

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**LAND CASE APPEAL NO. 05 OF 2021**

*(Arising from the decision of Tabora District Land and Housing Tribunal in Land Appeal No. 75 of 2020 and Land Case No. 01 of 2020, Usisya Ward Tribunal)*

**RASHIDI SHABANI SIZYA..... APPELLANT**

**VERSUS**

**RAMADHANI JUMA MGONELA..... RESPONDENT**

*Date of Last Order: 21.02.2023*

*Date of Judgment: 31.03.2023*

**JUDGMENT**

**KADILU, J.**

The appellant herein filed Land Application No. 01 of 2020 in Usisya Ward Tribunal which was decided in his favour. Aggrieved by the decision of the Ward Tribunal, the respondent filed Land Appeal No. 75 of 2020 in the District Land and Housing Tribunal for Tabora which was decided in his favour. Dissatisfied with that decision, the appellant filed the instant appeal armed with the following grounds:

- 1. That, the District Land and Housing Tribunal (DLHT) erred in law and fact by invoking the doctrine of adverse possession in circumstances where the respondent was a licensee.*
- 2. That, the DLHT misdirected itself in law and fact by deciding the dispute on the basis of the respondent's written submission which was bad in law.*

*3. That, DLHT erred in law and fact in deciding the dispute in favour of the respondent against the evidence presented in the appellant's written submission.*

The appellant prays for the court to allow the appeal with costs and quash the decision of the DLHT.

Brief background of the dispute is that, the disputed land is located at Mabundulu Village within Urambo District in Tabora Region. It is estimated to be forty-five (45) acres. The appellant is said to have arrived at Mabundulu village in 1968 and acquired the suit land by clearing the bush. The appellant asserts that after the respondent arrived in the Village in 1974, the appellant gave him the suit land. The respondent contradicts this story and narrated that he was allocated the disputed land by the Sorovea (Surveyors) in compliance with the Government's operation villagisation of 1974. The respondent's story is that the appellant and himself were allocated neighbouring pieces of land, though the appellant occupied his land first.

It is narrated further that in 1978, there occurred a deadly decease in Mabundulu Village whereby seven (7) members of the respondent's family died including his wife. The respondent buried them in his piece of land at the border between himself and the appellant. He then left his piece of land with his children and went to Tabora. The children continued to use the land in dispute until in 2020 when the dispute arose. The appellant stated that in 2020, members of his family went to the suit land to collect firewood, but they were stopped by the respondent. According to the appellant, that fact

made him realised that he was deprived of his land by the respondent. He decided to file a land dispute in Usisya Ward Tribunal.

When the appeal was called for hearing, the appellant was represented by Mr. Said Seleman, the learned Advocate whereas the respondent appeared in person, unrepresented. On the first ground of appeal, the appellant has faulted the DLHT for invoking the doctrine of adverse possession while the evidence showed that the respondent was a mere licensee of the appellant. Replying to this point, the respondent avers that he was not given the disputed land by the appellant. He stated that he was allocated the suit land by the Government and the appellant has his own piece of land although they are neighbours. He argued that, if at all he was the licensee of the appellant, there would be a time-frame of the said license.

The Court of Appeal in the case of ***Registered Trustees of Holly Spirit Sisters Tanzania v January Kamili Shayo & 136 Others***, Civil Appeal No. 193 Of 2016 laid down the following factors which should be proved cumulatively by any person alleging to have acquired title to land by adverse possession:

- (a) *That, there had been absence of possession by the true owner through abandonment;*
- (b) *that, the adverse possessor had been in actual possession of the piece of land;*
- (c) *that, the adverse possessor had no colour of right to be there other than his entry and occupation;*

- (d) *that, 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 land for purposes for which he intended to use it;*
- (e) *that, there was a sufficient animus to dispossess and an animo possidendi;*
- (f) *that, twelve years had elapsed;*
- (g) *that, there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
- (h) *that, the nature of the property was such that in the light of the foregoing, adverse possession would result.*

In the present appeal, the doctrine of adverse possession could not be applicable because the appellant did not abandon his land. Moreover, it cannot be said that the respondent had no colour of right to the disputed land other than his entry and occupation since he alleges that the land was allocated to him by the Government. It is not disputed that the appellant was the first to settle in Mabundulu Village, but it is on record that the respondent as other villagers were allocated pieces of land afterwards, following the villagisation policy. The record shows that the appellant and the respondent were allocated the neighbouring plots because both were herders.

