

**IN THE HIGH COURT OF TANZANIA**

**TABORA SUB REGISTRY**

**AT TABORA**

**LAND CASE APPEAL NO.7 OF 2022**

*(Arising from Land Application No. 13/2021 of the District Land and  
Housing Tribunal for Nzega)*

**LUTALAMBULI MAGEKE.....1<sup>ST</sup> APPELLANT**

**NG'OMBE STEPHEN.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**NGASA BUNDALA (Administrator of Estate of the Late Bundala  
Shilinde Gota).....RESPONDENT**

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**JUDGEMENT**  
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*Date of Last Order: 12/05/2023*

*Date of Delivery: 16/05/2023*

**AMOUR S. KHAMIS, J.**

This is the first appeal from Land Application No. 13/2021 of the District Land and Housing Tribunal for Nzega. Lutalambuli Mageke and Ng'ombe Stephen, the appellants herein, being dissatisfied by the decision of the trial tribunal, lodged this appeal.

In the impugned judgement, the District Land and Housing Tribunal for Nzega declared Ngasa Bundala, the respondent herein, as a lawful owner of his late father's disputed parcel of land.

Records show that Ngasa Bundala successfully instituted a Land Dispute No. 13 of 2021 in the District Land and Housing Tribunal for Nzega for declaration that the disputed parcel of land belongs to the late Bundala Shilinde Gota.

Dissatisfied with the findings of the trial tribunal, the appellants herein lodged a Memorandum of Appeal to this Court challenging the decision of the trial tribunal on the following grounds:

- i) That, the trial District Land and Housing Tribunal erred in law for failure to consider that the case was pre-mature.
- ii) That, the trial District Land and Housing Tribunal erred in law for failure to examine evidence that the appellant owns the suit land for more than 12 years using simultaneously, consecutively and without being interrupted by anyone even the late Bundala Shilinde Gota.
- iii) That, the District Land and Housing Tribunal erred in law for failure to discover that the respondent's claim is hopelessly time barred.
- iv) That, the District Land and Housing Tribunal erred in law for overriding appellant's evidence adduced during trial.
- v) That, the District Land and Housing Tribunal erred in law for holding in favor of the respondent while he failed to prove the case on the balance of probability.

In this appeal the appellant was represented by Mr. Samwel Ndanga, while the respondent enjoyed the service of Mr. Emmanuel Sululu, learned advocates. With the approval of the Court the parties proceeded by way of written submissions.

Submitting on the first ground of appeal, Mr. Ndanga asserted that in course of hearing this land dispute in the District Land and Housing Tribunal for Nzega, the **Land Disputes Courts Act, No. 216 R.E 2019** was amended, to oust the Ward Tribunals jurisdiction from adjudicating matters affecting title or any interest in land.

Mr. Ndanga contended that, the ward tribunal are vested with power to settle land matters amicably, since the suit was instituted on 18/05/2021 and the amended law came into force on 1<sup>st</sup> September 2021, it is his contention that the trial tribunal ought to dismiss the suit and direct parties to refer the matter to the Ward Tribunal for amicable settlement of their dispute as required by the amended law prior to institution of a suit in the District Land and Housing Tribunal.

On the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal, Mr. Ndanga collectively submitted that the appellant had been using the disputed parcel of land for more than 12 years undisturbed after buying the same from the late Bundala Shilinde Gota and Bundala Lutaja for exchange with six (6) cows, and that there are tombs of his beloved ones in the suit land.

He referred to the case of **LEMAYANI VS MHANI 1972 HCD NO. 149**, wherein the High Court held that:

*“where a person has stayed in the land undisputed for more than 12 years then he acquires the title through acquiesce”.*

He further contended that the respondent and his late father abandoned the suit land for many years, and was therefore time barred to recover the same.

On the 5<sup>th</sup> ground of appeal, Mr. Ndanga demonstrated on how records show that there is no direct evidence to prove the respondent's case on the balance of probability as required by laws. He summed up with assertion that the respondent failed to show how and when the suit land came into possession by his late father.

In reply, Mr. Sululu submitting on the first ground of appeal contended that the suit is not premature because it was filed before the amendment came into force and therefore the trial chairman was right to proceed with the matter.

On the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal, Mr. Sululu argued that the disputed parcel of land belongs to the late Bundala Shilinde Gota who cleared the then virgin land and lived there with his family until he vacated to Mbeya-Songwe and left his land under the care of one Hoteli Mwigulu (ten cell leader).

Mr. Sululu contended that the 1<sup>st</sup> appellant was interested to buy the land which is estimated to be 600 on exchange with 30 cows, but failed to pay the said consideration despite of several follow-ups made by the first appellant.

It was Mr. Sululu's contention that since the first appellant failed to purchase the suit land, he is duty bound to vacate the same regardless of development effected on it.

