

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND APPEAL NO. 49 OF 2020**

(Arising from Temeke District Land and and Housing Tribunal in Land Application No. 194 of 2017)

**AGNESS BUGINGO.....APPLICANT**

**VERSUS**

**CHIKU MOSHI CHANGA** (As administrator of the  
late MOSHI MUSSA CHANGA).....**RESPONDENT**

Date of Last Order: 24.02.2021  
Date of Judgment: 27.04.2021

**JUDGEMENT**

**V.L. MAKANI, J**

This appeal is by AGNESS BUGINGO. She is appealing against the decision of Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 194 of 2017 (Hon. Amina R Ntibampema, Chairperson).

The Tribunal decided in favour of the respondent herein, that she was the lawful owner of land located at Block 5 Plot No. 3 at Tuangoma, Temeke Municipality (the **suit land**).

The appellant is dissatisfied with the decision of the Tribunal has filed this appeal with the following grounds:

- 1. That the District Tribunal erred in law and fact deciding in fever (sic) of the respondent while respondent was time barred to claim ownership of the disputed land.*
- 2. The District Tribunal erred in law and fact to decide in favour of the respondent without taking into considerate that the government did not follow laws and procedures to seize the land from the appellant.*
- 3. The District Tribunal erred in law and fact to deliver judgment without giving clear conclusion who is a lawful owner of the disputed land.*
- 4. The District Tribunal erred in law and fact to decide the matter without proper evaluation the whole evidence produced by parties to the case.*

The appellant prayed for the decision of the Tribunal to be quashed and the appeal be allowed. And the appellant be declared the lawful owner of the suit land. The appellant also prayed for costs of the appeal and the court below and any other order that the honourable court may deem fit and just.

The appeal was argued by way of written submissions. Ms. Sakina Sinda, Advocate drew and filed submissions on behalf of the appellant and the respondent personally drew and filed her own submissions.

Ms. Sinda said according to the Law of Limitation Act CAP 89 RE 2019 a suit in respect of recovery of land shall be instituted within 12 years.

She said the Tribunal did not consider that the time for filing the suit had elapsed. She said according to the evidence the appellant had been on the suit land cultivating since the year 2000. But it is on 2014 when the respondent started to claim that she was the owner of the suit land which is about 15 years and she filed the suit in court in 2017 which is 18 years. Ms. Sinda said this is contrary to section 3 of the Limitation Act and the First Schedule to the said Act. She said that if at all this was the respondent's land how could she have left the land for so many years and later come to claim it. She cited the case of **Felician Selestine & Thabita Magenge vs. Mashuri Misungwi & 7 Others, Land Appeal No. 26 of 2019 (HC-Mwanza)** (unreported). She said the appellant is entitled to ownership of the suit land under the doctrine of adverse possession. She further cited the case of **Registered Trustees of Holy Spirit Sisters Tanzania vs. January Kamili & 136 Others, Civil Appeal No. 193 of 2016 (CAT-Arusha)** (unreported) which case gave the elements underlying the doctrine of adverse possession.

Regarding the second ground, Ms. Sinda stated that if the suit land was surveyed as alleged, then the appellant ought to have been given notice according to the law. She said Dw2 the ten cell leader of the

area said in cross-examination that the land was seized and surveyed by the government and the process of identifying the original owner was done in the absence of the appellant. She said the appellant was denied her right to compensation. In summary of this ground, she said that the appellant is the lawful owner as she was in the suit land before the survey, the land was re-allocated without notice, and she continued to live on the suit land, build a house and stay on the suit land for more than 15 years without disturbance from the late Moshi Mussa Chang'a or the respondent who is the administrator of the estate of Moshi Mussa Chan'ga.

Arguing the third ground, Ms. Sinda said going through the records there were two respondents that is Regina Thomas (1<sup>st</sup> respondent) and Agness Busingo (the 2<sup>nd</sup> respondent). She however said, the whole proceedings and judgment do not say anything about the whereabouts of the 1<sup>st</sup> respondent and her relevance or irrelevance in the case or whether she has withdrawn, or the case has abated against her or that after the death of Moshi Mussa Chang'a the respondent was appointed administratrix of his estate. It was in 2014 when she made follow up of the properties of the late Moshi Mussa Chan'ga up to the Commissioner for Lands where it showed that Hawa

Omary was the owner of the suit land. Ms. Sinda said there is nowhere in the evidence where it is explained how the land previously owned by Hawa Omary was transferred to the late Moshi Mussa Chan'ga. She said the scenarios leave a lot to be desired and therefore she prayed the court to find that the appellant is the real owner of the disputed land.

As for the last ground Ms. Sinda said the District Tribunal failed to properly evaluate the whole evidence that was produced by the parties in the case and if a proper evaluation had been done then the decision would have been different.

In reply the respondent submitted that she was allocated the suit land by the government through the Ministry of Lands and Housing since 2003. She said she paid all the requisite fees and was granted a Certificate of Title. She said the appellant ought to have produced a document to show that she has been occupying the suit land for such a long time. She said in 2003 the government paid compensation to the appellant hence mere being at the suit land does not justify ownership of the appellant. So, the case was instituted within 12 years. She pointed out that the issue of the matter being time barred

was not raised during trial therefore the allegation is an afterthought and has no justification. She said the case of the **Registered Trustees of Holy Spirit Sisters Tanzania** (supra) is not applicable.

