

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO**

LAND APPEAL NO. 02 OF 2022

*(Originating from Land Dispute No. 170 of 2018 delivered on 19/11/2021 by Morogoro District
Land and Housing Tribunal)*

CATHERINE KWARAI APPLICANT

VERSUS

LUCAS GIDALIMO..... RESPONDENT

JUDGMENT

Hearing date on: 25/4/2022

Judgement date on: 06/5/2022

NGWEMBE, J:

The appellant in this land matter, is challenging the judgement of the District Land and Housing Tribunal dated 19/12/2021 whereby the Tribunal declared the suit land property of the Village Council. In brief the Tribunal held:- first, the disputants are not lawful owners of the suit land; second, the disputants are advised to follow the legal procedures in acquiring the suit land; third, the allocation of the suit land was illegal hence nullified; fourth, the suit land revert back the Village Government until properly allocated; fifth, each party to bear his/her own costs.



Having so decided, the appellant was dissatisfied, hence sought an assistance of learned advocate Leah Mwasa from B.L. Tarimo & Advocates lodged this appeal clothed with three grounds namely:-

1. That the Chairperson erred in law and fact for disregarding strong evidence adduced by the appellant and her witnesses during trial;
2. That the chairperson erred in law and fact for failure to take note and consider on the issue of time limitation; and
3. That the Chairperson erred in law and in fact by rendering unfair decision.

These grounds were forcefully, argued by the learned advocate Leah Mwasa while the respondent was not represented by an advocate. In arguing these three grounds, the learned advocate submitted jointly grounds one and two and the third ground was argued separately.

Arguing on the first two grounds, she submitted that the appellant entered into the suit land in year 2004 by clearing a total land of 100 acres. In year 2018 the respondent invaded in her land. Some witnesses who testified before the tribunal participated in clearing the suit land. However, such piece of evidence was not considered. Referred this court to section 110 of the Evidence Act. Concluded these two grounds by insisting that the suit land is owned by the appellant.

Submitting on the last ground, she pointed out that the appellant started to own the suit land on 2004 undisturbed up to 2018 equal to 14 years. Thus, under the doctrine of adverse possession, the land is owned by the appellant. Insisted on this point by referring this court to the case of **Registered Trustees of Holly Spirit Sisters (T) Vs. January Kamily Shayo & 136 others, Civil Appeal No. 193 of 2016**. Since the



appellant owned such land for more than 12 years, same is by the doctrine of adverse possession, a true owner.

In turn, the respondent though was not represented by an advocate, argued quite eloquently, that he was issued a total of 50 acres of land in year 2014 by the Village Council of Ngerengere. Therefore, the suit land which brought into tensions with the appellant is 50 acres as opposed to 100 acres. Following such grant of land, on 15/8/2014 he was issued a certificate/letters of ownership with the village council. Proceeded to argue that, in year 2017 he cleared part of it and planted some trees and built a house where he started living therein in year 2018.

Proceeded to deny ownership of 100 acres of land, rather has only 50 acres. Contented that, the appellant never had any piece of land known by the village leadership. Following the decision of the District Tribunal, he reverted back to Morogoro Municipal Council where they issued him only 24.8 acres of land in Ngerengere area with a drawn map indicating his land. Concluded by insisting that the claim of 100 acres of land against him is unfounded and the appeal should be dismissed forthwith.

Having summarized the arguments of both parties, certain facts are not in dispute. First, neither the appellant nor the respondent were original owners of the suit land. According to the appellant she invaded that land in year 2004 by clearing it. Likewise the respondent came to the suit land in year 2014 and by year 2017 he obtained letters from Ngerengere village government authorizing him only 50 acres of land. Second, it is true the land in dispute between the two disputants must not be 100 acres, rather should be only half of it. Since the respondent has only an issue with 50 acres of land, it means the remaining 50 acres are not disputed.

Much as I would agree with the appellant's submission, that the appellant, by virtual of being in occupation over the suit land from 2004 to 2018, she assumed ownership under the doctrine of adverse possession. Yet I have several unanswered questions including, which exactly piece of land holds the two disputants in loggerheads? Whether the doctrine of adverse possession may apply to land owned by the village without offending the Village Land Act Cap 114 R.E. 2019?

To answer these questions, I have reviewed the whole evidences adduced during trial and realized that, the land in dispute is only 50 acres. As of now, the respondent is claiming ownership of the suit land only 24.8 acres as per the respondent's submission herein court. Therefore, the claim of 100 acres of land against the respondent is inapplicable.

The learned advocate advanced the doctrine of adverse possession in this appeal and she cited the case of **Registered Trustees of Holly Spirit Sisters (T) Vs. January Kamily Shayo & 136 others, (Supra)**. To the best, such decision came up with eight (8) ingredients namely: -

- 1. That they had been absence of possession by the true owner through abandonment;*
- 2. That the adverse possession 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 foresaid statutory period; and*
- 8. That the nature of the property was such that, in the light of the foregoing, adverse possession would result.*

The same reasoning was repeated in other cases like in the case of **Hamisi Mghenyi Vs. Yusufu Juma, Land Appeal No. 61 of 2008, High Court of Tanzania at Dodoma (Unreported)** and **Samson Mwambene Vs. Edson Mwanjigili (2001) TLR 1.**

I am also aware that the doctrine of adverse possession does not apply to an invitee to the land even if he may stay therein for a century or more. In respect to this appeal, the appellant cannot be said by her invasion to that land, she acquired good title over and above the Village Council of Ngerengere. More so, such land was unoccupied, same was not abandoned. Apart from the Village Council, none of them claimed ownership over the suit land. To the best, the ingredients of adverse possession do not apply to the circumstances of this appeal.

Considering deeply on the circumstances of this appeal in line with the Village Land Act, obvious Ngerengere is among the villages within the boundaries of Morogoro Municipality. Thus, neither the appellant nor the

respondent had any title or ownership over the suit land without recognition by the Village leadership and or Municipal Council.

Therefore, when this appeal is tested by the Village Land Act, these grounds of appeal cannot stand. Accordingly, the decision of the District Tribunal was well founded. I find no convincing reason to depart from it.

In totality and in the circumstances of this appeal, I proceed to uphold the decision of the District Land and Housing Tribunal, accordingly, this appeal lacks merits same is dismissed. Each party to hear his/her own costs.

I accordingly order.

Judgement delivered in chambers this 6th day of May, 2022



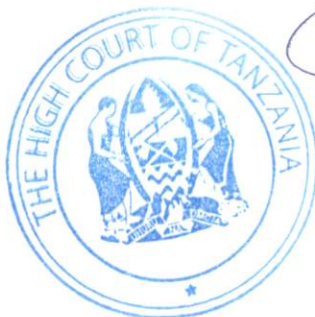
P.J. NGWEMBE

JUDGE

06/05/2022

Court: Judgement is delivered at Morogoro in Chambers on this 6th day of May, 2022 in the presence of Leah Mwasu Advocate for the appellant and in the presence of the Respondent.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

06/05/2022