

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPEAL NO 3 OF 2018

*(From the decision of the District Land and Housing Tribunal of Morogoro in
Land case Appeal No. 103 of 2017 and original Ward Tribunal of Matuli Ward in
Application No. 114 of 2017)*

**RAMADHANI MAKWEGA..... APPELLANT
VERSUS
THERESIA M. MSHUZA.....RESPONDENT**

Date of last order: 10/07/2018

Date of Judgment: 07/08/2018

JUDGMENT

Makuru, J.:

The facts giving rise to this appeal may be briefly stated as follows. The Respondent Theresia M. Mshuza successfully sued the Appellant Ramadhani Makwega in the Ward Tribunal of Matuli. The subject matter is a piece of land which the Respondent alleged to have been trespassed by the Appellant. The Ward Tribunal found the Respondent to be the lawful owner of the disputed land. Aggrieved by the said decision the Appellant appealed to the District Land and Housing Tribunal of Morogoro where he lost again on ground that the Respondent's mother acquired ownership by way of adverse possession. This is now a second appeal. The Appellant has preferred three grounds of appeal.

Basically, the Appellant is challenging the evaluation of evidence by the lower Tribunals. I will therefore consider the evidence on record and

determine as to whether the lower Tribunals correctly evaluated the evidence.

The Respondent's case during trial was based on the evidence that, she inherited the disputed land from her late mother. She also testified to the effect that, her mother was allocated the disputed land during Operation Vijiji.

The Appellant's case on the other hand is based on the evidence that, he owned the disputed land long before Operation Vijiji and he gave the disputed land to his sister (the Respondent's mother) for temporary use. According to him, during Operation Vijiji in the year 1974 he was allocated the same land. It was, therefore, his argument that the Respondent's mother's occupation ceased in 1974 after the allocation by Operation Vijiji.

The first Appellate Tribunal found that, the Respondent's mother is protected by Law of Limitation Act as she occupied the suit land from 1975 to 2010 which is almost 35 years undisturbed. Hence, she is entitled to the disputed land by adverse possession.

I will start by defining the term adverse possession. **Black's Law Dictionary, Eight Edition at Page 59** defines adverse possession to mean:

- 1. The use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open and notorious.*

2. *The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time.*

In the case of **Jackson Reuben Maro Vs Hubert Sebastian** CAT Civil Appeal No. 84 of 2004 (Arusha Registry, unreported) it was stated that:

" In adverse possession there must be an act or conduct on or relating to the property which is inconsistent with the rights of the owner and which is not authorized by the owner."

In the instant case, the record shows that the Respondent mother's stay in the disputed land was authorized by the Appellant as he gave her the said land for temporary use. Therefore, the Respondent's mother was a mere invitee, and it is trite law that an invitee cannot claim adverse possession over the host. This position was established in the case of **Mukyemalila & Thadeo Vs. Luilanga** [1972] HCD 4 where it was held that:-

"An invitee cannot establish adverse possession against host even if the invitee had made the permanent improvement."

Having said all that, I find merits in this appeal and hereby quash and set aside the decisions of the District Land and Housing Tribunal. The appeal is allowed with no order as to costs.



C.W. Makuru
JUDGE
07/08/2018

Court: Judgment delivered in court this 07th day of August, 2018 in the presence of the parties in person. Right of appeal explained.

A handwritten signature in black ink, appearing to be 'C.W. Makuru', written over a circular stamp or seal.

C.W. Makuru

JUDGE

07/08/2018