

**THE UNITED REPUBLIC OF TANZANIA  
IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MTWARA  
AT MTWARA**

**LAND APPEAL NO. 20 OF 2022**

(Originated from the District Land and Housing Tribunal for Mtwara at Mtwara in Land  
Application No. 22 of 2020)

**FILIMONI THOMAS ANDREW (Administrator of the Estates of the Late  
Thomas Andrew Liwema) ----- APPELLANT**

**VERSUS**

**BARBINA ERNEST ----- 1<sup>ST</sup> RESPONDENT**

**SIMON MICHAEL ----- 2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

Date of last Order: 12.07.2023  
Date of Judgment: 18.08.2023

**Ebrahim, J.**

Parties in this case are blood relatives. The Appellant has filed the instant appeal contesting the decision of the District Land and Housing Tribunal on declaring the suit land of their late father one Thomas Andrew Liwema who died on 04.01.1992. The background of the matter as can be deduced from evidence on record is that the Appellant claimed that his late father was the lawful owner of the

suit land located at Mtawanya Ward at Mtwara District within Mtwara Region covering approximately 1 acre. He testified that after the demise of their father, him and PW4 were taken by their uncle to Dar es Salaam and the suit land was under the care of the 1<sup>st</sup> Respondent who is their relative. The Appellant has been visiting the suit land in 2002, 2004 and 2007. In 2014 he found the 1<sup>st</sup> Respondent has sold a piece of the suit land and she has built her house. The Appellant agreed because she was her sister. He testified further that in 2017 when he went back to the suit property, he found another house has been built. He asked the 1<sup>st</sup> Respondent who told him that there is a sponsor who has built the house for her so that she can leave him (the Appellant) with the other piece of the suit land. The Appellant told her that the suit land should be residence of the whole family. In 2019 the Appellant found the piece of land on the suit land which was left for him to build his house. He asked the 1<sup>st</sup> Respondent on the issue and she told him they have nothing there because their father is already dead and they can go to claim anywhere.

Upon hearing and evaluation of evidence from both sides and considering the testimonies of the assessors, the trial tribunal declared the suit land not to be the property of the deceased i.e., the late Thomas Andrew Liwema.

Aggrieved by the decision of the trial tribunal the Appellant lodged the instant appeal raising three grounds of appeal mainly complaining that the trial tribunal did not properly analyse and evaluate the evidence adduced by the Appellant's witnesses.

The appeal was disposed of by way of written submission. Both parties appeared in person, unrepresented.

Submitting in support of the grounds of appeal, the Appellant opted to argue the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal together. He contended that the 1<sup>st</sup> Respondent on her evidence at page 33 of the typed proceedings told the tribunal that the late Thomas Andrew Liwema was the one who invited her at the suit land due to the challenges she faced at her marriage. He argued that it is undisputed fact that the suit land was the property of the late Thomas A. Liwema. He added that 1<sup>st</sup> Respondent was an invitee therefore her long stay and developments she made at the suit land

does not make her the owner on the bases of adverse possession. To cement his argument he cited the case of **Registered Trustees of Holy Spirit Sisters v. January Kamily Shayo**, Civil Appeal 193 of 2016 which provided eights criteria for a person to acquire title to land by adverse possession. He further cited the case of **Magoiga Nyankorongo Mriri vs. Chacha Moroso Saire**, Civil Appeal No. 464 of 2020 (CAT) (Unreported), where it was held that;

*"Where a party's claim arises after being invited to stay on the suit land on terms prescribed, on the balance of probabilities, such a party is a mere licensee, that possession could never be adverse if it could be referred to as the lawful title."*

The above position was emphasized in the case of **Musa Hassani Vs. Barnabas Yohanna Shedafa (Legal Representative of the late Yohanna Shedafa)**, Civil Appeal No. 101 of 2018 (unreported) where it was stated that;

*"We wish to underline that an invitee cannot own a 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 has even made*

*unexhausted improvement on the land on which  
he was invited."*

The Appellant argued that at the instant case 1<sup>st</sup> Respondent was invited by the late Thomas to stay at the suit land where she stayed for more than 12 years. He contended that it was not adverse possession and the 1<sup>st</sup> Respondent had no title to pass to the 2<sup>nd</sup> Respondent as she was a mere licensee. He prayed for the court to allow the appeal with costs.

