

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEEA SUB - REGISTRY

(LAND DIVISION)

AT SONGEEA

LAND APPEAL NO. 37 OF 2023

(Originating from the Decision of the District Land and Housing Tribunal for Songee at Songee in Land Application No. 51 of 2022)

VERONIKA MOYO APPELLANT

VERSUS

MAGINUS MBIRO RESPONDENT

JUDGMENT

Date of Last Order: 12/07/2023

Date of Judgment: 27/07/2023

U. E. Madeha, J.

Before the District Land and Housing Tribunal for Songee, through Land Application No. 51 of 2022, the Appellant sued the Respondent claiming to be declared the lawful owner of a piece of land measuring two acres located at Kanjele "A" at Utwango Village, Namabengo Ward within the District of Namtumbo and Ruvuma Region. She also, claimed for the declaration that the Respondent is a trespasser on the disputed land. After a full trial, while dissenting with the opinion of the assessors, the trial Tribunal dismissed the application for lack of merit. It was held that the

Appellant failed to prove her claim. Dissatisfied with the decision of the trial Tribunal, the Appellant lodged this appeal before this Court. In her memorandum of appeal, the Appellant has preferred three grounds of appeal which can be paraphrased as follows:

- 1. That, the trial Tribunal Songea erred in law and fact by not considering the fact that the Appellant is the legal owner of the suit premises despite the strongest evidence adduced by the Appellant and her witnesses.*
- 2. That, the trial Tribunal erred in law and fact by failure to consider the evidence that the land was given to the Appellant by his father-in-law as a gift way back in 1976.*
- 3. That, the trial Tribunal erred in law and fact by admitting a fake document of surrendering the disputed piece of land to the Respondent by the members of the Ward Land Committee which was not signed by the member.*

Before I engulf myself in discussing this appeal, I have preferred to start by stating the brief facts which led to this appeal. At the trial Tribunal, to prove the above stated claims, the Appellant brought four witnesses while the Respondent had three witnesses.

In her testimony the Appellant testified that she was married to Adrian Haule in 1974. In 1976 her father-in-law, one Madard Haule gave them a farm measuring two acres and they used it for cultivation. After

sometime, conflict between her and her husband occurred and their marriage is no longer active. She testified further that the disputed land was given to them by their father-in-law who was given that piece of land by Oscar Mbiro who was the grandfather of the Respondent. She further averred that she is bordered by Pius Mbiro on the eastern side while on the western side she is bordered by Binti Fabian Fusi, in the northern side she is bordered Suzu, and Emmanuel Mbiro in the southern side.

The Appellant further testified that she planted trees on the disputed land and some of them still exist. The Appellant also prayed for the trial Tribunal declare her as the lawful owner of the disputed land. As a matter of fact, the three witnesses who testified for the Appellant told the trial Tribunal that the Appellant and her husband started using the disputed land since 1976 and they had been using it for agricultural activities.

On the other hand, the Respondent told the trial Tribunal that he was given the disputed land by his father, one Kilian Mbiro in 1993. He used the disputed land up to 2007 when he leased it to the Appellant's husband, with whom they agreed that he should plant short-term crops and not permanent crops. In 2019, the Appellant's husband handed over that piece of land to him and that was witnessed by the Ward Land Committee Chairman. The handing over agreement was tendered and received as an

exhibit MK1. When the Respondent went to start using his land the dispute arose between them.

The Respondent's witness, one Emmanuel Kilian Mbiro (DW2) told the trial Tribunal that in 2007, the Appellant's husband went to the Respondent requesting to be given the piece of land for cultivation. The Appellant's husband was given the disputed land and he used it up to 2019 when he handed over to the Respondent and the handing over was done in writing. DW3 one Victor Isdori Luambano in his testimony told the trial Tribunal that the disputed land was used by the Respondent's father but later on it was used by the Appellant's family but recently the disputed land has been handed over to the Respondent.

From these facts, the trial Tribunal found the Appellant to have failed to prove her claims and the Respondent was declared to be the lawful owner of the disputed land. Aggrieved by that decision the Appellant knocked the doors of this Court by way of appeal.

When the appeal was placed before me for hearing, both parties appeared in person, they were unrepresented. It is important to note that the appeal was disposed through oral submission. Being a layperson, the Appellant reiterated her testimony that she testified before the trial

Tribunal and she added that the trial Tribunal erred in law by ignoring her evidence and that given by her witnesses. She added that the trial Tribunal ignored the fact that she has been in use of the disputed land for a period of more than thirty years, by using it for cultivation and planting trees thereon and the Respondent had never been in use of the disputed land.

The Appellant further contended that the trial Tribunal Chairman has no justifiable reason in departing from the opinion given by the assessors that the Appellant is the lawful owner of the disputed land.

On the other hand, the Respondent in his submission resisted the Appeal. Also, being a layperson has no useful arguments to resist the appeal rather than reiterating his testimony given before the trial Tribunal insisting that he obtained the disputed land from his father in 1993 and the trees found on the disputed land were planted by his grandfather. He further insisted that he used the disputed land up to 2007 when he leased to the Appellant's husband who handed it over to him in 2019 and later on the dispute arose between him and the Appellant. Lastly, he submitted that the trial Tribunal was satisfied with the evidence given before it and declared him to be the lawful owner.

In her short rejoinder, the Appellant stated that the trees found on the disputed land were not planted by the Respondent's grandfather as stated by the Respondent but they were planted by herself and people knew that she is the lawful owner of the disputed land.

