

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 5 OF 2012

(From the decision of the District Land and Housing Tribunal
of Njombe District at Njombe in Land Case Appeal No. 6 of
2011 and Original Ward Tribunal of Mahongole Ward in
Application No. 31 of 2010)

CHERESTINO KIDADULA APPELLANT

VERSUS

AULALIA KIHAGA RESPONDENT

(Date of last Order 6.11.2012

Date of Judgement 7.12.2012)

JUDGEMENT

KIHIO, J.,

This is a second appeal. The appellant, Cherestino Kidadula unsuccessfully sued the respondent, Aulalia Kihaga at Mahongole Ward Tribunal over a piece of land.

The appellant appealed to the District Land and Housing Tribunal but his appeal was unsuccessful.

Undaunted, he came to this court in this appeal.

The appellant told the Ward Tribunal that the respondent has sent her children, Edger Mgihilwa and Philimon Mgihilwa to trespass into his land. He further told the Ward Tribunal that his disputed land was trespassed on 15.4.2010. He said that he had cultivated the disputed land for thirty years. In cross-examination by the respondent he stated that he was given the disputed land by his parents. In cross-examination by the Ward Tribunal member, Albelito Mkuye, he explained that he started to cultivate the disputed land when he was fifteen years old and when he was under his parents care. He went on to explain that his father passed away five years ago and that the said land was also belonging to his (appellant's) mother.

John Madunda (PW.2) simply told the Ward Tribunal that he knew that there was a dispute over land between the appellant and the respondent. In cross-examination by the Ward Tribunal member, Fexon Mkiuza, he said that the disputed land was belonging to the appellant. He went on to say that there were sugar canes in the disputed land.

Andrea Ngelengele (PW.3) told the Ward Tribunal that his mother's land bordered the land belonging to the appellant's mother and after his (PW.3's) mother's death he occupied his

(PW.3's) mother's land.

The respondent told the Ward Tribunal that the disputed land is belonging to her and the appellant was the one who trespassed into her land. It was in her evidence that the dispute between her and the appellant was settled at the Village Council and Ward Tribunal where she was declared the lawful owner of the disputed land. In cross-examination by the Ward Tribunal member, Albelito Mkuye, she said that there were a "*pagale*", bamboo plants, wattle trees and a grave at her disputed land.

Gemenzi Ngelengele (DW.2) told the Ward Tribunal that the respondent was given the disputed land by his (DW.2's) father, Mpangage Ngelengele. He further told the Ward Tribunal that his father gave another land to the appellant's father, Gabriel Kidadula. He said that the appellant trespassed into the respondent's disputed land.

The Ward Tribunal found that the exhibits stated by the respondent were seen at the disputed land and so from the evidence adduced the evidence on the respondent's side was heavier than that on the appellant's side. It therefore found that the respondent was the lawful owner of the disputed land.

The appellant raised four grounds of appeal in his

Petition of Appeal. The four grounds of appeal are:-

1. The learned District Land and Housing Tribunal erred in law and fact by forbidding the appellant to submit his document solidifying his ownership over the disputed suit premises.
2. That the learned District Land and Housing Tribunal erred in law and fact by scorning to visit the locus in quo as pleaded for sake of justice.
3. That the learned District Land and Housing Tribunal erred in law by going against the wise assessors who both decided in favour of the appellant after scrutinizing the weight of the evidence.
4. That the learned District Land and Housing Tribunal erred in law by not considering the doctrine of adverse possession.

The parties appear in person.

The appellant submitted that he was the lawful owner of the disputed land because he occupied the disputed land for almost thirty years. He further submitted that the respondent sent her children to trespass into his land. He contended that

the Ward Tribunal did not take into consideration his evidence which was heavier than that on the respondent's side.

On the other hand, the respondent submitted that there is no truth that the appellant occupied the disputed land for almost thirty years. She further submitted that the appellant trespassed into her disputed land. She contended that the disputed land is belonging to her.

The main issue in this appeal is whether the appellant is the lawful owner of the disputed land or not.

The law is clear that the person whose evidence is heavier than that of the other is the one who must win (See the cases of **Hemedi Said V. Mohamed Mbilu** (1984) T.L.R. 113 and **Gaudence Mgoveke V. Augustino Chussi**, Misc. Land Case Appeal No. 1 of 2007, High Court Iringa registry (unreported)).

According to the evidence of the appellant and his witness, John Madunda (PW.2) the disputed land was and still is belonging to the appellant. In cross-examination, the appellant gave testimony that it was five years when his father passed away to the time when he gave testimony in the Ward Tribunal and that the said land was belonging to his (appellant's) mother. The appellant's witness, Andrea

Ngelengele (PW.3) boldly told the Ward Tribunal that his (PW.3's) mother's land bordered the land belonging to the appellant's mother and after his (appellant's) mother's death he (appellant) occupied his (PW.3's) mother's land. The evidence of PW.2 showed further that there were sugar canes only in the appellant's disputed land.

The respondent's evidence was supported by the evidence of Gemenzi Ngelengele (DW.2) to the effect that the disputed land is belonging to the respondent. It was in the respondent's evidence that there are "*a pagale*", bamboo plants, wattle trees and a grave at her (respondent's) disputed land. According to the evidence of DW.2 the respondent was given the disputed land by his (DW.2's) father Mpangaye Ngelengele and the appellant trespassed into the respondent's disputed land.

From the evidence adduced, it was the finding of the District Land and Housing Tribunal and the Ward Tribunal that the evidence on the respondent's side was heavier than the evidence on the appellant's side that the respondent is the lawful owner of the disputed land.

On my evaluation of the evidence I find that the evidence on the respondent's side was heavier than the evidence on the appellant's side to the effect that the respondent is the lawful owner of the disputed land.