

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF SONGEA)

AT SONGEA

LAND APPEAL NO. 57 OF 2023

KARIM A. NCHIMBIAPPELLANT

VERSUS

**MARIAM ALKAAM NCHIMBI (Administratrix of
the estate of the late Alkaam Said Nchimbi)RESPONDENT**

JUDGMENT

Dated: 9th February & 13th March, 2024

KARAYEMAHA, J.

This is an appeal that arises from the decision of the District Land and Housing Tribunal for Songea at Songea (trial tribunal) in Application No. 13 of 2023, in which the respondent's prayer for a declaration that the suit land belongs to the late Alkaam Said Nchimbi (hereinafter the deceased) was granted. At the trial tribunal, the respondent sued the appellant claiming ownership of a piece of land measuring 2.5 acres (suit land) situated at Mtakanini within Msindo Ward in Namtumbo District. It was pleaded by the respondent in the application filed in the trial Tribunal, that the suit land was part of the deceased's estate which he inherited from his father, namely, Amir Namakunguru in 1989. It is

revealed that Amir Namakunguru got that piece of land in 1974 during operation vijiji.

The contention by the respondent was that, the deceased owned the suit land since 1989 undisturbed. In 2006 he cleared the suit land which was by then a forest, built a house and did agricultural activities therein. It was further stated by the respondent that in 2021 after the deceased's death, while the suit land was under the family's care, the appellant trespassed in the same claiming ownership, started cultivating and rented it to different people. Further to that he stopped the deceased's family from using it. That efforts to stop the appellant from trespassing into the suit land were in vain, hence she instituted a suit as alluded to above, claiming the following reliefs:

- "a) a declaration that the suit land lawfully belongs to deceased whose estate is administered by the respondent.*
- a) A declaration that the appellant is the trespasser hence should vacate immediately.*
- b) Payment of general damages.*
- c) Costs of the suit.*
- d) Any other reliefs this tribunal deems fit to grant."*

The respondent's suit was supported by herself as PW1 and two other witnesses, namely, Nesha Awami Nchimbi (PW2) and Francis Xavery Ngonyani (PW3).

The appellant contested the suit in which in his written statement of defence (WSD) lodged at the trial tribunal, he simply put the respondent to strict proof of the contentions. He stated that the suit land has no connection with his total land. Finally, he invited the trial tribunal to visit the *locus in quo* to determine the nature spinning around the dispute.

The appellant's evidence was very brief that the suit land belongs to him and has lived therein for a long time. He maintained that the deceased trespassed in his land but he did not remember the year. He insisted that he has been in the suit land since 1974 till 2021. He also said that Said mistakenly bequeathed his land to the deceased.

The appellant also called Hassan Said Nchimbi (DW2), Iddi Abdulabi Nchimbi, (DW3) and Abas Abdurahim Nchimbi (DW4). Basically, all these witnesses informed the trial tribunal that the appellant is the rightful owner of the suit land. They testified in total that the deceased trespassed in the appellant's land and when he was doing

so, the appellant cautioned him and the two agreed that he would vacate when the appellant needed it.

At the conclusion of the trial, having considered the evidence on record for both sides, the trial tribunal decided in favour of the respondent, hence this appeal by the appellant. The memorandum of appeal contains two grounds of appeal which I find it appropriate to reproduce hereunder:

1. That the Honourable Chairperson erred in law and facts in disregarding the fact the respondent did not produce any documentary evidence to proof ownership (sic) of the late Al-Kaam Said Nchimbi on the disputed property.
2. That the Honourable Chairperson erred in law and fact by deciding in favour of the respondent and declaring the respondent as the lawful owner without any justification or reasons for declaration or decision.

Disposal of the appeal was done through written submissions filed by the parties pursuant to a schedule drawn by the Court on 1st November, 2023. Whereas the appellant fended for himself, Mr. Bernard Mapunda, learned advocate appeared for the respondent. According to

the written submissions, grounds of appeal were argued separately and I shall travel in the same path.