He referred to the case of **MAGOIGA NYAKORONGO MRIRI V. CHAHA MOROSO SAIRE, CIVIL APPEAL NO. 464 OF 2020**, (unreported), wherein the Court of Appeal held that:

*"we wish to underline that an invitee cannot own land to which he was invited to the exclusion of his host whatever the length of his stay. It does not matter that the said invitee had even made unexhausted improvements on the land on which he was invited."*

He further submitted that, the first appellant failed to prove his purchase of the land and he never called any witness to prove on the alleged purchase at a consideration of six (6) cows.

On the fifth ground of appeal, Mr. Sululu submitted that the respondent tendered all necessary evidence before the trial tribunal to show that the late Bundala Shilinde Gota is the lawful owner of the disputed land, hence proved his case on the balance of probability. He urged this Court to dismiss the appeal with costs.

After carefully reviewing the records of the trial tribunal, the Memorandum of Appeal filed by the appellant, and considering the written submissions by both parties, the issue is whether the District Land and Housing Tribunal erred to declare Bundala Shilinde Gota as the lawful owner of the disputed parcel of land.

Starting with the first ground of appeal, Mr. Ndanga submitted that the dispute was required to start at the ward tribunal for mediation in accordance to the requirement of the amended law. On his part, Mr. Sululu argued that the suit was filed before amendment of the law and therefore no requirement to start at the ward tribunal for mediator.

After going through records, it is clear that the suit before the trial tribunal was instituted on 18/05/2021 while The Written Laws (Miscellaneous Amendment) (No.3) Act No. 5 of 2021 which amended S. 13(2) and 16 (1) of Land Disputes Courts Act, no. 216 R.E 2019, came into force on 1/09/2021.

Therefore, I agree with Mr. Sululu that the trial tribunal was quite right to proceed hearing the dispute because it is a well established principle that the law does not apply retrospectively. Thus, this ground lacks merit.

On the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal, Mr. Ndanga submitted that the appellant had been using the disputed parcel of land for more than 12 years undisturbed after buying the same from the late Bundala Shilinde Gota and Bundala Lutaja for exchange with six cows.

In reply Mr. Sululu stated that the late Bundala Shilinde Gota agreed to sale the land which is estimated to 600 acres to the appellant for exchange of 30 cows, unfortunately the appellant never paid that consideration.

I have considered submissions from both parties, meanwhile, it is no disputed that the said land was formerly owned by the late Bundala Shilinde Gota before he vacated to Songwe, and it also not disputed that the late Bundala Shilinde Gota and the respondent herein agreed to sale the land at an exchange for cows. Therefore, the questions are: how many cows were agreed to be exchanged for the land estimated to be 600 acres, and whether the agreed number of cows were paid to the seller.

The respondent contended that the appellants never paid the cows and that before his death, the late Bundala Shilinde Gota made several follow ups for such payment but in vain. On the other hand, the appellant asserted that he paid 6 cows to the late Bundala Shilinde Gota and Lutaja Bundala the latter being the third respondent in a suit filed in the trial tribunal. However, during trial Lutaja Bundala testified that the appellant never paid any cows as a consideration for the purchase of the land.

It is my firm view that, there is no any evidence to prove that the appellants paid such cows in exchange of the disputed land to the respondent. Basing on the assertion that appellant had been using the disputed parcel of land for more than 12 years undisputed, this cannot be considered as adverse possession as it does not meet the prerequisite conditions enumerated in the case of **THE REGISTERED TRUSTEES OF HOLY SPIRIT SISTERS TANZANIA VERSUS JANUARY KAMILI SHAYO AND 136 OTHERS, CIVIL**

**APPEAL NO. 193 OF 2016** (unreported), wherein the Court of Appeal observed that:

*“Thus, on the whole, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following: -*

*(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 color of right to be there other than his entry and occupation;*

*(d) that the adverse possessor had openly and without the 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 animus possidendi;*

*(f) that the statutory period, in this case 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 current case it is clear that the deceased did not abandon the suit land but left it in the hands of a care taker and subsequently,



made follow ups on the appellant as interested purchaser. In this regard, the grounds nos. 2, 3 and 4 also lack merits.

On the fifth ground 5, based on the above enumerated facts, it is clear that the evidence adduced by the respondent proved his case in the standard requirement in civil case namely, on the balance of probability.

In line with the above exposition, this appeal is hereby dismissed. I make no orders as to costs.

It is so ordered



**AMOUR S. KHAMIS**

**JUDGE**

**16/05/2023**

**ORDER:**

Judgment delivered in open Court in presence of Mr. Samwel Ndanga, learned advocate for the appellant and also holding brief of Mr. Emmanuel Sululu, advocate for the respondents. Right of appeal explained



**AMOUR S. KHAMIS**

**JUDGE**

**16/05/2023**