

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

LAND APPEAL NO. 95 OF 2020

(Arising from Mkurunga District Land and Housing Tribunal in Land Appeal No. 13 of 2020;
Originating from Kiparang'anda Ward Tribunal in Land Case No. 18 of 2019)

SAID SELEMANI MKONGE.....APPELLANT

VERSUS

HEMEDI SAIDI KAUNDU.....RESPONDENT

Date of Last Order: 27.10.2021
Date of Ruling 13.12.2021

JUDGMENT

V.L. MAKANI, J

The appellant is SAID SELEMANI MKONGE. He is appealing against the decision of Mkurunga District and Housing Tribunal (the **District Tribunal**) in Land Appeal No. 13 of 2020. The matter was originally before Kiparang'anda Ward Tribunal (the **Ward Tribunal**) in Land Case No. 18 of 2019.

The grounds of appeal are reproduced hereinbelow as follows:

- (a) *That the hon. Chairperson erred in law and facts by declaring again that the Respondent is a legal owner of the suit property without justifiable documentary evidence to prove the said ownership during trial.*

- (b) That the Chairpersons of both Mkuranga District Land and Housing Tribunal and the Ward Tribunal erred in law and facts for not properly evaluating the evidence tendered by the appellant during trial.*
- (c) That the Hon. Chairperson erred in law and facts for determining the matter relying on the evidence of Msuya Selemani Mkonge and ignore the evidence of appellant's witnesses.*

Briefly stated, this is a second appeal. This matter originated from the Ward Tribunal where the appellant claimed to be the owner of 4 acres of land (the **suit land**) which he inherited from his late father since 1997. The appellant said the respondent's mother was his neighbour and after her death, the respondent crossed over to his land. The appellant said there was evidence that the land was owned by the appellant's father, but he surrendered the land to the Village Council who in turn allocated it to different people.

On his side the respondent claims that he was on the suit land since 1983 and he was given the said suit land by the appellant's father. He said he has been occupying and using the suit land peacefully until in 2018 when the appellant started to claim back the said land. He said he has never had problems with the appellant's father during his lifetime.

The appeal was argued by way of written submissions. The submissions by the appellant were drawn by Mr. Said Ally Said, Advocate and the respondent personally drew and filed submissions in reply.

In his submissions Mr. Said consolidated the grounds of appeal. He said there was no evidence that the respondent is the lawful owner of the suit land as the ownership was not proved by documentary evidence or even the call of witnesses who witnessed the transfer transaction from the appellant's father. He said the evidence by the appellant was corroborated by that of Rajabu Shabani and Hamis Mpetta who said the land was given to the Village Council and not the respondent. He said the respondent's witness Msuya Selemani Mkonge has a long misunderstanding with the appellant as such turned to be hostile to the appellant and there were even criminal charges against him. He said the evidence was not properly evaluated and there was no documentary evidence on ownership of the suit land by the respondent.

In reply the respondent said that land disposition in Tanzania can be orally or written depending on the situation. He said the suit is not

surveyed and his witness one Msuya Selemani Mkonge the younger brother of the appellant testified that the suit land was given to the respondent by their father Selemani Shomvi Mkonge and was not allocated by the Village Council. He said the appellant is alleging that there is no documentary proof but pointed out that whoever alleges must prove as in section 110 and 111 of the Evidence Act CAP 6 RE 2019. The respondent said the late Selemani Shomvi Mkonge had 8 issues and none of them has complained about ownership of the said suit land except the appellant, and furthermore, his younger brother testified against him. He further said the younger brother of the appellant could not have been a hostile witness because he was not the appellant's witness. He said he is not aware of any criminal charges against the appellant by his younger brother and concluded that the evaluation of evidence was proper by the Tribunals and the appeal ought to be dismissed.

In rejoinder Mr. Said reiterated what he stated in the submissions in chief and further stated that there was a meeting of 28/06/2016 which the witness of Msuya Selemani Mkonge acknowledged that the suit land belonged to the appellant and he signed minutes to that effect. He prayed for the appeal to be allowed with costs.

I have gone through the submissions by the parties and this being a second appeal the court is not supposed to interfere with the concurrent decisions of the lower Tribunals. The issue is whether this appeal has merit.

The main complaint by the appellant may be summed up as evaluation of the evidence by the Tribunals. It should be noted that the evidence at the Ward Tribunal is the crucial one because this was the trial Tribunal where evidence was taken and the demeanour of the witnesses observed.

It is not in dispute that the appellant is in possession of the suit land from 1983 to the time the appellant brought filed the suit at the Ward Tribunal in 2020. The only controversy is that the appellant claims that the suit property was not given to the respondent by his father but his father gave it to the Village Council. On the other hand, the respondent insists that the suit land was given to him by the appellant's father in 1983.

This is a very straight forward appeal. The claims by the appellant that the suit land was given to the Village Council and not the

respondent would have merit if there was corroborative evidence to that effect especially evidence from the Village Council and or their leaders. As correctly said by the respondent, the appellant was the one who alleged so he has to prove. I have gone through the proceedings at the Ward Tribunal there is no evidence from the Village Council stating that the suit land belongs to the Village or was given to someone else other than the appellant. It is apparent as said by the respondent and Msuya Selemani Mkonge that the suit land was duly given to the respondent by their father and that has not been well challenged. Further, the appellant said there were minutes but these were not presented in the Ward or District Tribunals and the same cannot be raised at this stage of appeal as it was not raised and determined in the lower Tribunals (see Hotel Travetine vs. NBC [2006] TLR 133)

Further since, it is not in controversy that the respondent has been on the suit land since 1983 and there has not been any dispute whatsoever from either the village or relatives of the appellant until 2020 it means the respondent is owner of the suit land under the principle of adverse possession. In Tanzanian land laws, if a person moves into a land, occupies it and develops it for 12 years or more

with no interference whatsoever from the true owner of that plot, then that person who has occupied it for the 12 years or more acquires adverse possession (see **Nassoro Uhadi vs Musa Karunge [1982] TLR 302**). Simply stated, adverse possession can only occur when the person not owning the land occupies the said land for a long period of time and developing it while the owner keeps quiet. This is also the truth of this case where the true owners of the suit land including the appellant did not say anything from 1983 to 2020. In that respect therefore the respondent is the lawful owner of the suit land.

For the foregoing reasons, I am not departing from the decisions of the Ward and District Tribunals though the analysis and the evaluation of evidence is slightly different.

In the result, the appeal has no merit, and it is hereby dismissed with costs. It is so ordered.


V.L. MAKANI
JUDGE
13/12/2021

