

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF TABORA**

**AT TABORA**

**MISC. LAND CASE APPEAL NO. 2 OF 2023**

*(Arising from Land Case Appeal No. 37 of 2021 of the District Land and Housing Tribunal for Tabora at Tabora, Originating from Land Case no. 4 of 2021 of Mtendeni Ward Tribunal)*

**CHRISTINA ALFRED MERIKIADI .....APPELLANT**

**VERSUS**

**MRISHO JUMA NGELEMBI.....RESPONDENT**

**JUDGMENT**

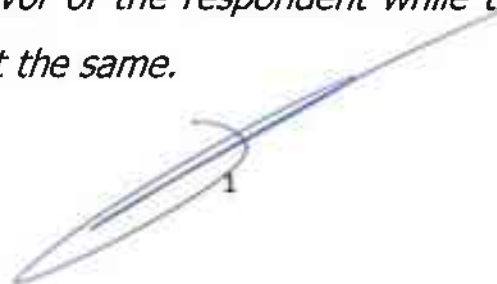
*Date of Last Order: 29/08/2023*

*Date of Delivery: 05/10/2023*

**MATUMA, J.**

Mrisho Juma Ngelembi the respondent herein, instituted a land dispute No. 4/2021 before Mtendeni Ward tribunal against the appellant claiming for ownership of land. The trial tribunal declared him the lawful owner of the suit land. Aggrieved with the decision of the Ward Tribunal, the Appellant herein unsuccessfully appealed to the District Land and Housing Tribunal for Tabora hence this second appeal for the following grounds;

- i. That the honorable chairman of the tribunal erred in law and fact to decide in favor of the respondent while the available evidence did not support the same.*



- ii. That the honorable chairman of the tribunal erred in law and fact to decide in favor of the respondent while there is misjoinder of parties who know the real owner of the disputed land.*
- iii. That the honorable chairman of the tribunal erred in law and fact to rule out that the respondent is the owner of the land in dispute without considering that the appellant used the land in dispute and developed the same for a long time without the respondent raising conflict.*

At the hearing of this appeal, the appellant appeared in person while the respondent was represented by Mr. Ally Maganga learned advocate. The appellant decided to abandon the second ground of appeal and proceeded to argue on the first and third grounds relating to the weight of evidence on record and long use of the land.

On the first ground which relates to the weight of evidence, the appellant argued that the trial tribunal failed to accord weight to her evidence, the evidence of her witnesses including family members of the original owner of the suit land and those who witnessed her buying the suit land.

The appellant argued further that, she bought the suit land from the representative of one Sada now the deceased and that the said Sada had bought it from the family of Mzee Mchawa who originally owned the said suit land. She contended that her evidence was heavier than that of the Respondent and therefore she was wrongly adjudged the loser.

On the ground of long use of the land, the appellant contended that she had been in possession of the suit land since 2017 and cultivating it without respondent's interruptions until in the year 2020 when the dispute arose. She therefore prayed for this appeal to be allowed with costs.

In reply, Mr. Maganga learned advocate for the respondent opposed this appeal and submitted that the Respondent deserved the victory he got because at the trial he had four witnesses including Rajab Salum the local leader who witnessed the sale agreement between him and Iddy Abdallah (now deceased). He further argued that the respondent was further supported by Generoza Eneriko who confirmed that her late husband Iddy Abdallah sold the suit land to the respondent. That the said witness further explained how her late husband acquired the land in dispute in which she stated that it was from his brother-in-law, Mzee Mchawa.

The learned advocate also argued that the Appellant did not establish how suit land changed ownership from Mzee Mchawa to Sada and that even Charles James who sold the suit land to the Appellant purporting to act as Sada's representative was not appointed as the administrator of the estate of the late Sada. The learned advocate then doubted the sale agreement of the Appellant which was witnessed by a six years old child and endorsed by the appellant's husband as the street council member instead of being witnessed by the local chairman.

In respect of the ground relating to the long use of the suit land without interruption, the learned advocate argued that it is the Respondent who has been in possession of the suit land for a long time because he bought the

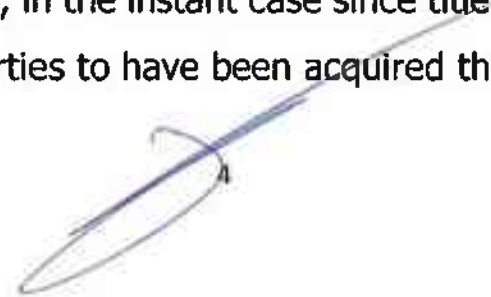
same in 2014 while the Appellant claimed to have bought it in the year 2017. That the respondent is the one who has been using the land for long time until in 2020 when he found bricks which belonged to the appellant's husband. He finally prayed for dismissal of this appeal with costs.