I gather from the appellant's written submission in respect of the first ground of appeal that, the epicenter of his complaint is that, the deceased could not be declared as a rightful owner of the suit land while the respondent failed to produce any documentary evidence to prove that fact. The appellant invited this court to visit the case of **Splendors (T) Limited v. David Raymond D'souza (under irrevocable special power of Attorney by Mary Mushi & Jerry John as the Administrators of Christina S. Mugamba – Deceased) & Jane Philomena Babsa**, Civil Appeal No. 7 of 2020 to underscore the view that when two parties have competing interest over the landed property, a party with certificate will always be taken to be the lawful owner. It is submitted further that the deceased and appellant entered into an oral agreement for the deceased to clear and use suit land but later return the same to the appellant.

It is therefore submitted that since the deceased and the appellant had an oral agreement that the former would use the suit land to protect himself from dangerous animals/insects, the trial chairman could not declare the deceased the rightful owner. The reason for this

assertion, it is argued, is that the respondent failed to prove on the balance of probabilities that the suit land belonged to the deceased. In this regard, it is contended that the appellant is the rightful owner of the suit property because through an oral agreement he gave the suit land to the deceased.

It is thus prayed that the first ground be allowed and the decision of the trial tribunal be quashed and set aside because the trial chairman relied on a mere story without any documentary proof to justify the claim.

Arguing the second ground of appeal, the appellant elaborated much about the principle of adverse possession and its applicability. He argued further that the respondent was illegitimately declared the lawful owner of the suit land basing on the fact that her father used it for agricultural activities. He said that the land was acquired by the appellant during operation vijiji. He held the view that the respondent did not know about this fact that is why she is predicating her claim on the doctrine of adverse possession.

On the counter argument, it is submitted by the respondent that the evidence on her side was very straight and direct that the suit land

belonged to the deceased since 1989 having inherited it from his father. She explained that the deceased's father acquired that land in 1974.

The respondent submitted further that she could not produce any document because the land is unsurveyed and inherited from one person to another. In view thereof, she held the position that practically it was difficult to have documents to prove ownership. She challenged the appellants view on this point and stated that the case of **Splendors (T) Limited v. David Raymond D'souza** (supra) was irrelevant because it dealt with a surveyed piece of land having a certificate of right of occupancy.

Arguing with respect to the second ground of appeal, the respondent milked nothing faulty in the trial tribunal's decision. It was her argument that it was impossible for the appellant to leave the deceased clear the bush in 2006, build a residential house and wait until his demise to claim it. The respondent argues further that by entering into the suit land, clearing and building a residential house, the deceased conduct was a serious and gross trespass which is intolerable in Ngoni society. In the end the respondent urged this court to dismiss the appeal for lack of merit.

I have dispassionately considered the argument by the parties to this appeal in the light of the trial tribunal's record and the grounds of appeal. I should now be in a position to confront the grounds for determination as appearing in the grounds of appeal raised. It is pertinent to bear in mind that in the instant appeal, as the first appellate court, my duty is to analyse and re-evaluate the evidence which was before the trial tribunal and come to my own conclusion on the evidence without overlooking the conclusion of the trial court (see **Pendo Fulgence Nkwenge v Dr. Wahida Shangali**, Civil Appeal No. 368 of 2020 and **Moses Mwakasindile v. Republic**, Criminal Appeal 15 of 2017 [2019] TZCA 275 (30 August 2019) at page 13, TanzLII.

In the 1st ground of appeal, essentially the complaint is that the respondent did not produce any documentary evidence to prove the late Al-Kaam Said Nchimbi's ownership of the suit land but the trial Chairman disregarded that fact. As I address this ground, I must quickly state that the trial chairman is being crucified on baseless grounds. I have cursory gone through the whole evidence on record. Nothing resembles the complaint raised. The issue of producing documents was not the issue before the trial tribunal. That denied the trial Chairman a chance to address it unless he was bringing in extraneous matters.

