

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT TANGA  
MISCELLANEOUS LAND APPEAL NO. 21 OF 2010

(From the Decision of the District Land and Housing Tribunal of  
Korogwe District at Korogwe in Appeal No. 25 of 2010 and Original  
Ward Tribunal of Jaila Ward in Application No. 3 of 2010)

JABIRI HASSANI MAGWADU ----- APPELLANT  
VERSUS

OMARI SALEHE ----- RESPONDENT

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JUDGMENT

**NDIKA, J:**

This appeal originates from the Jaila Ward Tribunal (to be referred to as "the trial tribunal") in Kilindi District. Before that tribunal, the respondent, Omari Salehe, successfully sued the appellant, Jabiri Hassan Magwadu, for ownership and possession of a farmland measuring about 100 acres.

The background to the dispute is briefly as follows: sometime in 1969 the appellant obtained a licence from one Selemani Sahungilo, the respondent's father, to take possession and cultivate his fallow land. He cleared and tilled it since then. In 2002 one Asha Nassoro, the respondent's sister and daughter of the said Selemani Sahungilo, sold to the appellant a 20-acre land, which belonged to the Sahungilo family for a consideration on TZS 80,000.00. In 2009, Selemani Sahungilo died whereupon the respondent claimed repossession of the land from the

appellant. It seems the appellant claimed ownership of the 20-acre land in addition to the licensed farmland, which was presumably measuring 100 acres.

In its decision, the trial tribunal resolved that the appellant was entitled to no more than the 20-acre land he bought from Asha Nassoro and that the rest of the farmland remain in the ownership of the respondent's family.

On appeal, the Korogwe District Land and Housing Tribunal (henceforth "the appellate tribunal") dismissed the appeal for lack of merits. Being dissatisfied, the appellant preferred this appeal, upon nine grounds of appeal, which in essence challenge the finding of the two tribunals that he was a trespasser to the 100-acre farmland, which he had used for over 41 years.

At the hearing of the appeal, the appellant claimed that he owned the 100-acre property jointly with his children. He denied that he was entitled to no more than 20 acres of land he bought from Asha Nassoro. On his part, the respondent had nothing much to say except insisting that the appeal had no merit as the land in dispute belonged to his family.

Having examined the entire record, I am satisfied with the finding of the trial tribunal and the appellate tribunal that the appellant was entitled to no more than the 20-acre land that he bought. It is evident that his evidence did not establish that the said Selemani Sahungilo transferred to him his title to the 100-acre property, as an outright gift, when he allowed him to occupy and cultivate it in 1969. His evidence did not challenge the respondent's case that he held that land as a mere licensee. Unmistakably, occupation of land as a licensee cannot be held to have established a permanent interest in or title to the land (see *e.g.*, *Meso s/o Mwakatobe v Lijumbete s/o Kasyama*

(1967) HCD n.437; see also *Michael v Msario* (1971) HCD n.17 in which Kwikima Ag. J., held with approval the reasoning of Platt, J., in *Mkakofia Meriananga v Asha Ndisia* (1969) HCD n.204 that prolonged occupation of land by a licensee does not vest title in the occupier unless he had taken steps to deal with the land against the interest of the owner).

For the above reasons, I find no merit in all nine grounds of appeal filed by the appellant. Accordingly, I dismiss the entire appeal with costs.



G.A.M. NDIKA

JUDGE

10<sup>TH</sup> JULY 2013

Court: Delivered in the presence of the appellant and the respondent.

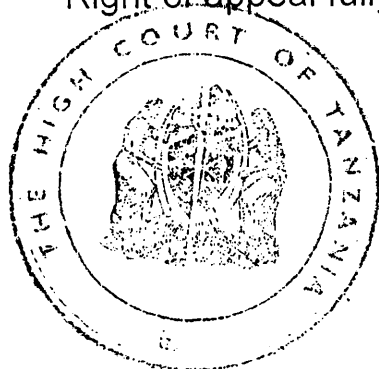


G.A.M. NDIKA

JUDGE

10<sup>TH</sup> JULY 2013

Right of appeal fully explained.



G.A.M. NDIKA

JUDGE

10<sup>TH</sup> JULY 2013