In her rejoinder the appellant repeated arguments relating to the weight of evidence on record.

Having heard the rival arguments between the parties for and against this appeal and going through the records at hand, I find that the ground of long use of the land is without any merit because it tends to raise the issue of adverse possession. Adverse possession cannot be raised in any suit unless it follows within the guiding factors as it was held in various cases including that of **Jumanne Chimpaye versus Daudi Mohamed Nkwaie (Administrator of the estate of the late Mohamed Nkwaie, Misc. Land Appeal No. 4/2020** High Court at Kigoma, and that of **Registered Trustees of Holy Spirit Sisters Tanzania versus January Kamili Shayo and 136 others, Civil Appeal No. 193 of 2016 (CAT)**.

In those cases, it was held that adverse possession is not applicable where the title over the dispute land is alleged to have been acquired by purchase despite of the long stay it might be on the dispute land. Adverse possession is only applicable when title allegedly is acquired by trespass without any color of right. When the title is acquired by way of purchase, it is the purchase which is to be established.

In the like manner, in the instant case since title over the dispute land was claimed by both parties to have been acquired through purchase, each



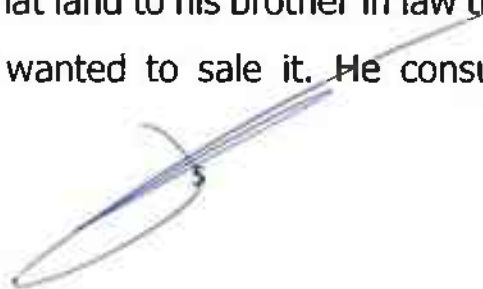
ought to have established such purchase and whether the same was lawful. It is not about the long stay and or occupation of the suit land. I therefore dismiss the first ground of complaint. That takes me to the ground relating to the weight of evidence on record.

It is undisputed by both parties that the original owner of the suit land was the late Mzee Mchawa who has been identified at the trial tribunal as Rashidi Salumu. Again, it is not in dispute that both parties did not acquire title over the suit land from Mzee Mchawa. The Appellant on her side claimed to have bought such land from Charles Clement James the representative of the late Sada and that the said Sada Said bought the same from the family of Mzee Mchawa whereas the one who sold to her the suit land was Daudi Rashidi the son of Mzee Mchawa.

On the other hand, the Respondent claimed to have bought the suit land from Iddy Abdallah now the deceased and that the said Iddy Abdallah was given the suit land by Mzee Mchawa who was his brother in law. Iddy Abdallah had married Mzee Mchawa's sister.

From such facts we have only one question to determine, to whom the title over the suit land passed from Mzee Mchawa and whether such title subsequently passed to either of the parties herein.

In accordance to the evidence of both parties as I have said there is no dispute that the original owner of the suit land was Rashidi Salumu @ Mzee Mchawa. The respondent's evidence at the trial tribunal was that the said Mzee Mchawa gave that land to his brother in law the late Iddy Abdallah and later Iddy Abdallah wanted to sale it. He consulted him and Mzee



Mchawa consented to the sale and participated in the sale transaction when Iddy Abdallah was selling the said land to the Respondent herein. Rajabu Ramadhani Shabani and Yasini Maulidi who witnessed Iddy selling the suit land to the Respondent testified during trial that at the time of such business the late Mzee Mchawa was present. Rajabu Ramadhani Shabani for instance testified;

*"Wakati eneo hilo linauzwa yule aliyetoa eneo hilo kwa Idd Mzee Mchawa alikuwepo na alishuhudia na aliruhusu liuzwe"*

Yasini Maulidi who was the local chairman by then also testified that when he was called to witness the transaction, he found Mzee Mchawa to the locus in quo. That Mzee Mchawa confirmed to him that he had given the said land to Iddy but since he has decided to sale, he had no objection. It is from such scenario he witnessed the sale and endorsed the transaction. In his own evidence Yasini Maulidi testified;