In reply, the Respondents jointly submitted that they oppose submission in chief on the fact that in 1992 1<sup>st</sup> Respondent applied to the Local Government to allow her to build a house in the suit land (farm) after the demise of the owner. There were no heirs or relative of the deceased who showed interest of developing the suit property. They also argued that this piece of evidence was not cross examined by the Appellant and he acknowledge to have not intervene with the affairs of the suit land since 1992 to 2019.

They contended that cause of action started from 1992. So the Appellant is time barred as per **Section 9 (1) of the Law of Limitation Act [Cap. 89 R.E 2019]**. They further contended that the Appellant was appointed as the Administrator of the estates of the late Thomas

A. Liwema on 19.02.2020. Thus, from 1992 to 2020 almost 28 have passed. To cement their argument they cited the case of **Yusuf Same & Another vs. Hadija Yusuf** (1996) TLR 347, it was held;

*"The limitation period in respect of land, irrespective of when letter of administration had been granted is 12 years as from the date of the deceased."*

They argued that the 1<sup>st</sup> Respondent was not a care taker of the deceased property as alleged by the Appellant, but the suit land was abandoned by the rightful heirs and relatives of the deceased. Furthermore, they argued that the case of **Registered Trustees of Holy Spirit Sisters (Supra)** is similar to the instant case and the 1<sup>st</sup> Respondent complied on the said principles hence the trial Chairman was right to dismiss the application on basis of adverse possession. Lastly, they contended that, 1<sup>st</sup> Respondent was not caught with the web as per the case of **Magoiga Nyankorongo Mriri (Supra)** on the fact that the 1<sup>st</sup> Respondent was not invited in the suit land but rather she built the house after the Local Government has allocate her the said suit land.

I have carefully examined the rival submissions of parties in view of the grounds of appeal. The bone of contention in this appeal is pegged on the proof of ownership and whether the 1<sup>st</sup> Respondent acquired the title by adverse possession.

Beginning with the ground of evaluation of evidence of each witness, certainly, I am abreast of the proposition by the Court of Appeal in the cited case of **Stanslaus Rugaba Kasusula and AG V Falesi Kabuye** [1982] TLR, 388 that it is the duty of the trial court to evaluate the evidence of each witness as well as their credibility and make a finding on the contested facts in issue. The contested fact in issue in this case is the ownership of the suit land as claimed by the Appellant. I thoroughly perused through the judgement of the trial tribunal. The trial Chairman generally based on the evidence adduced by the Respondents and concluded that;

*"Zaidi ushahidi uliotolewa hapa barazani unaonesha (sic) mjibu maombi wa kwanza alianza kuishi kwenye eneo la mgogoro tangu mwaka 1992 baada ya kufariki mmiliki wa kwanza wa eneo la mgogoro." (Page 5 & 6 of the impugned judgment.)*

Sitting as a first appellate court where I am obliged without fail to re-appraise the evidence on the record see **Jamal A. Tamim vs. Felix**

**Francis Mkosamali & the Attorney General**, Civil Appeal No. 110 of 2012 (unreported); and **Martha Wejja vs. Attorney General and Another** [1982] TLR 35; I find it apt to re-visit the evidence on record on the proof of ownership of the suit land.

The Appellant (**SM1**) testified before the trial tribunal that the owner of the suit land was his late father Thomas Andrew Liwema who he acquired it from **SM2** in 1980. He further stated that he has been visiting the suit property in 2002, 2004, 2007, 2014, 2017 and 2019 when the said dispute arose. **SM2** testified that he was the one who gave the suit land to the late Thomas A. Liwema long time ago. Then later on the Respondents took the suit land and refused to give the said land to the Appellant. Responding to the crossed examined questions he told the tribunal that the suit land was his land before giving to the late Thomas. The late Thomas developed the suit land after he has given him.

The 1<sup>st</sup> Respondent who testified as **DW1**, told the court that the late Thomas A. Liwema was her uncle and the father of the Appellant. She was married at Maumbika village and after having problems with her marriage the late Thomas A. Liwema took her. While she was



staying with him she did not see the Appellant, he was at Nachunyū. She further argued that she was the one who buried the late father of the Appellant. She argued that, she went to Balozi whom she alleged to be a deceased and ask him to use the suit land. He allowed her to use the suit land and she decided to build the first house. The Appellant was visiting even when she built the second house. She said was allowed by Balozi to plant coconut trees and she added that when the Appellant asked for the suit land, she thought he went to see her child. Unfortunately the Appellant found the 2<sup>nd</sup> Respondent building the house and it is when the Appellant took her at the Ward Tribunal.