The allegation that the respondent was a licensee on the disputed land was not proved. On page 3 of the proceedings of the Ward Tribunal, the appellant was asked if he has evidence that he gave the land in dispute to the respondent. He replied that there was no witness as they were two of them alone. The appellant could not also justify as to why he did not take

action in 1978 when the respondent buried members of his family on the disputed land. Additionally, there was no sufficient explanation from the appellant as to why he remained silent from 1987 when the respondent handed over the suit land to his children.

In the Ward Tribunal, the appellant testified as follows:

*"...Huyu ndugu Juma Ramadhani Mgonela alijimilikisha eneo langu nililomuazima mwaka 1974. Niligundua alipohama na kuwamilikisha watoto wake mwaka 1987."*

When the appellant was asked by the respondent about the reasons for remaining silent for all that long if the land was his, he replied that he did not ask as they lived like members of the same family. The respondent inquired more as to what had changed that the appellant decided to sue him in 2020 if he regarded him as his brother? The appellant responded that he was compelled to do so after the respondent had alleged to have been allocated the disputed land by the Government. For these reasons, I agree with the Advocate for the appellant that the doctrine of adverse possession was not applicable in this case and that it was wrongly invoked by the DLHT.

On the second ground of appeal, the appellant complains that the DLHT misdirected itself in law and fact by deciding the dispute on the basis of the respondent's written submission which was bad in law. During the hearing of this appeal, the Advocate for the appellant identified a number of weaknesses of the respondent's written submission which was filed in the DLHT. He concluded that it was not a submission in the eyes of the law and

the trial Tribunal was not supposed to consider it in reaching at its decision. Being a lay person, the respondent could not respond to this point during the hearing.

I have carefully examined the typed judgment of the DLHT. I do not agree with the views by the learned Advocate for the appellant that, the tribunal based its decision on the written submission of the respondent which was bad in law. A thorough scrutiny of the complained judgment indicates that the same was based on the doctrine of adverse possession. At page 4 of the judgment, the Chairman observed as follows:

*"Hivyo basi, kwenye kesi hii kwa kuwa hakuna shaka yoyote kwamba Mrufani amelitumia eneo lenye mgogoro kwa takriban miaka 46 toka mwaka 1974 mpaka mwaka 2020 pale mgogoro ulipozuka, eneo lenye mgogoro ni mali halali ya Mrufani Ramadhani Juma Mgonela na si vinginevyo."*

From the above extract, I have failed to understand the appellant's contention that decision of the DLHT was solely based on the respondent's written submission. In this regard, I dismiss the second ground of appeal for lack of merit.

Lastly, the appellant asserts that the DLHT erred in law and fact in deciding the dispute in favour of the respondent against the evidence presented in the appellant's written submission. Submitting on this ground, the appellant's Advocate told the court that the respondent did not adduce sufficient evidence in the DLHT justifying the Tribunal to decide the case in

his favour. The learned Advocate maintained that the appellant is the lawful owner of the land in dispute. The respondent insisted that he did not trespass to the appellant's land as alleged as each of them has his own piece of land where they are neighbours.

Much cannot be derived from the proceedings of the DLHT concerning evidence adduced since the case was disposed by way of written submissions. I have examined proceedings of Usisya Ward Tribunal where numerous witnesses were called and testified. The most part of evidence adduced in the Ward Tribunal focused on proving as to who between the appellant and the respondent was the first to arrive at Mabundulu Village. This was not however, a point of contention between the parties. It was undisputed that the appellant arrived at the Village first, in 1968 while the respondent went later in 1974.

The issue was whether or not the respondent was a licensee of the appellant on the disputed land. Regarding this point, one of the witnesses testified as follows on page 20 of the hand-written proceedings of the Ward Tribunal:

*"...kutokana na operesheni vijiji, huyu mzee Ramadhani alitoka Kitete na kuhamia katika eneo hili kwa kugawiwa na ndugu Emmanuel Kayoka. Huyu alikuwa Mwenyekiti wa Kamati ya Ugawaji."*

Based on this and testimony of other witnesses as has been shown herein above, I find the appellant's allegation that the respondent was his licensee lacks the legal base. Therefore, the third ground of appeal is devoid

of merit and it is dismissed. Consequently, the appeal is dismissed in its entirety for lack of merits. The respondent is declared the rightful owner of the land in dispute. Each party shall bear its own costs.

**Order accordingly.**



  
**KADILU, M.J.,**  
**JUDGE**  
**31/03/2023**

Judgment delivered in Chamber on the 31<sup>st</sup> Day of March, 2023 in the presence of Mr. Rashidi Shabani Sizya, the appellant and Mr. Ramadhani Juma Mgonela, the Respondent. Right of appeal is fully explained.



  
**KADILU, M.J.,**  
**JUDGE**  
**31/03/2023.**