

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

*(Holden at Ifakara)*

**MISC. LAND APPEALNO. 134 OF 2019**

*(From the decision of the district Land and Housing Tribunal of KILOMBERO District  
at ULANGA in Land Case Appeal no. 236 of 2017)*

**NURU KIFUNDAWILI ..... APPLICANT**

**VERSUS**

**WEMA SALUMU ..... RESPONDENT**

**JUDGMENT ON APPEAL**

**S.M. MAGHIMBI, J:**

This appeal emanates from the decision of the Kilombero/Ulanga District Land and Housing Tribunal at Ifakara in Land Appeal No. 236/2017, an appeal from the decision of the Msolwa Ward Tribunal in Case No. 04/2017. The dispute is on a piece of land situated at Nyange which the appellant alleges to belong to her father and that the Respondent herein is a trespasser, a fact which the respondent vehemently denied all along. The Ward Tribunal was convinced by the appellant's evidence and declared her the lawful owner of the disputed property. Aggrieved, the respondent herein successfully appealed to the District Tribunal hence this second appeal on the following grounds:

1. That the first appellate tribunal erred at law and facts to declare the Respondent to be the owner of the disputed premise while knowing that she was a mere invitee to the disputed premise.

2. That the lower tribunals erred in law and facts for its failure to consider the fact that the Appellant was in a peaceful ownership of the disputed land prior the death of her father Salumu Kifundawili who was the real owner of the disputed land.
3. That the first appellate tribunal erred at law and facts to overturn the decision of the trial ward tribunal in favor of the Respondent whose evidence and testimonies were weaker than that of the Appellant herein.

On those grounds, the Appellant prayed that this appeal is allowed by reversing the decision of the District Tribunal. On the 18<sup>th</sup> day of November, 2020, following a prayer by Mr. Kasungu, learned Counsel representing the appellant, this appeal was disposed by way of written submissions. Mr. Kasungu filed his submissions accordingly while the respondent did not file any reply submissions.

Having considered the grounds of appeal, Mr. Kasungu's submissions in support of the grounds of appeal and the perusal of the records of this appeal, I find that the appellant's complaint is directed on the misapprehension of evidence by the District Tribunal on ground that the respondent is a mere invitee to the said land.

Even in his submissions to support the grounds of appeal, Mr. Kasungu prayed to consolidate the said grounds and submit in support of them together. The substance of his submission was that throughout the proceedings in all the lower tribunals, it is not in dispute that the Land in dispute was previously owned by the Appellant's father who gave the said

land in dispute to the Respondent's husband years ago by solely allowing him to farm over the said land. He argued that these facts were agreed and consistent throughout the trials in the lower tribunals. He argued that in granting the appeal in favor of the Respondent, the Chairman of the District Tribunal's mainly considered the fact that the Respondent was in possession of the land in dispute since 1983 and that the Respondent has been cultivating crops in the said land for more than 30 years. Furthermore, the Chairman's decision relied on an assumption that the Appellant's father disposed off the said land to the Respondent's husband entirely which is something only the late Salumu Kifundawili could prove.

Mr. Kasungu submitted further that scrutinizing the Chairman's reason for the decision above, the Chairman clearly regarded the Respondent herein as an adverse possessor of the land in dispute mainly because of the fact that the Respondent has been in possession of the land in dispute for more than 30 years without disturbance. However, submitted Mr. Kasungu, the Respondent herein can not be regarded as an adverse possessor of the land in dispute and that the chairman erred to decide that possession and occupation of land for a considerable period, in itself, automatically gave ownership to the Respondent. He argued that it is a settled principle of law that a person who occupies someone's land without permission, and the property owner does not exercise his right to recover it within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession. To support this argument, he cited the case of ***Hughes v. Griffin [1969] 1 All ER 460*** where it was held that:

*"On the whole, a person seeking to acquire title to land by adverse possession had to cumulatively prove the following: -*

- 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; that the statutory period, in this case twelve 12 years, had elapsed;*
- f) that there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
- g) that the nature of the property was such that in the light of the foregoing/ adverse possession would result."*

He further substantiated his argument by citing the case of **Registered Trustees of Holy Spirit Sisters Tanzania Vs January Kamili Shayo and others, Civil Appeal No. 193 of 2016** (unreported) where the court of appeal emphasized that adverse possession is occupation inconsistent with and in denial of the true owner of the premises. Applying the above tests to the case at hand, Mr. Kasungu argued that clearly, the

Respondent herein can not be declared the legal owner of the land in dispute just because she was given the said land and has been in occupation of it for more than 30 years. That there is no proof of any sort of disposition over the said land apart from the common ground that initially, the parcel of land in dispute was owned by the Appellant's father who later on gave it to the Respondent's husband for the purpose of cultivating it. He concluded his submissions by praying that this court quashes the decision of the District Land and Housing Tribunal and allow this appeal.