Thus, going by the testimonies of the defence witnesses above, DW1 testified to be allowed by Balozi to use the suit land and later on she decided to build houses.

DW2 testified that he was born at the suit property in 1997. In 2019 it is the year he saw the Appellant when he went to claim the suit land. After that he filed the case.

In the respondents' submission they contended that the 1<sup>st</sup> Respondent applied to the Local Government to allow her to build a

house in the suit land (farm) after the demise of the owner due to the reason that there were no heirs or relative of the deceased who showed interest of developing the suit land. They further argued that the 1<sup>st</sup> Respondent was not a care taker of the deceased suit property as alleged by the Appellant but the suit property was abandoned by the rightful heirs and relatives of the deceased. They argued that the Appellant was time barred to claim for the suit property.

1<sup>st</sup> Respondent tends to forget to have testified before the trial tribunal that the Appellant was visiting the suit property at different times when she was developing the suit property. She further claimed that his evidence at the trial tribunal was not cross examined by the Appellant. In reality, even if the Appellant did not cross examine the respondents it does not amount that the Respondent did prove the ownership on the balance of probabilities.

It is the position of the law that he who alleges must prove; and that a burden of proof lies on a person who would fail if no evidence at all was given on the other side". **Section 110 (1) and 111 of the Law of**

**Evidence Act, [Cap 6 R.E 2022]**. It is equally the principle of the law in civil case that the standard of proof is on the balance of probabilities. This simply means that the court shall sustain such evidence which is more credible than the other on a particular fact to be proved. Again, **Section 112 of the Evidence Act, [Cap 6 R.E 2022]** provides that where a person claims existence of a particular fact, the proof of such fact lies on that person.

Basing on the above stances of the law in relation to the matter at issue it goes without say that the 1<sup>st</sup> Respondent had a duty to prove her claim that she was given the suit land by Balozi and the question is how did she acquire the said property by adverse possession while she knew the presence of the owners of the suit land. Further to that she did not tender a sale agreement or any documentary evidence to prove that she is the rightful owner. In fact there was no enough evidence to show how she acquired the suit land.

Again since the 1<sup>st</sup> Respondent specifically claimed that she was allocated the suit land by the Local Government then the legal burden to prove that particular fact was on her of which she did not

tender any evidence to that effect considering the fact that it was not disputed as to who was the owner of the suit land.

All in all, what is seen by this court is that while the Appellant managed to prove his claim that his late father Thomas A. Liwema was the owner of the suit land and how he acquired it by calling witnesses; the 1<sup>st</sup> Respondent could neither call any leader from the village government to confirm that she was allocated the suit property in the year 1992 nor tender any documentary proof to that effect. Also, in their submission the 1<sup>st</sup> Respondent contended to have acquire the suit land basing on **Section 9 (1) of the Law of Limitation Act [Cap. 89 R.E 2019]**. This issue should not detain us much as it was settled in this court vide Land Appeal No. 27 of 2020 of which the same parties were arguing on the same issue.

In essence, the weight of the testimonies of SM1 and SM2 are relevant and material to the fact in issue. There is no contradiction pointed out on their evidence and the application. The Respondents had not given the trial tribunal any cogent reason to discredit the Appellant testimonies. There is nowhere it has been shown that Appellant and his witnesses testimonies were contradictory. From the

above observation, I find that the trial tribunal was not correct to consider and give weight to the testimonies of the Respondents. More-so, the 1<sup>st</sup> Respondent admitted that she was invited to the suit land. Thus, she is a mere invitee and cannot acquire title by adverse possession irrespective of the developments she has made (see the cited case **Magoiga Nyankorongo Mriri** (supra) and the case of **Musa Hassani** (supra).

That being said I find this appeal to be meritorious and I allow it. The Appellant's evidence on the proof of ownership was heavier than that of the Respondents. The Respondents failed to discharge their burden of proof in proving ownership. The Appellant to have his costs.

Ordered Accordingly.



**R.A Ebrahim  
JUDGE.**

**18.08.2023  
Mtwara.**

