

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT TANGA**

**MISCELLANEOUS LAND APPEAL NO 6 OF 2006**

*(From the Decision of the District Land and Housing Tribunal of  
Tanga District at Tanga in Land Case Appeal No 21/2005 Original ward Tribunal of Mwangoi  
Lushoto ward Application No 8 of 2005)*

**HALID SHEMVAA.....APPELLANT**

**VERSUS**

**NURU KILUA.....RESPONDENT**

---

**JUDGEMENT**

**Before: Bongole,J**

Subsequent to the dismissal of the Appellant's Appeal No 21/2005 of District Land and Housing Tribunal at Tanga which arose from Mwangoi Lushoto Ward application No 8 of 2005 appeals before this court on three (3) grounds namely:-

1. Both the Ward Tribunal and the 1<sup>st</sup> appellate Tribunal erred in law as there was misapprehension on the evidence adduced.
2. That the appellate District Land and Housing Tribunal for Tanga erred in law when it ruled that the action by the appellant against the respondent was time barred.
3. The trial ward Tribunal erred in law when it engaged on conjecture on the evidence adduced before it.

The court ordered the parties to argue this appeal by way of written submissions.

In arguing the 1<sup>st</sup> ground, the appellant submitted that both the Ward Tribunal and the 1<sup>st</sup> appellate Tribunal erred in law as there was misapprehension on the evidence adduced. That the only evidence of the witnesses at the Ward Tribunal show that the respondent had exchanged forms with the appellants sister one Mariam Shemvaa in 1975 when the appellant was living in Tanga. That there is no evidence that the said Mariam Shemvaa had owned the farm she exchanged with the respondent. Furthermore that the Ward Tribunal and the DLHT overlooked the fact that the appellant had earlier successfully filed Civil

Case No 120 of 1981 at Mlalo Primary court and no appeal which was preferred by the respondent.

On the 2<sup>nd</sup> ground of appeal, he averred that the cause of action in the matter accrued in 1975. That it is on record that the appellant started pursuing the matter in 1981 at Mlalo Primary Court in civil Case No 120/1981 that is merely 6 years after the cause of action arose. So he argued that the computation by the district Land and Housing Tribunal on time limitation was erroneous.

On ground No 3, he reiterated what he argued in ground no one. He therefore prayed that the appeal be allowed and the said farm be restored to the appellant.

In response, the respondent argued that the evidence before the Ward Tribunal proved his case. That the owner of the suit plot was the late Mariam shemvaa who is the sister of the appellant. That it was in 1975 when the owner of the suit plot Mariam exchanged the said suit plot to the respondent on "quid pro quo" basis. That the prescribed period within which one can sue for recovery of possession of land is 12 years.

That the exchange of the farm was in 1975 and to date the respondent is still cultivating it and so the appellant cannot at present claim to be the owner of the said farm.

Furthermore that the appellant at the lower Tribunal had not raise the issue that the matter started at Mlalo Primary Court in 1981.

The decision arrived in by the Mwangoi Ward Tribunal and the District Land and Housing Tribunal was from the evidence adduced during trial. It was on the 24<sup>th</sup> August, 2005 when the appellant testified before the Ward Tribunal. He categorically stated to have known the transaction of exchange of his farm by his sister and the respondent in 1980 when he returned from Tanga.

That his sister died in 2001. He said to have followed the respondent and demanded the farm from him where in the year 2004 the respondent informed him that he does not own his farm.


The appellant in his testimony never mention if he had a case involving his sister Mariam Shemvaa in respect of the said farm. Further, he never tendered any court proceedings and Judgment of Mlalo Primary court to proof his assertion he raised in the submission in support of

grounds of appeal. I find his arguments to be afterthought because he failed to proof his case on a balance of probability during trial.

It is crystal clear that the respondent has been cultivating the said farm since 1975 up to the date the appellant filed the dispute i.e on 24/8/2005. It is almost 30 years the respondent has been enjoying uninterrupted occupation. Thus, the Ward Tribunal's findings that the matter before it was time barred and as was correctly decided by the DLHT must be blessed.

It is from the a foregoing reasons that I find the appellant's appeal unmeritorious and accordingly I dismiss it with costs.

Appeal is dismissed with costs.




S.B. Bongole

JUDGE

25/07/2012

**Order:** The record be forwarded to the District Registrar at Tanga zone for delivering this Judgment upon notifying the parties on the date of Judgment.



S.B. Bongole

**JUDGE**

**25/07/2012**

DATE: 29/10/2012

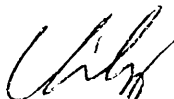
CORAM – P.C. MKEHA – DR.

APPELLANT:- Present

RESPONDENT: Present

C/C Sarah

**Court:-** Judgment is read over to the parties on this 29<sup>th</sup> day of October, 2012.

  
**P.C. MKEHA – DR.**  
**29/10/2012**