

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL NO. 19 OF 2022

*(Arising from land appeal No. 51/2020 in the District land and housing tribunal for Kahama
and originating from Zongomela ward tribunal in land case No. 6 of 2020)*

JUSTINA MAGANGA NDONGO.....APPELLANT

VERSUS

PAULO JUMARESPONDENT

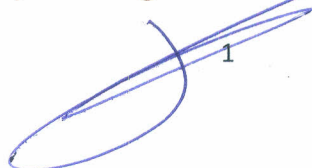
8th February & 14th March, 2023

MATUMA, J.

JUDGMENT

This judgment is arising from an ex-parte hearing after the Respondent's deliberate refusal of service from the Appellant as evidenced by the endorsement on the returned summons; *"Amekataa kusaini. Wako Mwenyekiti Mtaa wa Zongomera"*

The brief facts arising from this appeal is that; the Appellant and her siblings Nyerere Nguno and Sozi Maganga owned the suit land which they inherited from their parent many years ago. In the course of struggle for life they


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scattered at various places leaving the suit land under the custody of one Bundala Ngeleja. Later they learnt that the Respondent was claiming to have bought the suit land from Maziku Maganga. They thus fell into a land dispute. The Respondent decided to sue the appellant at Zongomera ward tribunal claiming for ownership of that land. After a full trial the ward tribunal ruled out in favor of the appellant. Aggrieved by such decision the Respondent successfully appealed to the District and Land and Housing Tribunal for Kahama which overturned the decision of the Ward Tribunal decreeing the Respondent as a lawful owner of the suit land by purchase from Maziku Maganga. The appellant was not satisfied hence preferred this appeal with three which carries one major complaint that;

That the honorable chairman grossly erred in law and facts to determine this matter in favor of the Respondent without considering the evidence on record of which the evidence of the Appellant was stronger than that of the respondent.

At the hearing the Appellant appeared in person and submitted that the Respondent trespassed the land at issue purporting to have bought it in the presence of the ten cell leader but the said ten cell leader who came as a

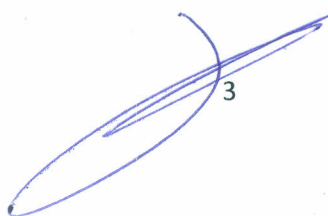
witness denied the sale agreement which was tendered by the Respondent in evidence.

She further argued that at the trial ward tribunal she brought witnesses who supported her evidence making her evidence heavier than that of the Respondent.

The appellant after submitting on the complaint relating to the evidence on record, she lamented that even at the hearing of the appeal in the District Land and Housing Tribunal she was not served any summons nor the grounds of appeal. She was only summoned on the date of judgment without having been heard on the appeal itself. She finally prayed that this appeal be allowed with costs.

I have gone through the records of the two lower tribunals and the grounds of appeal and heard the arguments of the Appellant in support of this appeal.

I find the complaint of the appellant that she was not heard at the District Land and Housing Tribunal in the first appeal to have no any merit. The records of that tribunal are against the complaint. The appellant was heard fully although it is not clear if she was served with the grounds of appeal



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before the date of hearing. Even though, the ground of appeal before me do not contain any complaint relating to the right to be heard. Such complaint has been brought by way of oral submission at the hearing stage and as a matter of practice I cannot entertain it because principally the parties are confined to their pleadings.

Back to the complaint in the grounds of appeal which has been condensed as herein above, I agree with the Appellant that taking the evidence of both parties on record of the trial court the appellant had heavier evidence than that of the Respondent and was rightly pronounced a winner by the trial tribunal. The District Land and Housing Tribunal therefore erred to overturn the decision of the trial ward tribunal.

The Appellant's evidence which was supported by her witness Bundala Ngeleja who is the neighbor to the suit farm was to the effect that the said farm was originally owned by the Appellant's father one Maganga. Upon death of such parent the Appellant and her two relatives supra inherited it. They then scattered at different areas for life struggle and left the suit farm in the hands of Bundala Ngeleja who appeared as the first witness of the appellant at the trial tribunal. Later the Respondent trespassed it and when

such witness intervened against him the Respondent claimed that he bought it. The said witness Bundala Ngeleja testified;

"Mlalamikiwa ni mtoto wa Maganga na shamba hilo ni mali halali yake ya kuachiwa na marehemu mzazi wao Maganga. Baba yake alipofariki mashamba yakawa mikononi mwangu Bundala Ngeleja nilianza kuyaangalia haya mashamba baada ya watoto kusambaratika wa kike wakiolewa na kaka yao akarudi Dar es salaam kikazi"

This witness father stated that later the Respondent trespassed but when he stopped him he alleged to have bought it; *"Ilifikia hatua hayo mashamba yakaanza kuingiliwa na ndugu Paulo Juma. Nikafika kwenye shamba kumuuliza vipi hapa mbona mnafyeka"*, the reply by the Respondent was; *"Ni kama unavyoona hili shamba nililinunua."*

