

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

**LAND APPEAL NO. 86 OF 2022**

*(Originating from Land Appeal No. 75 of 2021 District Land and Housing Tribunal for Kilombero/Ulangu at Ifakara, Originating from Sanje Ward Tribunal in Land Dispute No. 4 of 2021)*

**FADHILI JUMA MLANZI ..... APPELLANT**

**VERSUS**

**EDWARD M. TESHA .....1<sup>ST</sup> RESPONDENT**

**JOSEPH RAINA .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Hearing date on: 15/6/2023*

*Judgement date on: 20/6/2023*

**NGWEMBE, J:**

This is a second leg of appeal after the first appeal being determined by the District Land and Housing Tribunal for Kilombero/Ulangu at Ifakara in Land Appeal No. 75 of 2021 whose judgement was delivered on 16/5/2022. The appellant was dissatisfied, hence this appeal.

Tracing the genesis of this appeal as was duly testified by witnesses during trial, it is undisputed that on 1998 the village government of Msolwa Ujamaa decided to allocate plots bearing size of 25 X 40 meters of land to the interested villagers and others for building houses. The area had 500 plots of land. That whoever was cultivating crops prior to that decision was



granted 2 plots and the rest was distributed to others. At the same time the owner of a bare land was allocated one plot. Equally important to note that, the respondents were found in the suit land, when that program was carried by the village authority.

More interestingly, the appellant is claiming ownership of the suit land through inheritance. That her mother along such village program was allocated a plot in year 1998. Since then to her death, she never occupied it effectively by making any development therein. After demise of such allocatee, the appellant inherited it and went to claim such plot of land in year 2021, after lapse of 23 years. In fact, even the appellant admitted that, he did not know the existence of such piece of land for he grew up in Dar es Salaam.

The appellant successfully claimed ownership of such plot of land before the Ward tribunal in land dispute No. 4 of 2021. However, the respondent herein appealed to the district land and housing tribunal. The decision of Ward tribunal was set aside and the respondents were declared true owners of the suit land. Such decision aggrieved the appellant, hence this appeal clothed with three grounds, summarized hereunder: -

1. The first appellate tribunal erred in law and fact for deciding in favour of the respondents who had no evidence at all;
2. The first appellate tribunal disregarded the evidence of the appellant in deciding the appeal; and
3. The chairman erred in demanding compensation to the respondents be paid by the appellant.



I may gather from these grounds of appeal and comprehend into one ground that, the district land tribunal ought to uphold the decision of the trial ward tribunal based on evidences adduced by the appellant. The departure of the district land and housing tribunal was based on the facts that, the respondents have been in use of the suit land for many years undisturbed. Second the appellant if so wished to regain it, must pay compensation as was rightly decided by the ward tribunal. The reasoning of the appellate tribunal in page 6 is quoted hereunder: -

*"Baraza la Kata lilipotembelea eneo la mgogoro lilibaini kwamba eneo hilo lilikuwa limeendelezwa na warufani hivyo kama mrufaniwa alitaka eneo hilo ambalo kiasili halikuwa eneo lake alitakiwa kulipa fidia"*

Translating in a language of this court means the Ward tribunal visited *locus in quo* and found the suit land is developed by the respondents herein. Since the suit land was not properties of the appellant herein, then he ought to compensate the respondents.

The arguments advanced by both parties were on historical perspectives. Both were unrepresented by learned advocates; hence they did not argue those grounds of appeal, rather they traced the historical ownership of the suit land, which same was testified during trial. Hence no useful submission on this appeal by the parties. I therefore, proceed to determine this appeal based on the available records and evidences adduced during trial and as determined by the first appellate tribunal.



It is on record that, the respondents prior to year 1998 they were occupying such piece of land and when the village authority planned to turn their farm land into plots for residential use, did not compensate the original owners. Above all, neither the appellant nor her mother entered into the claimed piece of land and improved therein. Counting from year 1998 to 2021, is equal to 23 years and according to law of limitation, time to claim ownership of a piece of land is up to twelve (12) years. It means, the respondents continuously and without interference from whoever, neither from the alleged village government nor from the appellant's mother nor from any relative of his mother, until 2021 when the appellant came up to claim ownership under inheritance.

