

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MWANZA

MISC. LAND CASE APPEAL NO. 01 OF 2010

**(From the decision of the District Land and Housing Tribunal
of Tarime District at Musoma in Land Case Appeal No. 52 of 2008
and original Ward Tribunal of Nyamagoro Ward in Application
No. 21 of 2008)**

ESTHER ODEMBA APPELLANT

VERSUS

ONGOSO MWITA RESPONDENT

JUDGMENT

MWAKIPESILE, J.

This is a land case it originated from Ward Tribunal Nyamagoro Rorya where the decision was in favour of the appellant Ester Odemba who was the defendant. At appeal at the District Land and Housing Tribunal the decision of the Ward Tribunal was set aside, the appeal was allowed, from this decision the appellant Ester Odemba appeals to this court, raising the following grounds:-

1. That during operation Vijiji the land and plots was handed over to village council;
2. The village council re allocated the plots to residents of the village.
3. The Nyang'ombe village was registered under Reg. No. MR/KIT 143 of 20/11/1978 (Ref. Village Registration Act, 1964) and it has power to allocate the piece of land.

4. The disputed land was occupied by Odemba who left to Buryri and hand over the land to village government in 1982, then after the land was reallocated to five residents;

- (i) Odundo Obwaga
- (ii) Mangira Makori
- (iii) Nyagabo Marwa
- (iv) Ngogesa Busubi
- (v) Ester Odemba

5. The defendant had expand the boundaries illegally about 40 metres and had removed the planted "Mabingobingo tingo".

6. The trial Tribunal rejected to visit the land in dispute.

Both parties were present at hearing of the appeal, the appellant submits that her evidence was not considered, she was allocated the shamba in dispute in 1983 by Nyamagoro Ward and Nyangombe village including other persons. The respondent had trespassed to her land and had planted crops, we prays for appeal to be allowed.

Responding to appellants submission the respondent replied that his father occupied the land in dispute in 1945, before operation vijiji it was occupied by their family his father died in 1966, in 1984 the land in dispute was reallocate to him and he developed by plaiting banana, mango, orange, timber, coconut and lemon trees.

The ten cell leader Makoli Msama confirmed the land in dispute to be his property.

Having gone through both parties submissions, it is my considered view that the Chairman of the District Land and Housing Tribunal erred in law in setting aside the decision of the Ward Tribunal on the following reasons:-

First: It has been stated by the respondent that in 1945 his father Ongoso Mwita occupied the land in dispute and his father died in 1966, in 1970 Augustino Odemba was allocated for farming; in 1984 he started to develop, which prove that about 22 years the land in dispute was abandon by the respondents family.

The act of abandoning the land gives right of ownership to another person because it belongs to no one, then she acquires a lawful title.

Secondly: The witness of the complainant at Ward Tribunal named John Kabata testified clearly that he was appointed as a Chairman in 1974 where by the land in dispute was nationalized, the village possessed it, this is a witness who proved that the land in dispute was no longer occupied by the respondent family since 1974.

Thirdly: Time limit under Rule 22 part I colum I of the limitation Act Cap. 89 R.E. 2002.

The appellant was allocated the land in dispute in 1983, it is about twenty five years she is occupying the alleged land.

Part I column I, Rule 22 of the Limitation Act, limits the respondent/complainant to file recovery of the land in dispute it is more than 12 years which is required the law.

Lastly: The evidence of the witness Odudo Obwanga who was among the persons who was allocate the land in 1983 proved that the appellant Ester Odemba was one of them who was allocate the land.

Therefore, for the above started reasons the District Land and Housing Tribunal judgment is set aside, the Ward Tribunal decision is uphold and appeal allowed; it is hereby ordered accordingly.

Sgd: G.K. Mwakipesile
Judge
06/08/2012

Date:- 25/09/2012

Coram:- Hon. I. Arufani – DR

Appellant:- Present in person

Respondent:- Present in person

Bench Clerk:- Leonard Tibinula – RA

Court:- Judgment delivered today 25th day of September, 2012 in the presence of both parties in person and right of appeal is fully explained to the parties.



I. Arufani
DISTRICT REGISTRAR
25/09/2012

Respondent:- I am no satisfied with the decision of the Court.



I. ARUFANI
DISTRICT REGISTRAR

AT MWANZA
25/09/2012