

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

**LAND APPEAL NO. 24 OF 2021**

*(Arising from Maswa District Land and Housing Tribunal in land Appeal. No. 39 of 2020, Originally Land complaint no. 1 of 2019 in the Ward Tribunal for Malambo)*

**LIMI MAYIGE..... APPELLANT**

**VERSUS**

**LUCIA NTEMI.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

14<sup>th</sup> March, 2022

**MATUMA, J.**

In the Land Ward Tribunal for Malambo, Lucia Ntemi now the Respondent sued the Appellant Limi Mayige for ownership of land measuring one and half acre. The trial tribunal adjudged for the herein respondent for the reason that she was in use of it for long time since 1974 after having been given it.

The appellant was aggrieved with such findings and therefore appealed unsuccessfully to the District Land and Housing Tribunal hence this second appeal. The appellant is armed with three grounds of appeal to the effect;

- i) That the Appellate tribunal erred for not finding that the ward tribunal was not properly composed.
- ii) That the evidence on record was not properly analysed, evaluated and considered.

- iii) That there was failure to find that the dispute between the parties is a boundary and not ownership of acres of land.

The appellant had also an additional ground of appeal filed without leave of the court and therefore it was withdrawn by the appellant's advocate. Upon being probed by the court, the learned counsel also admitted that the first and third grounds of appeal were not raised in the first appellate tribunal and prayed to abandon them.

At the hearing of this appeal, the appellant was present in person and was also represented by Mr. Issa Magori learned advocate while the Respondent was present in person.

Mr. Issa Magori learned advocate submitting on the second ground of appeal submitted that the evidence on record shows that the respondent was given only a half an acre by the Appellant's father who was her lover but as time went on the respondent extended the boundary encroaching into the Appellant's farm measuring one acre which made the respondent to possess one and a half acre contrary to the boundary which was put at the time she was given a half an acre.

The learned advocate prayed for the appeal to be allowed and the respondent be restricted to only a half an acre which the appellant's father gave her. The rest an acre be declared to be the property of the appellant.

The respondent on her party submitted that she was given one acre and a half by her friend namely Ng'wasi Nengelo and not the Appellant's father. She father submitted that Ng'wasi got the said shamba from his father who had a big farm thereat and that since she was given that farm she cultivated it for forty years without any problem.



It is plainly clear that the 1<sup>st</sup> and third grounds of appeal were not subject to determination at the District Land and Housing Tribunal. The Appellant did not raise them thereat. The law is settled that grounds which were not raised and determined in the 1<sup>st</sup> appellate court cannot be raised and determined in the second appellate court. They are regarded as afterthoughts. Seen; ***Matias Luhana versus Mupizi Mpuzu, Misc. land Appeal No. 2 of 2019***, High court at Kigoma.

I therefore agree with Mr. Issa Magori learned advocate for his abandonment of the two grounds for the reason herein above stated. This appeal shall therefore be determined on the second ground of appeal alone as to whether the dispute between the parties herein was determined on the weight of evidence on record. That means, whether the evidence on record was analysed, evaluated and determined properly. According to the evidence on record, the respondent claimed ownership of the dispute land that she was given it by her friend namely Ng'wasi Nengelo and that prior to having been given such land, the same was the lawful property of Ng'wasi's uncle (baba mdogo was Ng'wasi).

On her party the Appellant presented her evidence to the effect that the suit land belonged to her deceased father and she has been in use of it since her youthhood as she was born finding his family using it.