Having considered Mr. Kasungu's submissions and the judgment of the preceding tribunals below, I have noted that as correctly pointed out by Mr. Kasungu, even in her judgment at page 2, the Chairman of the District Tribunal held that during the hearing of the appeal, the appellant (respondent herein) admitted that the land was originally owned by the respondent's (appellant herein) father who gave the land to the then appellant's husband. She then made a finding that the trial tribunal failed to evaluate the evidence that the appellant therein was in possession of the disputed land since 1983 to 2017 and that the respondent therein found the appellant therein in cultivation and was never stopped by the appellant. It was on that basis that the respondent herein was in undisturbed use of the land for more than 30 years that the District Tribunal allowed the appeal declaring the respondent herein the lawful owner of the suitland. The question in controversy is whether from the way the respondent came into possession of the suitland, the undisputed grant

by the appellant's father for cultivation, amounted to an adverse possession.

Defining the doctrine of adverse possession would be of much assistance in reaching a verdict to the present appeal. The doctrine allows a person who is in possession of a piece of land for an uninterrupted given period of time, which according to our law of Limitation (under paragraph 22 of Part I of the First Schedule)Act, Cap. 89 R.E 2002 is twelve years; to actually become the owner of the land if the prescribed period of time; **coupled with other conditions;** lapses. As pointed out, mere uninterrupted possession in itself is not the sole factor for adverse possession; the possession must be subject to the conditions that I will elaborate. In **Civil Appeal No. 84 of 2004, Jackson Reuben Maro Appellant Vs. Hubert Sebastian**, the Court of Appeal sitting in Arusha had this to say:

*"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."*

Therefore in order to succeed in adverse possession, a person claiming adverse possession must also prove that his possession was actual, hostile, open & notorious, exclusive and continuous for the period of the statute of limitations. The occupation and any activities on the land must be visible to others, either the neighbors or a diligent owner and the presence of acts or conducts inconsistent with the rights of the owner.

Coming back to the case at hand, it is an undisputed fact that the land was originally granted to the respondent's husband by the appellant's father

way back in 1983. The appellant's allegation is that the land was only granted for agricultural purposes and there was no evidence that the land was transferred.

Furthermore, I have taken time to peruse the evidence that was adduced by the parties during trial, while the respondent herein was asked questions by the appellant herein, she admitted that the land was given to her husband by the appellant's father. She (respondent herein) also admitted that she did not know whether the said farm was granted for cultivation or transferred to her husband. The respondent also admitted that at the Village Council she alleged that her husband paid for the land but she could not prove the alleged payments. The respondent did not even know the size of the land in dispute. All witnesses testified that the land in dispute belonged to the appellant's father. In the cited case of **Registered Trustees of Holy Spirit Sisters Tanzania Vs January Kamili Shayo and others, Civil Appeal No. 193 of 2016** (unreported) the Court of Appeal held:

*"In the situation at hand, the respondents sought to establish that their right to adverse possession is derived from the original owner in the form of permission or agreement or grant. Such is, so to speak, not adverse possession. Possession could not be adverse if it could be referred to lawful title, such as the present situation which was based on alleged grant. It has always been the law that permissive or consensual occupation is not adverse possession. Adverse possession is occupation inconsistent with and in denial of the true owner of the premises."*

Therefore for one to succeed in adverse possession, the person occupying the land (the respondent herein) must have physical possession and acting in a manner of a property owner by engaging in acts consistent with the property's purpose, acts which must generally be observed by others to be typical of that expected of an owner. The respondent was therefore required to adduce evidence that he was actually conducting activities inconsistent with the rights of the owner. Going through the trial evidence however, it just established that the respondent was continuing with the activities which were the purpose of the grant, cultivation and there was no evidence of any acts inconsistent with the interests or rights of the owner. She cannot therefore be granted ownership on ground of adverse possession because no matter how long she has been using the disputed uninterrupted, she has always remained an invitee to the said land.

From the above findings therefore this appeal is allowed. Since the evidence was sufficient to prove that the respondent's husband was an invitee to the disputed land, then the respondent cannot be granted ownership on the ground of adverse possession. Furthermore, in the absence of evidence that the land was sold to the respondent's husband, it remains the property of the estate of Mzee Kifundawili and the respondent shall immediately hand over vacant possession thereto. The appellant shall have her costs of this appeal.



A handwritten signature in blue ink, appearing to read "S.M. Maghimbi", is written over a horizontal dotted line.

**S.M MAGHIMBI**  
**JUDGE**  
**04/12/2020**