

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

LAND APPEAL NO.49 OF 2019

(From the Decision of the District Land and Housing Tribunal of Kibaha District at Kibaha in Land Case No.109 of 2015)

IDD RAMADHANI MWASA (As an Administrator of the Estate of Masozi Duduma).....APPELLANT

VERSUS

MOHAMED MASHAURI KIOGOMO.....RESPONDENT

JUDGMENT

OPIYO, J:

This appeal lies on the following grounds; -

1. That the trial tribunal grossly erred in law when it did wrongfully find and conclude that that the disputed land was left as a bush since 1970 and deserted by the appellante for long time.
2. That the trial tribunal erred in law and facts in holding that the appellant did not file his final submissions while the same was filed as it was ordered by the trial tribunal.
3. The trial tribunal erred in law and facts in holding that no proof of ownership of the disputed land was given while the applicant's witnesses testified that the land belonged to the late Masozi Duduma.

4. That the trial tribunal erred in law and facts for its failure to apprehend facts and evidence tendered before the trial tribunal and wrongly reached to the wrong decision.

The background of the matter at hand briefly is the allegation that, in 1931, one Masozi Duduma passed away, leaving behind his estate comprising the suit land of which the respondent is said to have trespassed upon it since 2011. The appellant being the Administrator of the Estate of the late Masozi Duduma decided to take legal actions against the respondent by instituting a land case at the District Land and Housing Tribunal of Kibaha. The said case was heard *ex-parte* after the respondent's failure to appear and file defence. The suit was dismissed by the trial tribunal leading to this appeal.

The appeal was heard by written submissions, the Cleophas Mayangu appeared for the appellant while the respondent appeared in person. Submitting on the 1st ground of appeal, Mr. Mayangu was of the view that, the trial tribunal failed to apprehend the facts, evidence and the law when it rushed to the conclusion that the disputed land was left as a bush or undeveloped or was deserted by the appellant for a long time. This shows that the trial tribunal was prepared to give judgement not in favour of the appellant on the basis that the disputed land was left undeveloped and deserted for long time.

He argued further that, the trial tribunal ignored the fact that, the land in question was not the property of the appellant rather of the late Masozi Duduma who died in 1931 and the appellant later was appointed as an administrator of the Estate of the said Masozi Duduma. In such circumstances, the reasoning of the trial tribunal that, the land was

deserted is defeated as it is contrary to the evidence presented before it, he contends. The appellant's counsel insisted that, a mere desertion of land does not extinguish rights or interests to the owner unless a due process of law is followed to extinguish such rights as stated in sections 45 and 51 of the Land Act, Cap 113 R.E 2019 and the case of **Registered Trustees of Holy Spirit Sisters Tanzania versus January Kamili Shayo and 136 Others, Civil Appeal No.196 of 2016, Court of Appeal of Tanzania (unreported)**.

On the 2nd ground of appeal, appellant's counsel insisted that, the trial tribunal erred in law in insisting that, the appellant did not file his final submissions as ordered while the same were filed by the appellant within time. Therefore, it was wrong for the trial tribunal to blame the appellant for no reason.

On the 3rd and 4th grounds of appeal it was submitted together that, the facts which consisted the cause of action according to the pleading/application occurred in 2011 when the respondent trespassed in the suit land out of 200 acres. The land belonged to the late Masozi Duduma who passed away in 1932 and the appellant was just an Administrator of the estate of the deceased. It was for the estate to declare that the suit land formed part of the deceased estate and not otherwise. The trial tribunal did not do this because it failed to apprehend the facts of the case correctly and reached to the wrong decision thinking that the appellant was looking forward to be declared the legal owner of the suit land, he submits.

In reply the respondent was of the view that, the trial tribunal was correct to decide as it did as the appellant and his witnesses failed to prove that the land in question belonged to Masozi Duduma. They did not even know when the said land was acquired by the late Duduma as all of them were not present in 1931 when the said person died.

On the second ground, the respondent maintained that, non-submissions of the final submissions don't bar the trial tribunal from composing the judgment. In the 3rd and 4th grounds of appeal it was argued by the respondent that, the appellant and his witnesses was not able to prove as to when the respondent trespassed over the suit land hence it was right for the trial tribunal to dismiss the suit.

In rejoinder, the appellant's counsel was of the view that, when the evidence of the parties on record is properly evaluated, it is clear that on balance of probabilities the suit land should be taken as part and parcel of the estate of the Masozi Duduma. He therefore reiterated his prayer that the appeal be allowed with costs.

Having gone through the submissions of parties and the records, in determining the merit or otherwise of this appeal, I will consolidate all four grounds and discuss them together as all of them the appellant appears to believe that had the trial tribunal evaluated and analyzed the evidence properly, the decision would have been in his favour based on the balance of probability rule.

In my settled view, after a through scrutiny of the evidence on record I realized that there is a contradiction on crucial issue of when the respondent trespassed on the suit land for the purpose of determination

of time limitation as per section 5 of the limitation Act, Cap 89 R.E 2019. This was the observation of the trial tribunal too at page 4 of its judgement when it stated that "*Further testimonial of PW1 and PW3 are not clear as to when the respondent trespassed therefore the date when the respondent trespassed is not known.*" Absence of proof as to when the trespass occurred defeats the claim as it remains unknown if the claimant presented the same within the time required as it is on record that the alleged owner stopped using the suit land in 1970, almost fifty years ago.

Another issue which was not proved before the trial tribunal is how the late Masozi Duduma got the ownership of the suit land. The trial tribunal visited the suit land and found nothing suggesting that the same was owned by Masozi Duduma. Even the allegation that part of the area was used as family grave yard was not proved during visit to locus in quo to substantiate the fact that the suit land belonged to Masozi Duduma.

It is on this basis; the trial tribunal decided the case before it in favour of the respondent and in fact it was very right to do so. The evidence on record overwhelmingly favoured the respondent, hence he deserved the win (**see Hemed Said versus Mohamed Mbilu, (1984), TLR 113**). Therefore, this appeal lacks merit and the same is hereby dismissed with costs.

It is so ordered.



**M. P. OPIYO,
JUDGE
1/3/2021**