At the end, the tribunal visited the suit area and took some evidence from the neighbours thereat and finally adjudged;

*"Hivyo baraza la Migogoro ya ardhi na nyumba limejikita Zaidi kuangalia Ushahidi wa pande zote mbili na kuona kuwa mdai anao uhalali wa kupewa na kuendelea kulitumia eneo hilo ambalo amekuwa akitumia tangu*

*mwaka 1974 ndugu Lucia Ntemi lenye ukumbwa wa hekali moja na nusu, ambalo hata mdaiwa alilitambua na kutoa maelezo kuwa ni kweli Lucia Ntemi alipewa na marehemu baba yao mzee Mayige Noni.”*

In the circumstances of such findings, it is obvious the trial Ward tribunal upon hearing the parties and visited the locus in quo, it was satisfied that the suit land belonged to the father of the appellant. The respondent did not challenge such finding in the first appellate tribunal. She only during hearing of this appeal challenged such finding through her submission insisting that she was not given that land by the appellant's father but one Ng'wasi Nengelo, her friend. Such challenge at this stage is an afterthought and cannot be accommodated. The finding of the trial tribunal thus remain that the original owner of the suit land was the appellant's father. The issue is whether there was any evidence on record to establish that such Appellant's father gave such suit land to the respondent.

In the first place the respondent herself did not give such evidence. She claimed to have been given such land by her friend one Ng'wasi Nengelo as stated herein above. She refused in her own words when cross examined as to whether she was given such land by the late Mayige.

In that respect, it was wrong for the trial tribunal to rule out that the respondent was given that land by the late Mayige as she herself refused that fact. The trial tribunal did not find or value the evidence that it was Ng'wasi who gave the suit land to the respondent. If it was satisfied that the suit land belonged to the late Mayige, it should have found in



favour of the appellant who remained in use of it after the death of her father.

It seems, the trial tribunal was instigated by the claims that the respondent was in use of the land since 1974. In that respect it was applying the principle of **adverse possession**. Adverse possession does not apply when title over the suit area is not claimed on trespass over an abandoned land. For the adverse possession to apply, the adverse possessor should have no any colour of right over the suit land other than **his entry and occupation**. See; *Hughers v. Griffin (1969) 1 ALLER 460, Nuru Kifundawili versus Wema Salumu, misc. Land Application no. 134 of 2019* and that of *Registered Trustees of Italy spirit sisters Tanzania versus January Kamil Shaya and others, Civil Appeal No. 193 of 2016 (CAT)*.

In the instant matter the respondent did not claim title over the suit land by adverse possession. She claimed to have been given it by her friend one Ng'wasi. She ought therefore to bring evidence to prove that really Ng'wasi gave her that land and that Ng'wasi had power to give her the said land. She did not call the said Ng'wasi to testify in her favour and did not state why she did not call her or any other witness who witnessed and was aware that she was really given the suit land by Ng'wasi and that Ng'wasi was the lawful possessor thereof.

In fact it is on record from the respondent herself that, the land belonged to Ng'wasi's baba mdogo who was not named. But on this appeal she submitted that the suit land belonged to the father of Ng'wasi. Most important, the trial tribunal was satisfied that the land belonged to

mzee Mayige, the appellant's father. In that respect, it was the evidence of the appellant heavier than that of the respondent.

Therefore, the appellate tribunal ought to have found in favour of the appellant that the respondent encroached into the appellant's land over and above the half an acre she was given by the late Appellant's father.

I therefore allow this appeal on the strength of the ground that the trial tribunal which visited the locus in quo was satisfied that the suitland belonged to the appellant's father and it is the appellant who is the beneficiary thereof. Out of one and a half acre in dispute, the respondent shall remain with a half an acre which she was given and the rest one acre shall form part of the appellant's farm thereof as against the respondent.

The judgments of the two lower tribunals declaring the respondent as lawful owner of the whole Suitland is hereby quashed and the decrees thereof set aside. The appellant is declared lawful owner of one acre out of the Suitland and the respondent is ordered to vacate therefrom without any undue delay.

Taking the circumstances of this matter, I order that each party shall bear its own costs. Right of further appeal subject to the relevant laws governing third appeals has been explained to the parties.

It is so ordered.



  
**A. MATUMA**  
**JUDGE**  
**14/3/2022**