*"Nakumbuka ilikuwa mwaka 2014 kuna kijana alinifuata ili twende eneo la tukio. Nilipofika shamba nilimkuta Mzee Mchawa na alinithibitishia ya kwamba shamba hilo alimpa Iddi Abdallah.....Hivyo Iddi Abdallah Vilangweye alipotaka kuuza Mzee Mchawa hakuwa na pingamizi sababu alikuwa amekwishatoa eneo hilo kwa Iddi Abdallah Vilangweye."*

The evidence of these two witnesses were in material particular corroborated by Jeneroza Eneliko Birasha and Hussein Rashidi Matibhi the elder son of the late Mzee Mchawa. Hussein Rashidi Matibhi for instance in



his evidence testified that his late father Mzee Mchawa prior to his death gave the suit land to the late Iddi and informed him as such;

*"Sehemu bishaniwa Baba Mzazi alimpa shemeji yake ambaye dada yake aliolewa na baba na kuzaa Watoto wawili. Tena nakumbuka niliwahi kumuuliza kuhusu hilo eneo na alisema; mimi nimekwishatoa eneo kama zawadi kwa shemeji yangu aitwaye Iddi Abdallah Vilangweye"*

Their respective evidence is further corroborated by the sale agreement between Iddy Abdallah Vilangweye and the Respondent in which Mzee Mchawa in his own names Rashidi Salumu signed as a witness of Iddy Abdallah (the Seller). It is on the basis of this evidence the trial tribunal held that the Respondent was the lawful buyer of the suit land;

*"Hoja ya nani muuzaji halali na nani mnunuzi halali inachanganuliwa katika kielelezo "A" ambacho kina sahihi ya Rashidi Salumu (Mzee Mchawa) baada ya kuridhia eneo alilotoa zawadi kwa Iddiy Abdallah Vilangweye liuzwe kwa mlalamikaji"*

The appellate tribunal upheld this finding and I have no reason to disturb such findings. Mzee Mchawa being the undisputed original owner passed his title over the suit land to Iddy Abdallah Vilangweye who subsequently thereof passed the same to the respondent. The evidence that Iddy Abdallah Vilangweye possessed good title to pass is abundant on record as herein above reflected.

To the contrary the appellant's evidence apart from the contradictions explained by the trial tribunal on whether or not the appellant bought the

suit land in question, I find that the same is short of giving plausible explanation on how Daudi Rashidi (Mzee Mchawa's son) acquired title over the suit land to pass it to Sada and subsequently to the Appellant.

The appellant in her submission at the hearing of this appeal argued that the said Daudi Rashidi was the one who was being used by his father Mzee Mchawa to sale the plots. Unfortunately, we have no evidence to support such contention. In fact, the appellant did not purchase the suit land from the said Daudi Rashidi. She bought from one Charles who is allegedly the brother of Sada. On whether at the time Daudi Rashidi was selling the suit land to Sada he possessed any authority; the appellant cannot tell because she was not there. Even though the sale agreement between Daudi Rashidi and Sada is speaking by itself that Daudi sold his own piece of land;

*"Mimi Daudi Rashidi nimemuuzia kipande cha shamba langu mimi mwenyewe chenye ukubwa wa robo heka...ndugu Sada Said bila kulazimishwa na mtu yoyote"*

In that regard Daudi Rashidi sold the suit land purporting it to be his own property the fact which is not true. He did not own the suit land as the evidence portrays supra. The elder brother of Daudi Mr. Hussein Rashidi Matibhi in his evidence explained that after the death of their father the said Daudi used to sale the plots without family consent and sometimes sold plots which were already sold by their late father and thereby creating conflicts;

*"Baada ya kufariki mzee kuna bwana mdogo aitwaye Daudi alianza kuuza bila kushirikisha ndugu na aliuza mpaka maeneo ambayo baba alikuwa ameuzi"*



With such evidence it is obvious that Daudi Rashidi possessed no good title over the suit land and therefore he had nothing to pass to Sada. As such the Appellant could not and didn't acquire title on the suit land. I therefore uphold the concurrent findings of the two lower tribunals to the effect that the suit land was lawfully and properly bought by the Respondent from Iddy Abdallah who possessed good title to pass to him.

In the circumstances of what I have explained supra, I find no merit in the instant appeal. The same is hereby dismissed with costs. It is so ordered. Right of appeal to the Court of Appeal subject to the laws governing third appeals is hereby explained to the parties.



**MATUMA**

**JUDGE**

**05/10/2023**

**Order:** Ruling delivered in the presence of the appellant in person and in the absence of the respondent.



**MATUMA**

**JUDGE**

**05/10/2023**