



THE JUDICIARY OF TANZANIA
IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA
(CORAM: HON. AUGUSTINE RWIZILE)

LAND APPEAL NO. 20 OF 2023

JONAS MAYANI COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

JEREMIA KAVYIGI RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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28th of May 2024

Hon. RWIZILE.:

The appellant and the respondent, each claimed to have owned the land in dispute. The appellant claimed to acquire the said land in 1984 after the demise of his father, whereas the respondent claimed to have been given same land in 1973 during Operation Vijiji. The dispute was heard by District Land and Housing Tribunal (DLHT). The judgment was entered for the respondent, the appellant was not satisfied with the decision and has filed this appeal with the following grounds: -

1. That, the trial District Land and Housing Tribunal grossly erred in law and fact when it departed from the framed issues as agreed by both parties but determined the matter by relying on the principle of adverse possession or time barred and without giving reasons contrary to the law. Hence a nullity judgment.
2. That, since the dispute was over the boundaries of the land owned by the appellant and respondent the trial District Land and Housing Tribunal grossly erred in law and fact when it determined the matter in favour of the Respondent without visiting *locus in quo* and without respondent adducing the evidence regarding the specific boundary in question.
3. That, the trial District Land and Housing Tribunal grossly erred in law and fact when it held in favour of the respondent basing on principle of adverse possession while the parties were not afforded chances to address the issue.



It is in record that the appellant acquired the land after the demise of his father in 1984. In 1989, it was cultivated for the last time, and the record shows that the dispute arose in 2020. On the other hand, the respondent is said to have acquired it since Operation Vijiji in 1973 which he subdued then to date. Assuming that, on the side of the respondent, there is no proof of acquiring the land during Operation Vijiji, instead, he acquired it in 1989 and peacefully enjoyed its fruits undisturbed to 2020 when the problem arose. It means he was in actual possession, and that is why the question of adverse possession comes in.

Coming to the 2nd and 4th grounds, the trial tribunal was not bound by any statute to visit the disputed boundaries. Apart from the cited cases in the submissions, the case of **Sikuzani Saidi and another vs Mohamed Roble**, (CAT), Civil Appeal No. 197 of 2018, pages 5-6

"We need to start by stating that, we are mindful of the fact that there is no law which forcefully and mandatory requires the court or tribunal to conduct a visit at the locus in quo, as the same is done at the discretion of the court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during trial..."

In the light of the above, visiting *locus in quo* was at the discretion of the trial tribunal and not the requirement of the law. It had the discretion to do so if it thought fit to do so. A mere anticipation that witnesses may tell lies, is not a concrete reason to visit the *locus in quo*. In the end, I find these grounds without merit. Generally, it is for the foregoing reasons that I find no merit in the appeal. It is therefore, dismissed with costs.

Dated at KIGOMA ZONE this 28th of May 2024.



AUGUSTINE RWIZILE
JUDGE OF THE HIGH COURT

