

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT SUMBAWANGA  
MISC. LAND APPEAL NO. 28 OF 2020**

*(Arising from Land Appeal No. 86 of 2019 in the District Land and Housing Tribunal of Rukwa District originating from the decision of Ilemba Ward Tribunal in Madai Na. 14 of 2019)*

**ASIKILIDA CHAMBANENJE ..... APPELLANT**

**VERSUS**

**FROLENCE SOKOTA ..... RESPONDENT**

*Date of Last Order : 19/04/2021*

*Date of Judgment : 16/08/2021*

**JUDGMENT**

**C.P. MKEHA J;**

The District Land and Housing Tribunal of Rukwa District (the appellate Tribunal) delivered its decision that overturned the decision of the trial Ward Tribunal. Before the trial tribunal, there was a land case that was instigated by Asikilida Mwanandenje against Frolens Sokota. Whether these two are the same parties before the trial tribunal, the same will be answered in due course.

As it can be gathered from the records of proceedings, Asikilida Mwanandenje successfully sued the said Frolens Sokota over a piece of land measuring two acres. In her testimony during trial, she said that the suit land

belonged to her. Between 2010 and 2012 she had to spend time in custody. During that period, she left the suit land to Nodi, a farmworker. She was, on her returning from the custody, surprised to find Frolens Sokota, the owner of the suit land. She was not pleased when she knew that it was Nodi who sold it to Frolens Sokota. She had mentioned the following people as neighbors; Kanchule, Kibalale, Baba Kachanga and Saluhanga. John Kasochela was called as a witness for Asikilida Mwanandenje who said that, the suit land belonged to Mr. Mkuto, who was in custody. The witness approached Mr. Mkuto when he was in custody in his attempt to pursue Mr. Mkuto to sale it to him. At that time the suit land was left in the control of a farmworker one Nodi. The move proved futile and eventually it became apparent to him that Frolens Sokota was the owner after the later purchased it from Nodi. It was Frolens Sokota who told John Kasochela about the said sale. John Kasochela, when he was under cross examination by Frolence Sokota told the trial tribunal that, the said Frolence Sokota cultivated the suit land since 2015 which was almost a period of four years. According to this witness the neighbors of the suit land were; Masha, Kapera, Mbalamwezi Patrick and Machete.

On the other side, Frolens Sokota told the trial tribunal that, he bought the suit land from his uncle one Anodi since 2005. The said Anodi was the owner of the said suit land since 2001 after he was granted by the village government. He

became the owner since then and no one came forward ever since claiming right over it. In his further testimony, during cross examination by Asikilida Mwanandenje, it was Kibalale who was the chairperson during the sale. Joseph Kalimanzila was called as a witness for Frolens Sokota during trial. He told the trial tribunal the same facts as those that were given by the said Frolens Sokota. He, during cross examination, testified that, he witnessed the sale of the suit land between Anoldi and Sokota. Enock Mbalamwezi gave testimony to the effect that, the suit land belonged to Anodi who, in 2005, sold it to Frolensi. He told the trial tribunal that he was a neighbor of Anodi and later on of Frolensi. He also told the trial tribunal that he witnessed the sale between the duo at a price of Tshs. 370,000/=. Modest Kibalale also was called as a witness on the side of Frolens Sokota. The witness told the trial tribunal that, the suit belonged to Anod since 2001. The said Modest testified as a neighbor. From the testimony of Modest, who was also a Hamlet (**Kitongoji**) chairperson, the suit land was sold to Frolens Sokota by Anodi at a price of Tshs. 370,000/=. The said Modest witnessed the said sale.

On the basis of the above said evidence, the trial tribunal reached a decision in the favour of Asikilida Mwanandenje. The reason being that the failure to summon the said Anod as a witness weakens Frolens Sokota's evidence. On appeal before the appellate tribunal, where the proceedings show

that, it was Frolence Sokota against Asikilida Chambanenje, the trial tribunal's decision was reversed. The appellate tribunal had invoked the principle of adverse possession. It counted a period between the year 2005 when the said suit land was sold to the appellant to when the complaint was instituted which was 2019. It arrived at a conclusion that a total of 14 years lapsed.

As I have said, before this court, Asikilida Chambanenje and Frolence Sokota appeared as the appellant and respondent, respectively. As the duo appeared and none contested their true identities I take as the same parties who prosecuted the case in respect of the suit land from the trial tribunal to this court. The parties at the appeal stage ought to have been Asikilida Mwanandenje and Frolens Sokota. Nevertheless, I have decided to overlook the anomaly and proceed dealing with merits of the appeal. See the case of **Chang Qing International Investment Limited v. TOL Gas Limited**, Civil Application No. 292 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported).

The petition of appeal filed in this court contained two grounds, as can be summarized herein below: -

1. The appellate tribunal was not justified when it invoked a principle of adverse possession whereas the appellant came aware of encroachment over her land in 2012 when she was free from the custody.

