

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DODOMA

MISC. LAND CASE APPEAL NO. 11 OF 2008

*(From the Decision of the District Land and Housing
Tribunal of Dodoma District at Dodoma in Land case
Appeal No. 20 of 2007 and Original Ward Tribunal
Ipera Ward in Application No. 37 of 2007)*

LAURENT KISAWIKE APPELLANT
VERSUS
THAMSON MALENDI RESPONDENT

J U D G M E N T

BEFORE: HON. NCHIMBI, J:

The appellant lost in both the Ward Tribunal for Ipera and the District Land and Housing Tribunal for Dodoma in Land Case Appeal No. 20/2007.

The evidence in the trial Tribunal showed that the appellant abandoned the suit land during the time of "operation Vijiji" in the 1970's or early 1980's. He called witnesses namely Benitho Kisarike and Galioni Mkalawa. Both of them stated the appellant

abandoned the disputed shamba and went to stay in another village called Indindamisi. As it can be seen they were not of any aid to his case. Likewise, the Respondent's witnesses; Raphael Mkalawa and Thomas Malende were in the affirmative that they had known the Respondent to be the owner of the disputed Shamba at least since 1980's, because they are neighbours. On account of the above, both Tribunals below held infavour of the Respondent and clearly found that the appellant was barred by effluxion of time, the Statutory Limit for recovery of land being 12 years.

In this appeal the appellant did not make any material submissions. He contended he had witnesses who testified in his favour. He also pontified that the Respondent refused to hand back the disputed shamba to him despite his request. In this context, his main ground of appeal is that there was no proper assessment of the evidence at the trial.

Mr. Wasonga who advocated for the Respondent was emphatic that the appellant's claim cannot succeed for the same reason of limitation like the two tribunals held.

The two Lady and gentleman assessors who assisted me did not find substance in the appeal. I take the same position.

The background given above speaks against the appellant. He filed his complaint in the Ward Tribunal in 2006 while the Respondent was, by then, in peaceful occupation and use of the disputed shamba for over twenty (20) years. If he had any justifiable claim, he is himself to blame for sitting over his rights. He is barred from claiming recovery of the disputed land on account of Limitation [See S. 3(1) part 1 item 22 of the Schedule to the Law of Limitation Act [Cap 89 R.E. 2002]

In the upshot, for the foregoing reasons, I uphold the concurrent decisions of both Tribunals below.

Appeal dismissed with costs.



A. A. NCHIMBI

J U D G E

Date: 19th March, 2009

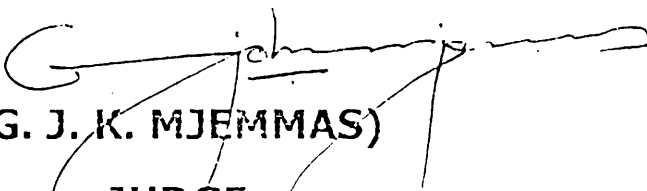
Coram: G. J. K. Mjemmas, J.

Applicant – Absent

Respondent – Absent

C/C: A. Mwaka

Order: Judgment delivered this 19 day of March, 2009 in the absence of the parties.



(G. J. K. MJEMMAS)
JUDGE
19/3/2009