Having gone through the grounds of appeal raised by the Appellant, the submissions made by the parties and the original records of the trial Tribunal, the main issue in this appeal is whether ownership over the disputed land was proved to the required standard of proving on the balance of probabilities. Generally, in civil suits each party needs to provide evidence supporting his or her claims and in making its decision, the Court is duty bound to evaluate the evidence presented before it.

This being a land dispute, in order to prove ownership over it the trial Tribunal was to take into consideration of the oral testimony given by the parties, the exhibits tendered as evidence, historical background over the disputed land and the issue of adverse possession. The documentary exhibits may include title deeds, leases, rental agreements, or any other legal agreement related to the disputed land.

As much as I am concerned, after making a thorough perusal of the original records of the trial Tribunal, I have realized that both the Appellant

and the Respondent claims for ownership of a piece of land measuring two acres which are located at Kanjele "A" area at Utwango Village, Namabengo Ward within Namtumbo District. Basically, both parties do not have any document to prove ownership. From the evidence given by the Appellant and her witnesses, the land was given to her and her husband in 1976. It was given to them as a gift by the father of her husband. PW2, and PW3 told the trial Tribunal that they saw the Appellant farming and planting trees in the disputed land from 1976 until 2019 when the conflict arose between the two parties.

The Respondent in his evidence stated that he was given the disputed land by his father in 1994. He used that land up to 2007 when he leased the land to the Appellant's husband. He had no written document of leasing the land but when the land was handed over to him by the Appellant's husband there was a written document and it was admitted by the trial Tribunal as *exhibit MK1*.

Apart from that testimony given by the parties, there is no further evidence on the disputed land. The Respondent had contended that he was given the disputed land by his father and he leased it to the Appellant's husband. That assertion leads to the issue of who was the owner of the disputed land?

From the evidence given by both parties, it is clear that the Appellant is the legal owner of the disputed land measuring two acres, for the reason that even the witnesses who testified in her favor told the trial Tribunal that they saw her ploughing those two acres of land from 1976 and she was in use of it up to 2019 when the conflict arose. She has been in use of the disputed land for more than thirty years now. The weight of the evidence given before the trial Tribunal shows that the disputed land is property of the Appellant.

I have keenly checked on the *exhibit MK1* which the Respondent claims that it was written between him and the Appellant's husband and I find it to be invalid since it does not show which land was handed over. The location of the land which was handed over was not described. Also, *exhibit MK1* has been sealed by the seal of Namabengo Ward Tribunal and signed by the Chairman and the Appellant's husband but the Respondent failed to call them to give oral testimony in justification of *exhibit MK1*. As far as I am concerned, I expunge *exhibit MK1* from the records of the trial Tribunal as I find such kind of evidence is an afterthought.

On the issue of the histological background of the disputed land, the evidence given by the Appellant and her witnesses proves that the Appellant owned and has been cultivating the disputed land from 1976 up

to 2019. Also, the Appellant managed to state the borders of the disputed land. From the evidence given by both parties, historically the Respondent is excluded in the ownership of the disputed land. Lastly, on the issue of adverse possession, the Appellant has been in using the disputed land thirty years without interference from anyone. This proves that the Appellant is the legal owner of the disputed land and the Respondent is barred by the principle of adverse possession since the Appellant has been in used of the disputed land for more than twelve years.

Principally, the principle of adverse possession presumes that when a person has been in use of the land for twelve years without interference, it is believed that the land belongs to him. The principle was well illustrated in the case of **Pravin-Chandra Girdharilil Chanda v. Murdin Yusuf Ally**, Land Case No. 94 of 2013 (unreported) and **Yusuph Same & Others v. Hadija Yusuph** (1996) TLR 347. In later case it was held that:

"The limitation period for recovery of land when possessed by someone for more than twelve years, the other party cannot claim on it as it will be time-barred."

The Court of Appeal of Tanzania in the case of **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 others**, Civil Appeal No. 193 of 2016 (unreported), stated that a person

seeking to acquire title over the land by adverse possession had to cumulatively prove the following:

- (a) That, there had been absence of possession of 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 act which were inconsistent with the enjoyment of the true owner of the land for the purposes for which he intended to use it.*
- (e) That, there was sufficient animus to dispossess and animus possidendi.*
- (f) That, the statutory period, in this case twelve years had expired.*
- (g) That, had no interruption to the adverse possession through the aforesaid statutory period and*
- (h) That's the nature of the property was such that, in the right to the foregoing adverse possession would result.*

In the case at hand, the Appellant used the disputed land for more than thirty years, from 1976 up to 2022, when Land Application No. 51 of 2022 was filed before the trial Tribunal. The evidence also shows that for the whole period she enjoyed all rights over the disputed land without any interference. This proves that the Appellant is the lawful owner of the

disputed land. Therefore, the Respondent have no claims over the suit land.

As far as I am concerned, I am inclined to adopt the principles stated in **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 others** (supra) which clearly illustrates the circumstances in the present appeal. For the foregoing reasons, this appeal is thus allowed. The judgement and decree of the trial Tribunal are quashed and set aside and the Appellant is declared to be the lawful owner of the disputed land. I give no order as to costs. It is so ordered.

DATED and DELIVERED at Songea this 27th day of July, 2023.



A handwritten signature in blue ink, appearing to read 'U. E. Madeha'.

U. E. MADEHA
JUDGE
27/07/2023

COURT: Judgment delivered in the presence of the Appellant and the Respondent. Right of appeal is explained.



A handwritten signature in blue ink, identical to the one above.

U. E. MADEHA
JUDGE
27/07/2023