Kitabuka. She proceeded that the appellant instituted a case in the Ward Tribunal of

Nyankanga and the case ended up to the High Court, Mwanza where it was ordered to start afresh.

Ms. Mary argued that the disputed land was occupied by the respondent's father and later the respondent inherited it in 1996 after demise of his father. She added that the disputed land, while under the ownership of the respondent's father, it once had the disputes between village chairman of Nyankanga and the respondent's father in 1993. Mary stated that the dispute was resolved and the land continued to be under the ownership of the respondent's father.

Ms. Mary further submitted that, in 1994 the disputed land was leased to Bega Nyarokende to use until 1997 but for the whole period the appellant never appeared to claim that he was the owner of the land.

Submitting on the ground that the Tribunal failed to take into account the adverse possession, Ms. Mary argued that the argument is untenable because the appellant did not qualify. Citing the case of **Maria Nyarukinga vs Mwita Machuche**, Misc. Land Appeal No. 51 of 2021, HC Musoma, Ms. Mary was of the view that the adverse possession can apply where there is no true owner and the one claiming it is in actual possession.

As regards to the 3rd and 4th grounds of appeal, Ms. Mary submitted that there is no new ground which was raised in the District Land and Housing Tribunal. The fact that the respondent was living in the disputed land since 1974 was testified on in the trial Tribunal, particularly in the testimony of the respondent Chacha Nyambete.

On the 5th ground, Ms. Mary argued that the Ward Tribunal properly analysed and scrutinized the evidence and finally reached at the right decision. Equally, the District Land and Housing Tribunal went through the evidence and found it proper. The learned counsel prayed the Court to dismiss the appeal with costs.

The appellant did not make any rejoinder.

Having deeply gone through the evidence on record and on account of the grounds of appeal along with submissions of the parties, I found the major issue of discussion here is whether the appeal is meritorious.

Starting with the 1st and 2nd grounds of appeal, the appellant faults the DLHT on failure to consider that the matter was time barred and adverse possession. Unfortunately, the record speaks against the appellant's contention. At page 3 and 4 of the judgment of the DLHT the chairperson stated that the trial Tribunal correctly considered the evidence adduced and it was satisfied that there was no evidence to prove that the

appellant possessed the disputed land for a long time. Upon appraisal of the record, I am also of similar findings that the appellant failed to establish that he was in possession of the suit land for a long time.

As to the issue of adverse possession, I am at one with the respondent's learned counsel that the same can be invoked when the person claiming land is in actual possession of the disputed land.

Both trial Tribunal and the first appellate Tribunal found that the disputed land belonged to the respondent after he inherited it from his parents in 1996. Thus, the appellant cannot claim the adverse possession as it was proved that the disputed land belongs to the respondent.

Regarding the 3rd and 4th grounds, the appellant faulted the DLHT for considering new issues which were neither pleaded nor raised at the trial Tribunal. I have gone through the petition of appeal and judgement of the first appellate Tribunal but the record is against the appellant's contention. There is no any new issue considered by the DLHT which was not pleaded before the trial Tribunal.


Lastly, as to the 5th ground that the DLHT chairperson failed to evaluate and scrutinize the whole evidence adduced before ward Tribunal, the ground is unfounded. The appellant did not demonstrate how the

DLHT chairperson failed to re-evaluate and scrutinize the evidence adduced at Ward Tribunal thereby arriving at wrong decision.


From the above deliberations, I find that the appeal is without merits. Consequently, I dismiss the appeal with costs.

It is so ordered.




A. A. Mbagwa
JUDGE
10/05/2022

Court: The judgment has been delivered in the absence of both parties this 10th day of May, 2022.


A. A. Mbagwa
JUDGE
10/05/2022