

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 13 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal of Rukwa at Sumbawanga in Land Appeal No. 31 of 2019 and Land case No. 3 of 2019 from Kate Ward Tribunal)

EVALIST KANONI APPELLANT

VERSUS

AUDIFASI CHENGA RESPONDENT

Date of last Order: 07/12/2020
Date of Judgment: 14/12/2020

JUDGMENT

C.P. MKEHA, J

The present appeal traces its origin from Kate Ward Tribunal before which the appellant sued the respondent for trespass over his (appellant's) land. At the end of trial the trial tribunal held that the disputed land belonged to the appellant. The trial tribunal disbelieved the respondent's story that, his father bought the suitland in 1986 from one old man who was chased away from Nchenje village because of witchcraft beliefs.

Following the trial tribunal's decision, the respondent appealed to the District Land and Housing Tribunal of Rukwa at Sumbawanga. The District Land and

Housing Tribunal reversed the trial tribunal's decision. It held in favour of the respondent for having been in long occupation of the suitland for over twelve years. It was then the appellant's turn to appeal to this court.

During hearing of the appeal the appellant was represented by Ms. Neema Charles learned advocate. The respondent appeared in person. Despite the fact that the learned advocate submitted in respect of six grounds appeal, only the first ground of appeal is considered determinative. That, the Appellate Tribunal erred in law and fact in evaluating evidence on the principle of adverse possession.

It was the learned advocate submission that since when the respondent trespassed over the appellant's land, only four years had elapsed. According to the learned advocate invasion to the appellant's land was done in 2015. The appellant filed his complaint before Kate Ward Tribunal in 2019.

The respondent's reply was that the appellate tribunal correctly analyzed and evaluated evidence on record which is to the effect that, the respondent has been in occupation and use of the disputed land undisturbed for more than twelve (12) years, hence correctly declared the lawful owner.

The only issue for determination is **whether the doctrine of adverse possession was correctly invoked in the circumstances of this case.**

As a matter of principle being in occupation of the disputed land for 12 or more years in only one of many factors to be cumulatively proved by a person seeking to acquire land by adverse possession. The following are the factors:-

- (a) That, there had been absence of possession by the true owner through abandonment;
- (b) That, the adverse possessor had been in actual possession of the piece of land;
- (c) That, the adverse possessor had no colour of right to be there other than his entry and occupation;
- (d) That, the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;
- (e) That, there was a sufficient animus to dispossess and an animus possidendi;
- (f) That, the statutory period, in this case twelve years, had elapsed;
- (g) That, there had been no interruption to the adverse possessor through the aforesaid statutory period and
- (h) That, the nature of the property was such that in light of the foregoing, adverse possession would result.

According to the respondent's own testimony before the trial tribunal, he inherited the suitland from his father, the late Anotory Chenga who bought the land from other person. Therefore, since the respondent testified to have had a right of entry as an heir, he cannot again claim to be the owner of the disputed land through adverse possession. In the absence of cumulative proof of the factors listed hereinabove on part of the respondent, it was unjustifiable for the appellate tribunal to reverse the decision of the Ward Tribunal.

For the foregoing reasons, the District Land and Housing Tribunal's decision and orders are set aside. The decision of the Trial Tribunal is restored. Appeal allowed. I make no orders as to costs.

Dated at **SUMBAWANGA** this 14th day of DECEMBER, 2020.




C.P. MKEHA

JUDGE

14/12/2020

Court: Judgment is delivered in the presence of Ms. Neema Charles for the appellant and the respondent in person.




C.P. MKEHA

JUDGE

14/12/2020

Court: Right of further appeal explained.




C.P. MKEHA

JUDGE

14/12/2020