

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 19 OF 2022

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for Mbulu at Dongobesh in Land Application No. 13 of 2021)

EDWARD DODI SINO.....APPELLANT

VERSUS

AGRICOLA BURA.....RESPONDENT

JUDGMENT

Date: 8/3/2023 & 6/4/2023

BARTHY, J.

The present appeal arises from the decision of the District Land and Housing Tribunal for Mbulu sitting at Dongobesh (henceforth the trial tribunal) in Land Application No. 13 of 2021.

A brief background giving rise to the present appeal as gathered from the record is such that; the appellant is the respondent's father in law, as the latter was married to his deceased son namely Charles Edward.

It is on record that, the respondent and her husband got married sometimes in 2006 and they lived together until 2014 when the respondent's husband passed away.

It was the appellant claim before the trial tribunal that, the respondent had trespassed on his land measuring 2.5 acres situated at Marang village in Mbulu District (hereinafter referred to as the suit land).

The appellant claimed he allowed the respondent to use the suit land in 2018 but she destroyed some crops planted by the appellant. He thus prayed for an assortment of reliefs including an order that the respondent to return the suit land, payment of the sum of Tsh. 2,470,000/= being the value of crops destroyed by the respondent.

On her party, the respondent denied the claim and further argued the suit land had already been allocated to her deceased husband by the appellant. The respondent contended further that, her husband has been utilizing the suit land prior to his death, and the dispute arose after the death of her husband.

After hearing the parties, the trial tribunal dismissed the appellant's claim and the respondent was declared as a lawful owner of the suit land.

The appellant is unamused with the trial tribunal's decision hence the instant appeal with the following grounds of appeal;

- 1. That the trial tribunal grossly erred in law and facts by not taking into considerations the credibility of the evidence presented by the appellant in the trial tribunal hence arriving at a wrong conclusion.*
- 2. That the trial tribunal erred both in law and fact in determine the case in favor of the respondent herein without any evidence presented which show that the land in dispute is owned by the respondent.*
- 3. That, the trial tribunal erred both in law and fact in determine (sic) the case in favor of the respondent without proving her case on the balance of probability as require by the law.*

4. That, the trial tribunal erred in law and fact in determine the case in favor of the respondents without any evidence presented that the said land was given to the deceased or respondent.

When the appeal was called on for hearing the appellant appeared in person. On the other hand, the respondent did not enter appearance despite being duly served. Hence, hearing of the appeal proceeded in her absence. The appeal was disposed of orally.

When the appellant was called to expound his grounds of appeal, he opted to submit generally in no chronological order.

The appellant on his submission he faulted the decision of the trial tribunal for not considering his evidence together and exhibits tendered. He contended further that the exhibits do prove his ownership of the suit land as proved by the village council.

The appellant submitted further that he was allocated the suit land in the year 1974 under '*Operesheni Vijiji*' and he continued to use the suit land at

all the time. The appellant admitted that his deceased son married the respondent and he gave the deceased one acre of the farm and another plot to build a house different from the suit land

The appellant denied to have given his deceased son the suit land. He claimed that, following the death of his son (the respondent's husband), he gave the respondent a piece of land measuring 50 by 60 meters for her use. However, after a couple of years the respondent trespassed to another land claiming that it belonged to her deceased husband.

The appellant was of the view that, the trial tribunal did not consider the evidence that proved that he owned the suit land for almost 50 years. Whereas the respondent did not have any proof of ownership of the suit land. That was the appellant's submission in support of his grounds of appeal.

Having gone through the appellant's submission and the records of the trial court, the court will determine if this appeal has merits or otherwise.

From the totality of evidence on record, the center of dispute is a piece of

land measuring about 2.5. acres. The appellant claimed that he allowed the respondent to use the suit land in 2018. The appellant did tender loss report and the copy of the title showing he was allocated the suit land in the year 1975 to substantiate his claims. Nevertheless, the appellant did not call any witness to establish that he indeed allowed the respondent to use the suit land.

The respondent testified before the trial tribunal that after she got married to the appellant's son in 2004 where she found her deceased husband in occupation of the suit land and they continued to use the suit land until his death in 2014.

The respondent's evidence was to effect that she continued to farm in the suit land even after the death of her husband, until the year 2019 when the appellant started to claim for the said land to be his. There also was evidence from DW2 and DW3 to support that the respondent's husband was using the suit land since the year 2000. The evidence was not seriously challenged by the appellant.

The facts gathered from the record reveal that, the appellant never took any

action since 2004 until 2021 when he filed the matter before the trial tribunal which signified that there was acquiescence on the party of the appellant to such occupation by the respondent and her deceased husband.

The doctrine of acquiescence was expounded in an English case of **Duke of Leeds v. Earl of Amherst** 2Ph 117 (123) (1846) as referred in a book, **Customary Land Law of Tanzania: A Source Book** by R.W. James and G. M. Fimbo, on page 551 quoted with approval by the Court of Appeal in the case of **Magoiga Nyankorongo Mriri v. Chacha Moroso Saire**, Civil Appeal No. 464 Of 2020 (Unreported) in which the court held that;

The doctrine of acquiescence applies if a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act was in progress, he cannot afterward be heard to complain about it.

Also, in another English case of **Ramsden v. Dyson** (1866) LR IHL 129 at page 140, the court held that, such an inference can only be drawn where it is a stranger who deals with the land in such a manner inconsistent with the rights of the one who owns the land.

The fact that the appellant allowed the respondent and her deceased husband to occupy and utilize the suit land for over seventeen years, counting from 2004 to 2021 when the matter was referred to the trial tribunal. In the absence of plausible explanation from the appellant or agreement requiring the respondent and her deceased husband to occupy and utilize the suit land for a specific period of time, then respondent was entitled to be declared as a lawful owner of the suit land from none interference adverse possession.

Again, drawing the reference from the case of **Magoiga Nyankorongo Mrii v Chacha Moroso Saire** (supra) the court held that;

We are alive to the principle of adverse possession that a person who does not have legal title to land may become an owner of that land, based on continuous possession or occupation of the said land.

It is for that reason I hold that, from uninterrupted quiet possession of land for above 12 years by the respondent, the appeal lacks merits and I find no reason to fault the findings of trial tribunal. Hence the appeal is dismissed in

its entirety. Since the respondent never entered appearance and taking into account the nature of the relationship of the parties, I will not make any order as to costs.

It is so ordered.

Dated at Babati this 6th April 2023.



**G. N. BARTHY,
JUDGE
6/4/2023**

COURT: Judgment delivered this 6th of April, 2023 at Babati in the presence of the appellant and Ms. Lightness Thuway Legal Officer from Karatu Law Chamber, Samwel Welwel Advocate for the Respondent.

**B. A. MPEPO
DEPUTY REGISTRAR
6/4/2023**