2. The appellate tribunal was not justified in declaring the respondent a rightful owner in the absence of proof to that effect.

Both parties, in this contentious appeal following a respondent's reply, appeared in their personal capacities, unrepresented. The appeal was argued through written submissions.

In her brief submission, the appellant argued that, the disposition of her land was illegal as it was done without his permission at the time when she was in custody. That was in the year 2014. Thus, she urged this Court to disapply the principle of adverse possession in the present facts. She was of the argument that, Anod was necessary party in this case and ought to have been joined as defendant. She, apart from a prayer that costs to follow event, also urged this Court to allow her appeal by nullifying the decision of the appellate tribunal. She, in support of the argument, cited the case of **Rehema Farid (the administrator of the estate of the late Farid B. Magari) v. Fatuma Mwinshehe Vogogo**, Land Case No. 348 of 2015, High Court of Tanzania (Land Division) at Dar es Salaam (unreported).

The respondent's reaction is on all fours with decision of the appellate tribunal. Besides that, he was of the contended argument that there is no evidence to prove that she was in custody. As for the issue of appellant's claim being time barred, the respondent emphasized by citing the following case law;

**Beldon Tewela v. Tabu Robert**, Misc. Land Case Appeal No. 14 of 2017, High Court of Tanzania at Mbeya (unreported). He equally cited another unreported case that emphasize similar issue though without producing its hardcopy.

He further told this Court that, the respondent's evidence was heavier than that of the appellant and that is why the appellate tribunal had to reverse the trial tribunal's decision. He further argued that, the joining of any party in the suit before the trial tribunal was in the hands of the appellant. Thus, he urged the Court to dismiss the appeal for want of merits. the case of **Hemedi Said v. Mohamed Mbilu** (1984) TLR 113 was cited emphasizing the burden of proof towards the one who desires any court to decide in his or her favour.

I have carefully considered the parties' written submissions and reviewed the proceedings before the lower tribunals. I have further gone through the law and my view is that, the main issue for consideration is whether the present appeal is meritorious. As for the first ground of appeal, it is obvious that, the appellant was the one who sued the respondent before the trial tribunal after learning about his encroachment over her land. That was in the year 2012 when she became aware of the trespass. It is my sincere observation that, it was not proper to invoke a principle of adverse possession considering the time from 2012, when the appellant became aware to 2019 when the suit was filed in the

trial tribunal. Thus, the appellate court's decision on that aspect was not proper. As such the first ground of appeal has merit.

As for the remaining ground, as I have said, the appellant was the one who was supposed to prove her claim. In her testimony she told the trial court that, she learnt about the encroachment when she was out of custody and it was Nodi who, unjustifiably, sold it to respondent. On this, it was the appellant who was supposed to prove that the said Nodi was just a farmworker with no powers to sale that suit land. Further to that, she was supposed to prove the fact that she was in custody since 2010 to 2012. Besides that, her witness one, John Kasochela testified that, the suit land belonged to Mr. Mkuto. The appellant and her witness also differ on the neighbors who bordered the suit land. Unlike the appellant, the respondent was able to bring witnesses who witnessed him buying the suit land from Anordi as well as the neighbor. If the appellant was aware of the encroachment since 2012, why then she had to wait until 2019 when she lodged her claim to the trial tribunal.

On the strength of the respondent's evidence, save for the first ground of appeal, I am inclined to dismiss the appeal mainly on the basis of the second ground of appeal. The respondent is the rightful owner of the suit land, measuring two acres that is situated at Sakalilo village within Ilemba Ward at Sumbawanga region. The appellant is condemned to pay costs of this appeal.

Dated at **SUMBAWANGA** this 16<sup>th</sup> day of August, 2021.



A handwritten signature in blue ink, appearing to read "C.P. MKEHA".

**C.P. MKEHA**

**JUDGE**

**16/08/2021**





Date - 16/08/2021  
Coram - Hon. W.M. Mutaki – DR.  
Appellant - Present  
Respondent - Present  
B/C - Zuhura

**Court:** Judgment delivered in the presence of the parties

Right of appeal is explained.

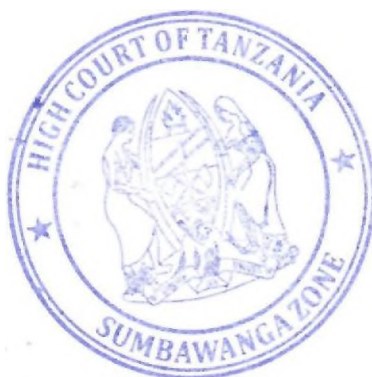
**W.M. MUTAKI**

**DEPUTY REGISTRAR**

**16/08/2021**

**Appellant:** Praying to inform the court my intention to lodge appeal to the court of appeal Tanzania

**Court:** Notice of intention to appeal is noted.



  
**W.M. MUTAKI**

**DEPUTY REGISTRAR**

**16/08/2021**

