

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

(LAND DIVISION)

LAND APPEAL NO. 38 OF 2023

(Originating from District Land and Housing Tribunal for Rukwa at Sumbawanga in

Land Application no. 48 of 2023)

DEUS KAZEMBE APPELLANT

VERSUS

LOGATUS KUSULA RESPONDENT

JUDGMENT

MWENEMPAZI, J.

The appellant is aggrieved by the decision of the District Land and Housing Tribunal for Rukwa at Sumbawanga, hereinafter referred to as the trial tribunal, dated 4th August, 2023. In the decision it was decided that the dispute land belongs to the applicant, the respondent herein.

According to the records, the dispute commenced with an application to the Ward Tribunal of Pito Ward where upon hearing parties a decision was made that the property belongs to the Respondent based on the fact that he

started using the same in 1981 by clearing the area once used for grazing. That decision allegedly based on settlement, did not satisfy the applicant hence impugned application.

In the application at the trial tribunal, the respondent was the applicant. He called three witnesses including himself. His case was that the dispute land, the garden, was given to him by his father, who in this case testified as SM2. However, before he was given, the first appellant's father asked to use the farm and started to use it in 1981. In short, he was invited to use by SM2 considering the appellant is a relative. SM2 is Abel Lubusi he testified that the appellant's father was his brother in the clan.

The appellant on his turn testified SU1. He narrated on the time the dispute arose. That it was 2022 and that he has been in possession of the dispute land for 43 years commencing in 1981. The other witness also testified to confirm the testimony by SU1 Deusu Kazembe.

At the conclusion of the trial the Honourable chairperson clearly had an opportunity to receive opinion from the assessors. Who offered their opinion that Deusu Kazembe is the rightful owner basing on the time he had in

possession. And that the land does not belong to the respondent but to his father. He ought to have claimed instead of the respondent.

The trial tribunal chairperson decided in favour of the respondent and in the process he went against the opinion of assessors; Andrea Massima and Daniela Laguna.

In the reasoning by the trial tribunal, in 1981 Deusi Kazembe was on 13 years old. He could not at the time start farming activities in the dispute area. Thus, the claim by SM2 Abel Lubusi that he gave permission to the appellant's father to farm in the area and later the appellant continued to use the land did hold water. The chairman then held that an invitee cannot establish adverse possession against host even if the invitee had made the permanent improvement. He referred the case of **Mukyemalile & Thadeo Vs. Luilanga [1972] HCD4.**

The appellant is aggrieved by the decision of the trial tribunal he has thus appealed against the decision raising seven grounds of appeal. I will not reproduce them herein but in summary the challenge revolves around the points that the argument that the trial tribunal did determine the dispute in absence of assessors as required by law; that it disregarded the fact that the

appellant had been working on the land since 1981, almost 43 years up to the time the respondent claimed the land, that is 2022; and that nothing was pronounced on the improvement made on the farm by planting timber trees (eucalyptus), maize $\frac{3}{4}$ acre beans $\frac{3}{4}$ acres, sisal fence and other small planted trees which are still growing.

Parties proceeded with hearing by way of written submission pursuant to an order of this court on 19/02/2024. According to the record it is not clear whether the appellant and the respondent complied to an order of the court. I say so because the documents filed are pleadings in the form of memorandum of appeal.

The record also shows the appellant on the 6th March, 2024 the date he was supposed to file written submission in chief to support his appeal, he filed a document titled "*Rejoinder to the memorandum of appeal*". In it, he has asked questions as to whether the respondent was right to remain quiet for 43 years looking at the permanent improvement being made by the appellant and at the same time knowing that the appellant is just an invitee to the disputed land. He has also questioned as to whether the appellant was definitely an invitee to the disputed land. He has then explained that he was

given the land by his brother Amando Kazembe who cleared the virgin land as a way of training the root of ownership. He has stated that Amando Kazembe started cultivating the land in 1981.

In general the questions he has posed in search of an answer, I believe so, were supposed to be answered by the evidence tendered in the trial tribunal. I have read the record, the evidence adduced, that was not done.

In my view, the evidence was in a way assuming the reader is knowledgeable of the history and facts of the case. It is very unfortunate that it was very short of details. After the appellant had stated his particulars or profile he is recorded: -

"Mnamo 2022 nilikuwa na mgogoro na SM1 kuhusiana (na) eneo gombewa lililopo Malagano ambao ulimalizika mbele ya Baraza la Kata Mnao 30/05/2022.

Nimeishi kwenye eneo gombewa kwa Zaidi ya miak 43 toka mnamo mwaka 1981. Sina mgogoro na SM1".

During cross – examination:

"Shauri lilianza kwenye baraza la Kata".

On answering questions from the council:

Mr. Ntasime: Sina swal.

Mrs. Leguna: - Nilianzisha eneo gombewa 1981.

- *Ninalima mpaka leo.*
- *Eneo gombewa ni hekari 3*

Sgd:

Chairman

It can be gleaned from the question the appellant has submitted trying to clarify what was not adduced in the trial tribunal and also introducing facts which were not adduced in the trial tribunal such as the story of Amando Kazembe his father. The evidence clearly shows the appellant's father was invited and he was not the owner, which devolved into him as an invitee as well.

In general, the decision of the trial tribunal is in line with the law and there are no faults to entitle me disturb its findings. Under the circumstances, being in the position of the invitee the appellant is not entitled to be the owner based on long use of the land or improvements made. The appeal is thus dismissed for lack of merit. Since the parties were relatives, I see it is

in the interest of justice not to order for cost. Each party to bear his own cost.

It is ordered accordingly.

Dated and delivered this 11th day of June, 2024.


T.M. MWENEMPAZI
JUDGE

Judgment delivered this 11th day of June, 2024 in the judge's chamber in the present of both parties.




T.M. MWENEMPAZI
JUDGE
11/06/2024