IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. LAND APPEAL NO. 24 OF 2021

(Originating from Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 102 of 2020 Original Land Dispute No. 107 of 2020 from Katete Ward Tribunal)

ABEL MGALA.....APPELLANT

VERSUS

MAILOS SIKOMBE.....RESPONDENT

JUDGEMENT

Date of last Order: *11/04/2022*
Date of Judgment: *18/05/2022*

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Katete Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the respondent herein successfully sued the appellant claiming ownership of piece of land. Dissatisfied the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa (henceforth the Appellate Tribunal) where the respondent was declared the rightful owner of the disputed land.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following grounds of appeal;

1. *That the Appellate Tribunal erred in law for not setting aside the incorrect judgement of the ward tribunal without reasonable cause, for it failed to apply a principle of adverse possession to award the appellant the disputed land which he has used it for 28 years undisputed.*
2. *That the Appellate tribunal misdirected itself on evaluation of evidence, it failed to observe that some of the appellant's witnesses were not considered and testify before the ward tribunal.*
3. *That the Appellate tribunal failed to consider and decide on the appellant's ground of appeal, instead it decided on unproved facts of respondent's inheritance over the disputed land.*
4. *That the appellant tribunal misdirected itself to decide the appeal based on a principle of invitee cannot establish adverse possession the fact which was not proved at the tribunal.*

As this appeal was called on for hearing, the appellant appeared in person, unrepresented whilst the respondent had a legal service of Mr Deogratius Sanga, learned advocate. The hearing proceeded orally.

In support of his appeal, the appellant prayed to adopt his petition of appeal comprised of four grounds of appeal.

While Mr Sanga for the respondent opposed the appeal by the appellant.

Mr Sanga submitted that as regards the first ground that the land in dispute was rented to the appellant by the respondent through his

wife who is the relative of the respondent. He further submitted that for the court to grant the appellant the land under adverse possession, the appellant must establish long stay in the said plot. He said the appellant just told the tribunal that he bought the land from one Mwanjelwa but did not state when he bought the said land. Mr Sanga was of the position that failure to establish long stay on his part adverse possession could not apply. He further argued that the witness called by the appellant when cross-examined said the said plot was used by Sikombe family not by Abel Mgala. The appellant never proved to have been in possession of the land in dispute for 28 years. Further he must prove that he was not an invitee in the demised land.

As to the second ground, Mr Sanga submitted that the tribunal made thorough analysis and evaluation of the evidence and came into just decision in line with the grounds of appeal presented by the appellant.

As to the third ground, he submitted that the District Land and Housing Tribunal decision based on what was in the ward tribunal record only. In the tribunal the appellant told the tribunal on how he came into possession of land and not otherwise.

As to the fourth ground, he said to have submitted in the first ground. He finally prayed for the court to find that the appellant was

just an invitee to the land in dispute, thus the appeal be dismissed with costs.

In rejoinder, the appellant prayed for the appeal be allowed basing on his grounds of appeal.

I have keenly followed the arguments of the appellant and that of the learned counsel for the respondent and I have read between the lines the appellant grounds of appeal and the entire proceedings of the tribunals below.

Let me, first start addressing the first complaint by the appellant that the appellant has been in occupation of the land in dispute for a quite long time, thus he owned the land under adverse possession for the period of 28 years without disturbance.

In his very testimony at the trial tribunal, the appellant told the trial tribunal that he used the disputed land since 1992. He further informed the trial tribunal that he bought the disputed land from one Mwanjelwa in unspecified date. He further informed the trial tribunal that the disputed land prior before he bought from Mwanjela he was granted by one Sikatendo for cultivation. However, all these two crucial persons named by the appellant were not called to testify before the

trial tribunal. Thus, it is not clear as to whether the disputed land was acquired by the appellant by buying.

Now the crucial point for me to determine is whether the appellant possession of disputed land since 1992 without interference renders the respondent's claim over the same land to be time barred by the of limitation period under item 22 in the First Schedule to the Law of Limitation Act which gives a limitation period of twelve (12) years. This being the main ground of complaint by the appellant.

It is undisputed fact from the proceedings in the Trial Tribunal of Katete, and of the Appellate Tribunal had concurrent findings of fact that the appellant was invitee to the disputed land since 1992. That he was rented the land for cultivation only belonging to his brother-in-law. The appellant in his ground of complaint asserted that the appellate court erred in law for not setting aside the findings of the trial tribunal for the fact that he possessed such land for 28 years undisturbed before the respondent's claim in 2020.

As hinted above, the appellant testified at the trial tribunal that he also bought such disputed land from one Mwanjelwa, however he was not called by him to testify such fact. It is trite law that whoever desires any court to give judgement as to any legal rights or liability dependent on the existence of facts which he asserts must prove that

those facts exist. See **section 110 (1) of the Law of Evidence Act**, Cap 6 RE 2019. Failure by the appellant to prove his assertion to my view draw adverse inference that he was mere an invitee to the disputed land.

It is my strong consideration that use of land as an invitee, or by planting trees or building a permanent house on another person's land or even paying land rent to the relevant authorities in his own name would not amount to ownership of the disputed land by the appellant. See the case of **Maigu E. M. Magenda vs Arbogast Maugo Magenda**, Civil Appeal No. 218 of 2017, CAT Mwanza, unreported.

Further, it is the position of the law as far as am 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. See the **Mussa Hassani vs Barnabas-Yohanna Shedafa (Legal Representative of the late YOHANNA SHEDAFA)**, Civil Appeal No. 101 of 2018, unreported, **Samson Mwambene vs Edson James Mwanyingili** [2001] TLR 1, **Makofia Merpianaga vs Asha Ndisia** [1969] HCD No. 204.

For the avoidance of doubt, let me make it clear that as regard the principle of adverse possession that a person who does not have a legal title to land may become owner of that land based on continuous or

occupation of the said land, however, the principle cannot apply where the possession derived from the permission or agreement as appears in the circumstances of this case.

The assertion that the appellant possessed the disputed land for such period of 28 years cannot said to qualify the possession under adverse possession as the same is derived from the respondent's permission.

As to the second complaint by the appellant, it is on record that out of the seven witnesses of the appellant listed to testify five were able to testify, two witnesses were not called did not testify. These two witnesses as hinted above herein were not crucial witnesses as determined by this court, even if were called to testify their testimonies could not prove the fact that the appellant bought disputed land. This ground of appeal also falls short of merit.

Am also aware that it is on very rare and exceptional circumstance s the Court will interfere with the findings of fact of a lower court. See the cases of **Materu Laison and Another vs R. Sospeter** [1988] TLR 102 and **Amratlal Damodar and Another vs H. Jariwalla** [1980] TLR 31. In the case of Amratlal Damodar and Another vs H. Jariwalla {supra}, the Court of Appeal held that: -

"Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been misapprehension of evidence, a miscarriage of justice or violation of some principles of law or procedure."

Having carefully perused the records of this appeal, I have not seen any circumstances that necessitated this court to interfere with the concurrent findings of fact that of the two tribunals below that the respondent was an invitee to the disputed land.

In view of the foregoing, I find this appeal has no merit. Thus, it is hereby dismissed.

I make no orders as to costs.

It is so ordered.

D. B. NDUNGURU

JUDGE

18. 05. 2022