Such evidence was further corroborated by another neighbor to the suit farm Mihayo Mabula who testified that;



"Mimi ninavyofahamu kwamba eneo hilo ni mali halali ya Maganga Kapapala na kulifahamu shamba hilo ni kwa sababu alikuwa anakaa hapo muda wote na uhai wake na amezikwa hapo alipofariki"

There was another neighbor Rembe Maziku who also supported the Appellant;

"Mimi ninavyojua hili eneo lilikuwa la mwana Kang'ombe mzazi wa Justina Ndongo ambaye katika kesi hii ni mlalamikiwa"

The Respondent on his party claimed to have bought the suit land from Maziku Maganga in 1996. The said Maziku Maganga is the Appellant's brother according to Herman Paulo who came as a witness of the Respondent. He brought one witness who was by then a ten cell leader to the effect that such witness witnessed the sale agreement and tendered the sale agreement as exhibit. Even though the said witness denied such exhibit stating that the sale agreement he wrote was in blue ink and not red as was to the exhibit tendered. It is from such fact the trial tribunal found that the Respondent tendered a forged document.

When I went through the said sale agreement, apart from being denied by the purported author the ten cell leader the same does not show that it was the Respondent who bought the farm from Maziku Maganga but one Said Juma. It does not also state with certainty that the land sold was the one in dispute nor that Maziku Maganga in selling that land sold it as his own farm or as an agent of the owner. It merely indicates that Maziku sold the land without disclosing his authority in that land;

"Ndugu Maziku Maganga ameuza shamba kwa shilingi elfu kumi na tatu 13,000/=. Mnunuzi ndugu Said Juma"

Basing on the above facts and evidence, the district land and housing tribunal ought to have found that the appellant had heavier evidence than the Respondent because she was supported by the neighbors to the suit shamba who knew it very well. To the contrary the evidence of the Respondent was not supported by his own witness for having denied the sale agreement which was tendered in evidence in purport that it was written by such witness. Not only that but also the purchaser in that document is not a Respondent as prescribed thereat and there was no evidence to clarify the

anomaly and or an affidavit of the Respondent to explain the use of the name Said Juma as against his names Paulo Juma.

The District Land and Housing Tribunal adjudged for the Respondent on the ground that he dully bought the suit shamba from Maziku Maganga and that the Respondent possessed it for too long time.

First of all we do not have evidence on record relating to physical possession of the suit shamba by the Respondent. That is why the Respondent went to sue the Appellant when the Appellant was cutting trees in the said shamba.

In the case of ***The Registerd Trustees Of Spirit Sisiters Tanzania Vs. January Kamili Shayo And 136 Others, Civil Appeal No.193/2016*** it was held that for the doctrine of adverse possession to apply there are conditions to be fulfilled namely; *1. That there had been absence of possession by the true owner through abandonment, 2. That the adverse possessor had no color of right to be there other than his entry and occupation, 3. That the adverse possessor had been in actual possession of the piece of land, 4. The adverse possessor had openly and without consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of the land for purposes for which he intended to use it, 5.*

That there was a sufficient animus to dispossess and animopossidendi, 6. That the statutory period had elapsed, 7. That there had been no interruption to the adverse possession throughout the aforesaid statutory period.

In the instant matter the conditions for adverse possession supra were not full filled and could not therefore be applied. The Respondent did not claim ownership by adverse possession. He claimed it by purchase. Under the circumstances what he ought to prove is that he truly bought the suit land and he bought it from the real owner. In the instant case as analyzed supra there is no positive evidence of purchase. Even if it would have been there, that would not be enough. The respondent should have been further proved that the one who sold him the said land had locus to do so. Unfortunately the learned chairman of the appellate tribunal shifted the burden of proof to the appellant when he held at page 4 of the judgment that; *"Mrufani alifahamisha baraza la kata kuwa alinunua eneo hilo mwaka 1996 kutoka kwa Maziku Maganga.....Mrufaniwa na mashahidi wake wameshindwa kuthibitisha kuwa eneo hilo halikuwa la marehemu Maziku Maganga."* That finding was wrong. It was the Respondent to prove that Maziku Maganga owned the suit land before selling it to him. It was not enough for the Respondent to merely

prove purchase without proving the locus of the seller to the stated sale agreement. To the contrary, the Appellant proved that the suit land was not the property of Maziku Maganga but her own property together with her two relatives after they inherited the same from their father. Even the purported purchase by the Respondent did not involve the neighbors who would have alerted the Respondent that his intended seller Maziku Maganga was not the owner of that land. Those neighbors came as witnesses in favour of the Appellant at the trial tribunal.

Under the herein above analysis, I find that this appeal has been brought with sufficient cause. The suit land belongs to the Appellant and her two relatives who inherited it customarily from their deceased father. I do hereby allow it with costs. Whoever aggrieved with this judgment has the right to further appeal to the Court of Appeal of Tanzania subject to the guiding laws thereto. It is so ordered.



A. MATUMA

JUDGE

14.3.2023