



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

LAND APPEAL NO. 25 OF 2023

LEXONA CHAKUPEWA COMPLAINANT / APPELLANT / APPLICANT /
PLAINTIFF

VERSUS

EMMANUEL LUGULI NZUBUKILA RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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31st of May 2024

Hon. RWIZILE.:

Land dispute No. 62 of 2022 was filed in the District Land and Housing Tribunal (DLHT) of Kigoma. The appellant and respondent were locked in this litigation for a piece of land measuring about one acre. The land is situated at Mtara village Kolala area in the ward of Muzye in Kigoma region. It is the respondent who successfully claimed his land from the appellant which he alleged was trespassed into. The appellant is aggrieved by the decision of the tribunal, hence this appeal with the following grounds of appeal: -

1. That, the trial District land and Housing Tribunal erred in law by entertaining the claims of the respondent while they were time barred. According to his application he stated that he bought the suit land in 1990 and has started claiming the said land from the respondent in 2020 which is more than 30 years. The appellant has been in use of the said land since the year 2000 without any disturbance from the Respondent.
2. That, the trial district land and housing tribunal erred in law when it entertained this case without joining the necessary parties such as JAMES MHANDO who is said to have sold the suit land to the respondent and SAIDI NDALYUZA (DW2) and JONAS MUYAGA (DW3) who testified that they sold the suit land to the appellant.
3. That, the appellant proved his ownership of the suit land to the required standard.



At the hearing, the appellant was under the services of Mr. Daniel Rumenyela, learned advocate, the respondent was unrepresented.

On the first ground, it was submitted that the dispute was filed out of time as per item 22 of the 1st schedule to the Law of Limitation Act, which requires the claim of land to be filed before the expiry of 12 years. He said, the tribunal held that the land in dispute was abandoned since 1990 and the case was filed in 2020, after an elapse of 30 years, it was therefore time barred.

The 2nd ground is on joinder of parties, he submitted that the sellers ought to be joined which was not done.

It was submitted in respect of the 3rd ground that the case was not proved. He added that the evidence of the respondent is full of contradictions. He pointed out contradictions to be on the size of the land owned by the respondent. It was testified to be 6 acres or 3 acres. In his view, the size of land is not known.

Responding to the grounds of appeal, on the first ground, it was submitted that the land stated in this appeal is different from the land in dispute. He added, if the trial tribunal could visit the premises, it could have observed the same. It was added, even the boundary was not identified. It was argued, the land in dispute, is the land which the appellant occupied and lived peacefully since the year 1990 after purchasing it from James Muhando.

On the second ground it was submitted that, the witnesses who were not called, had nothing to do with respondent's case. It was stated that the respondent had no issue with them, this is why he decided not to join them and that the land in dispute is one acre.

The respondent argued the third ground that the appellant proved his case compared to the respondent's case. His evidence was not contradicted. He finally requested this court to dismiss the appeal.

In a rejoinder, the appellant insisted that the dispute was time barred.

Having considered the rival arguments advanced by the parties and after having examined the record of appeal, the main issue to be considered is whether this appeal has merit.

The 1st ground of appeal is about limitation of instituting a claim for recovery of land. This is provided for as submitted under item 22, to the Law of Limitation Act to be 12 years. Therefore, for this point to succeed it must be proved that 12 years elapsed before any attempt to claim that land is made.

There is evidence as well that the respondent bought the land in 1990 and that the dispute arose in 2020. But there is no proof from the appellant that in 30 years the land was not occupied. The records show the respondent in the year 2012 sold part of his land to six people and at that time, there was no any dispute over the suit land, until in 2020. In this point, the question of adverse possession was invited. But in order to acquire land through adverse possession, cumulatively the following must be proved as formulated by the CAT:

1. *That there had been absence of possession by the true owner through abandonment.*
2. *that the adverse possessor had been in actual possession of the piece of land.*
3. *that the adverse possessor had no color 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 acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it.*
5. *that there was a sufficient animus to dispossess and an animus possidendi;*
6. *that the statutory period, in this case twelve years, had elapsed;*
7. *that there had been no interruption to the adverse possession throughout the aforesaid statutory period;*
and
8. *that the nature of the property was such that, in the light of the foregoing, adverse possession would result*

see the case of **Registered Trustee of Holly Spirit Sisters vs January Kamili Shayo and 136 others**, Civil appeal no. 193 of 2016. This ground has no merit.

On the 2nd ground that the seller was not join, this was after thought, the appellant had a time to rise it at the DLHT during the litigation, he did not do it, and there is no evidence to show that he was blocked to rise this concern. Apart from that a seller also came to testify to that effect. This ground has no merit also.

On the 3rd ground that the case was not proved. Proof in civil case is on the balance of probability. It is on record that the respondent stated he bought the suit land from James Mhando, Pw2 on 2nd May 1990. Pw2 however, said he acquired that land by clearing the bush in 1975 and subdued it, until it was sold to the respondent. The respondent tendered the sale agreement, exhibit P1. It was written by Pw3, who so testified. The evidence by the respondent was supported by other three witnesses. All of them were believed by the tribunal to have told the truth. The tribunal as well visited the land in dispute. It has been its reflection that the appellants witnesses who testified before her hand different evidence when they arrived at the suit land. For instance, the evidence of Dw1 and Dw2 had a conflict on the amount of land sold.

On his part, the appellant said to buy the land from Said Ndadyuza, with no sale agreement but a receipt. When examine, it is receipt for payment of levy and had no indication of proving ownership of land.

Apart from that, Dw2 who said sold land to the appellant in 2000, did not only failure to locate the land at the premises but also did not know the size of the same.

The appellant is said to have bought the land in the year 2000 and 2006. But his witness, Dw6, testified that it is the appellant who used to cultivate the land since 1992.

It is hereby dismissed without costs.

Dated at KIGOMA ZONE this 31st of May 2024.



AUGUSTINE RWIZILE



JUDGE OF THE HIGH COURT