As for the second ground the respondent submitted that since the appellant was aware that the government seized the suit land, if she was aggrieved in the manner in which the government acquired the said land and aggrieved by the payment of compensation then the appellant was supposed to institute a land case for unfair compensation within one year according to the Law of Limitation. She said the since the appellant kept quite then it was presumed, she was satisfied with the entire process. She said the book of Mwalimu Nyerere is not applicable.

Regarding the third and fourth grounds the respondent submitted that the Chairman clearly stated that the respondent was the lawful owner of the suit land in its judgment at page 9. She also submitted that there was proper evaluation of the evidence for instance at page 9 of the judgment the Chairman observed that: *"In measuring the weight of evidence, it is not the number of witnesses that counts most but the quality of evidence."* And the Chairman also said: *"Weighing the*

*evidence on the record it is clear that the applicant managed to prove her right over the suit.”*

The respondent further said the appellant ought to have proved that she is the owner of the suit land as required by section 110,112 and 115 of the Evidence Act CAP 6 RE 2019. She said she proved her case at the required standards. She therefore prayed for the appeal to be dismissed with costs.

In rejoinder Ms. Sinda reiterated her main submissions and emphasized that the suit is time barred and since it is a matter of law it can be raised anytime. She further stated the argument that the appellant knew that the land was reallocated, and the appellant was compensated is not supported by evidence and it is clear that from the respondent and DW2 that the appellant had been on the suit land from 2000. She prayed for the appeal to be allowed with costs.

The main issue for consideration is whether this appeal has merit. And in considering this I have gone through the records of the Tribunal and the submissions by the parties herein. I will determine the appeal according to the grounds raised.

I will consider the first and second grounds together. It is evident from the evidence on record that the area where the suit land is surveyed was located to different people including the appellant's father Moshi Musa Chang'a as a guardian of Shabani Moshi Chang'a and a Certificate of Title No. 64720 (**Exhibit P2**) was given. This was also confirmed by **PW2** Hellen Phillip, the Land Officer from the Ministry of Lands. The appellant does not dispute that there was a survey of the area and her witness **DW2** confirmed this, and he went on stating that after the survey he does not know who was allocated the land by the government. He however said he knows that the appellant was cultivating vegetables at the area, but she left and came back when the survey had already been conducted. The respondent in her evidence said she was the original owner and she further said she was allocated the land by a Land Officer. She nonetheless did not have proof of being the original owner and she did not mention the Land Officer who allocated her the suit land.

It is the trite law in land matters where the land in dispute is a registered land the prima facie evidence to prove ownership is the title deed. According to Section 2 of the Land Registration Act CAP 334 RE 2019 the word "owner" means:



*"in relation to any estate or interests the person for the time being in whose name that estate or interest is registered."*

This position was replicated in the case of **Salum Mateyo Vs. Mohamed Mateyo (1987) TLR 111**. This means, any presentation of a registered interest in land is a prima facie evidence that the person so registered is the lawful owner of the said land. The position was reiterated in the case of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma Civil appeal No. 35 of 2019 (CAT-Mwanza)** where the Court of Appeal stated:

*"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained."*

In view of the above, it is apparent therefore that the Chairman was correct in declaring the respondent the lawful owner of the suit land as she has proof that she was duly registered as the owner of the suit land by way of Certificate of Title. On the other hand, the appellant's evidence was flimsy as she alleged that there was a Land Officer who allocated the suit land to her. However, the said Land Officer was not called as a witness and there is no document to prove the said allocation.

Ms. Sinda also claimed that the appellant had been on the suit land for a long time for more than 15 years. However, the fact that there is a Certificate of Title, the issue of adverse possession cannot stand. In any case, adverse possession entails that there was a previous owner, and the current owner presumes that there is abandonment of the suit land. In the present case, the appellant could not state who was the initial owner and she could not say how she came about the suit land.

Ms. Sinda also claimed that there was no notice to the appellant that a survey would be conducted for purposes of compensation. But the evidence on record by **DW2** is quite obvious that the survey was conducted in the absence of the appellant. In any case, when a survey is conducted the local government (*Serikali ya Mitaa*) is normally involved. And if at all the appellant was owner of the suit land or she was commonly seen at the suit land then *Serikali ya Mitaa* would have noted this and informed the survey team, and a notice would have been issued. Since the appellant was absent and she was not the owner of the suit land then the issue of notice is far-fetched. Subsequently, the first and second grounds of appeal have no merit and they are dismissed.


As for the third ground Ms. Sinda alleged that the Tribunal did not state who was the lawful owner basically because there were two respondents but the whereabouts of the 1<sup>st</sup> respondent Regina Thomas is unknown. I have gone through the records and on 27/03/2018 there was an order by the Tribunal for an ex-parte hearing against the 1<sup>st</sup> respondent. Though this fact was not mentioned in the judgment, but the records are clear that the matter proceeded in her absence. Indeed, it would have been proper for the judgment to state the whereabouts of the 1<sup>st</sup> respondent, but the omission has not prejudiced the appellant in any way. This ground too has no merit and it is dismissed.

The last ground is that the Tribunal failed to evaluate the evidence on record. Undeniably, the reasoning of the judgment by the Chairman is very short but it stated that the respondent is the lawful owner of the suit land on the basis of the evidence which is stronger than that of the appellant. And as I have endeavored to explain hereinabove, I am in agreement that the evidence at the Tribunal by the respondent herein was stronger as illustrated in the case of **Hemed Said vs. Mohamed Mbilu (1984) TLR 113** which case was also cited by the

Chairman. In the result therefore there was proper evaluation of the evidence.

For the foregoing, I find no reason to fault the decision of the Tribunal. Subsequently, the appeal is dismissed with costs for want of merit.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**27/04/2021**