

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT TANGA**

**LAND CASE APPEAL NO 6 OF 2013**

**(From the Decision of the District Land and Housing Tribunal of  
TANGA District at TANGA in Land Case No 138 of 2009)**

**ALLY SHABANI.....APPELLANT**

**VERSUS**

**MHUNGE MADUNDA(ADMINISTRATOR OF ESTATE OF SHAIYA G.  
MADUNDA).....RESPONDENT**

**JUDGMENT**

**H. KALOMBOLA, JUDGE**

The appellant being aggrieved by the decision of the District Land and Housing Tribunal for Tanga in Application No 138/2009, is before this court for appeal, raising the following grounds:-

1. That on the preponderance of the evidence adduced at the trial the learned chairman erred in law and fact by not finding that the evidence adduced sufficiently established that the appellant rightfully owns the 3 ½ acre piece of land in dispute.
2. That the learned chairman erred in law and fact by holding that the granting of the land in dispute to the appellant was a nullity.

3. That without prejudice to the second ground of appeal the learned chairman erred in law and fact by not holding that even without exhibit "1" the rest of the appellant's evidence established that the appellant was lawfully granted the land in dispute.

Both parties enjoyed legal service, appellant being represented by Mr. Akaro and respondent by Mr. Mramba.

Mr. Akaro argued the first ground that the tribunal erred in holding that the appellant was not a rightful owner of the suit land. That the evidence of the appellants was heavier than that of the respondent.

On the second ground he submitted that the document which was tendered by the appellant did not require consideration as it did not create legal obligation as the transaction was a mere gift.

As regard to the third ground, Mr. Akaro contended that even without the said document, there is ample evidence that the appellant was given the land.

Mr. Mramba replied that the appellant did not complain for seventeen years and that witness before the trial tribunal talked about boundaries and not measurements.

On the second ground, the counsel submitted the same has no substance.

Going by the submissions and the entire record, I find the Tribunal correctly held the respondent rightful owner of the suit plot.

It is in the record that respondent's father bought the land from one Mwalimu Mohamed Mfaume on 8/7/1991 and he has been in occupation of the same for all those years until in 2008 when the appellant invaded it and claim ownership. The appellant claimed to have been given the land in 1990, but since 1991 when the respondent father bought it no one interfered him until in 2008, this means the appellant had abandoned the suit land for more than 17 years, therefore the principle of adverse possession applied to the respondent. It is unfair to disturb the respondent who have been occupying the land for more than 17 years. Thus, the principle of adverse possession as established in the case of NASSOR UHADI VRS MUSSA KARUGE (1982) TLR 302 could be the justification for the respondent to be declared lawful owner of suit land.

In the premises, I find the three grounds of appeal without merit, I accordingly dismiss the appeal with costs.

It is ordered.



**H. KALOMBOLA, JUDGE**

**11/7/2014**