Assuming that the issue of producing documents was raised. Legally it would fail dejectedly. While it is a trite law that the one who claims ownership must have sufficient evidence to prove, surveyed land is proved by producing the title deed or any other relevant documents. In the opposite proof of the unsurveyed land relies heavily on giving evidence on how one came into ownership of a particular piece of land by proving the way he/she came into possession. It may be by purchase (if there was any writing), inheritance, gift, adverse possession or by clearing of unoccupied bush.

Normally, in proving ownership of the unsurveyed land, the one who alleges must provide a clear description of the boundaries of the land by stating the size and location of the land and the peculiar and permanent features standing on the suit land. In the present case, this was done in compliance with the provisions of Order VII Rule 3 of the *Civil Procedure Code* (Cap. 33 R. E. 2019) which provides that:

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it

Principally, the standard of proof in civil cases is on the balance of probabilities as it was stated in the case of **Godfrey Sayi v. Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil

Appeal No. 114 of 2012 (unreported) in which the Court of Appeal of Tanzania stated that:

"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities."

In this case, although the respondent had no any documentary evidence, she managed to prove that the land in dispute belonged to the deceased, her father, since 1984. The deceased inherited it from his father (Amir Namakunguru) who acquired it in 1974. By so doing, she met the standard of proving her case as articulated under sections 110, 112 and 115 of the *Evidence Act* (supra). On the other hand, the appellant simply testified that the land in dispute belongs to him and lived there for a long time. Combining all the defence evidence, there is no proof where and when the appellant acquired it. Therefore, I find nothing faulty in the trial tribunal's decision. Ultimately, I find this ground of appeal unmeritorious and I dismiss it.

Having discussed the first ground and reached to the conclusion that the respondent proved her case to a required standard, the second ground should not detain me. I say so because there is strong evidence that the suit land belonged to the deceased. It is apparent and I agree

with the respondent's submission that the deceased inherited it from his father in 1989. The unchallenged evidence is clear that the land remained unused until 2006 when the deceased cleared it and built a permanent residential house.

As if that is not enough, the claim that there was an oral agreement between the deceased and the appellant the former to use the land and later return possession to him, has no bearing in the appellant's evidence. It only appears in the evidence of DW2, DW3 and DW4 who were corroborating the appellant's evidence. Unfortunately, they said what the appellant had no knowledge with. The well-known principle is that the purpose of corroboration is not to give validity or credence to evidence which is deficient or incredible but only to confirm or support that which is sufficient, satisfactory and credible. In the case at hand, the evidence of DW2, DW3 and DW4 comes in to give validity or credence to DW1's insufficient evidence. Even if their testimonies were allowed to stand alone, they did not disconnect the deceased with ownership of the disputed land. Their piece of evidence failed completely to associate the appellant with ownership of the suit land.

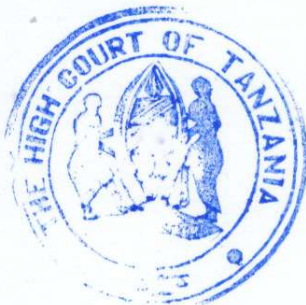
My line of thinking, then, is analogous to the appellant's contention in his submission that the doctrine of adverse passion was

misapplied if at all that happened. Since the deceased was the rightful owner of the land in dispute, there is no way the doctrine would be invoked. I cannot invoke it either. I consider the trial tribunal's holding on this point, honorable and supportable, and I find no merit in the appellant's argument that there were no justifiable grounds for declaring the respondent rightful owner of the land in dispute.

I hold the view, in consequence, that this appeal is barren of fruits. Accordingly, I dismiss it with costs.

It is so ordered.

DATED at SONGEA this 13th March, 2024.




J.M. KARAYEMAHA
JUDGE