Considering the grounds of appeal as summarized above, the immediate doctrine which fits in is the adverse possession. The ingredients of the doctrine of adverse possession were detailed in the case of **Registered Trustee of Holy Spirit Sisters Tanzania Vs. January Kamili Shayo and 136 others, Civil Appeal No. 193 of 2016, (CAT at Arusha)** and **Boke Kitang'ita Vs. Makuru Mahembe, Civil Appeal No. 222 of 2017**, those ingredients are summarized hereunder: -

- 1. That they had been absence of possession by the true owner through abandonment;*
- 2. That the adverse possessor had been in actual possession of the peace of land;*
- 3. That the adverse possessor had no colour of right to be there other than his entry and occupation;*





4. *That the adverse possessor 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 for 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.*

In similar vein, the case of **Musa Hassan Vs. Barnabas Yohanna Shedafa** [Legal representative of the late Yohanna Shedafa], **Civil Appeal of 101 of 2018 (CAT)** held: -

*"We are alive to the principle of adverse possession that a person who does not have a legal title to land may become owner of that land based on continuous possession or occupation of the said land. However, we hasten the remark that the principle cannot apply in circumstance where the possession roots from the owner's permission or agreement"*

Usually, the doctrine of adverse possession does not apply to invitees and does not apply to the possession rooted from owner's permission or agreement. This position was considered in countless precedents including in the cases 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) T.L.R 1.**

I have no doubt, the doctrine is applicable in this appeal. It is evident that the appellant had no contract or agreement related to possession of the suit land. Above all, even the appellant himself did not know if her mother had a plot of land allocated by the said village authority. Worse still, the said late mother never entered into the suit land and develop therein. Even compensation to the respondents were never done. Thus, they continued to plant coconut trees and other permanent crops as clearly recorded by the ward tribunal when they visited *locus in quo*. For the whole period of 23 years the respondents presumed ownership and with no interference from whoever. I think even without the existence of the doctrine of adverse possession, yet time has decided in favour of the respondents. The respondents have been in full occupation for the period of twenty-three (23) years as opposed to statutory period of twelve (12). In fact, time frame in this appeal has decided against the appellant.

Again, I have critically reviewed the whole evidences adduced during trial and the whole records of the district land tribunal, unfortunate I find no valid evidence in favour of the appellant. It is a common knowledge, that in civil proceedings, the party with legal burden also bears the evidential burden and the standard is on a balance of probabilities. In addressing a similar scenario on who bears the evidential burden in civil cases, the Court of Appeal in the case of **Godfrey Sayi Vs. Anna Siame as legal representative of the late Mary Mndolwa, Civil Appeal No. 114 of 2012**, and **Anthony M. Masanga Vs Penina (Mama Ngesi) and**



**another, Civil Appeal No. 118 of 2014**, the Court of Appeal cited with approval, the case of **Re B [2008] UKHL 35**, where Lord Hoffman, provided the most lucid definition of the term "balance of probabilities" to mean: -

*"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned to and the fact is treated as having happened"*

Repeatedly, this court has pronounced that, always courts decide cases according to available evidences/facts, applicable laws, precedents and the prevailing circumstances of the dispute.

It is a long-established principles of land law that the court will only grant protection to a person who has subsisting right over the suit land. The principle is quoted hereunder for ease of reference: -

*"The protection of the Court can only be granted or extended to the person who has valid, subsisting right over land"*.

The question for decision by this court, is whether the appellant deserves any right over the suit land? I think common sense, logic, law and justice, do not support the appellant to deserve any right over the suit land.




Accordingly, the decision of the District Land and Housing Tribunal was well founded, conceived, and rightly decided. I therefore, 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, thus, this appeal lacks merits same is dismissed with costs.

**I accordingly order.**

**Court: Judgement** delivered in chambers this 20<sup>th</sup> day of June, 2023



  
**P.J. NGWEMBE**

**JUDGE**

**20/6/2023**

**Court:** Judgement is delivered at Morogoro in Chambers on this 20<sup>th</sup> day of June, 2023 in the presence of all parties.

  
**Sgd: A. W. Mbanda, DR**

**20/06/2023**

**Court: Right to appeal fully explained.**



  
**Sgd: A. W. Mbanda, DR**

**20/06/2023**