

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 84 OF 2008

**(From the Decision of the District Land and Housing Tribunal of Mwanza at
Mwanza in Land Case Appeal No. 136B of 2007 and Original Ward Tribunal of
Misungwi Ward in Application No. 9 of 2007)**

JUMA MACHEMBA APPELLANT

VERSUS

NG'WENG'WETA NKUNULA RESPONDENTS

JUDGMENT

MWAMBEGELE, J.:


This is a second appeal. The Appellant lost in both the Ward Tribunal of Misungwi (henceforth the trial Tribunal) and the Regional Tribunal of Mwanza (henceforth the appellate Tribunal). The ground on which both Tribunals dismissed the Appellant's case was that the respondent has been in an uninterrupted occupation of the disputed land for more than twelve years.



The facts of this case in brief are as follows. The parties to this suit are blood relatives. The Appellant is an uncle of the Respondent. At the centre of controversy between them is a parcel of land situate at Mbela 'B' hamlet in Misungwi Village. The Respondent has been living with the Appellant's family since childhood and has been using the disputed land. At one moment, the Appellant divided the land among his sons and the Respondent was included in the said division. Out of that, the Respondent got the disputed land. That is when this dispute arose. The Respondent successfully sued the Appellant in the trial Tribunal. Dissatisfied, the Appellant appealed to the appellate tribunal against the decision of the trial Tribunal. He lost the appeal.

The appeal was argued *ex parte* before me on 25.10.2012. One Kurwa Nungu, holder of Power of Attorney argued the appeal on behalf of the Appellant. He prayed to rely on what is stated in the Petition of Appeal but added that the Respondent is not a son of the Appellant. He is his grandson; a distant grandson, he insisted.

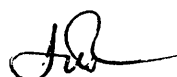
Having perused the entire record of this case, I am satisfied that the appellate Tribunal was correct to arrive at the decision as it did. There was ample

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evidence at the trial to the effect that the Respondent has been using the disputed land for more than twelve years. There is also evidence that the Respondent was given land by the Appellant and there was an agreement to that effect and the same was reduced into writing. This document reads:

*"YAH: KUWEKEANA MUAFAKA KATI YA
NWENWETWA NKUNULA NA JUMA MACHEMBA
Husika na somo hapo juu. Chajieleza kuwa Ndg.
Juma Machemba amempa eneo la kujenga Ndg
Nwenwetwa Nkunula Kitongaji Mbela B eneo
alilokuwa akiishi zamani kapewa sehemu ya kujenga
karibu na kaburi pembeni. Makubaliano haya
yamefanyinka mbele ya ofisi ya mtendaji wa kijiji".*

The document is dated 11.06.2006 and is witnessed by nine members who endorsed their signatures against their names. The above document corroborates the Respondent's testimony to the effect that the Appellant has been using the disputed land and in 2006 he divided his land to the Respondent and other members of his family; his sons. The exercise went on peacefully after which all participants took a meal together at the Respondent's residence. After a week or after the distribution of the land, the



Appellant's sons came to sale the land allocated to him by the distribution exercise. His testimony at the trial was supported by three witnesses he fielded to support his case. Above all, the trial Tribunal visited the locus *in quo* and questioned neighbours in respect of the disputed land. After this visit the trial Tribunal reduced into writing as to what transpired. The proceedings of the Ward Tribunal have this relevant note:

"4.1.2 Mke, mtoto na mjukukuu kuzikwa katika shamba la mlalamikiwa kunaonesha udugu, ukaribu na mahusiano mazuri yaliyokuwepo wakati ule

4.1.3 mlalamikaji kupanda miti ya aina mbalimbali na ya kisasa kwa kipindi kirefu bila kulalamikiwa wala kupigiwa kele

4.1.5 maelezo ya mtu aliyeishi kwa miaka mingi (Mashauri Nghwenge) yanatoa picha halisi ya jinsi gani mlalamikaji na mlalamikiwa walivyo na uhusiano wa karibu sana. Isitoshe maelezo haya hayakupingwa na mlalamikiwa hata kwa njia ya maswali"

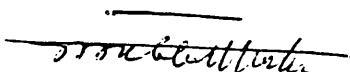
Indeed the evidence in totality in the record before me which I have read between the lines, sufficiently establishes that the Respondent is the lawful



owner of the disputed premises. It seems to me justice will prosper if I decide in favour of the Respondent. I do not see anywhere to fault the decisions of both tribunals as a result of which I endorse the decision to the District Land and Housing Tribunal.

In the result, this appeal is dismissed. In view of the fact that the Respondent did not defend this appeal, and in further view of the fact that the parties to this appeal are blood relatives, I make no order as to costs.

DATED at MWANZA this 1st day of November, 2012


J. C. M. MWAMBEGELE
JUDGE