

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND CASE APPEAL NO. 7 OF 2021

(From the Decision of the District and Housing Tribunal of Tabora District at Tabora in Land Case Appeal No. 77 of 2020 and Original Ward Tribunal of Kwamsekwa Ward in Application No. 40 of 2019)+

SAID ISSAAPPELLANT

VERSUS

JUMA KIHANGA.....RESPONDENT

JUDGMENT

Date: 25/11/2022& 17/2/2023

BAHATI SALEMA,J.:

This appeal emanates from the decision of the Ward Tribunal at Kwamsekwa. As it may be gathered from the facts, this case is upon ownership of the disputed land where the appellant Said Issa was declared a lawful owner of the disputed land by the Kwamsekwa Ward Tribunal in Land Case No. 40 of 2019.

Aggrieved by the said decision, the respondent (Juma Kihanga) appealed to the District Land and Housing Tribunal for Tabora where the Tribunal allowed his appeal and awarded the disputed land.

Resenting the impugned decision of the District Land and Housing Tribunal DLHT of Tabora delivered on 04/6/2021 by the chairman Waziri.M.H, the Respondent (Said Issa) raised three grounds of appeal before the High Court of Tabora, to wit that:

- 1. That the Hon. Chairman erred in law and facts deciding in the Respondent's favour on the ground of adverse possession while the land in dispute did not remain without any care for a long time but rather was in the care of Kulwa Magemu and the Appellant's mother, so adverse passion did not apply.*
- 2. That the Hon. Chairman erred in law and facts deciding in the respondent's favour that he is a legal owner of the disputed land while the evidence available did not support the same.*
- 3. That the Hon. Chairman erred in law and facts deciding the matter without taking into consideration the evidence adduced by the Appellant at the trial stage.*

The appellant prays for the following orders:-

(i) That, the appeal be allowed and the decision of the District Tribunal be quashed and set aside.

(ii) Costs of the Appeal.

(iii) Any other relief (s) that this Honourable Court may deem just and fit to grant.

When the matter was called for hearing, both parties in person appeared unrepresented.

Submitting on the 1st ground, the appellant stated that the respondent failed to produce evidence that he was living on the disputed land since 2005, and he failed to call Haruna Salum as a witness to testify that he sold the disputed land to the appellant. Further, the appellant adduced evidence that he bought the disputed land in 1980 and was living there, he built two houses and there were four graves of his beloved children.

On the second ground of appeal, the appellant submitted that the respondent's witnesses did not come to testify.

As to the third ground of appeal, he submitted that the one who sold the land dug up the graves of his children who were buried before he left for Kigoma region in 1987 when he had family problems. He prayed to this court to allow his appeal with costs.

In his response, the respondent avers further that it was evidently from the record that he has been living in the disputed land for more than 14 years peacefully without any disturbance therefore the Chairman was right to invoke the doctrine of adverse possession.

As to the second the respondent states that it was proved on the balance of the probabilities and the evidence shows that the respondent is the lawful owner of the land in dispute since he bought the land in 2005 after he purchased from one Haruna Salum and had been using the said piece of land for almost 14 without any interference until 2019 when the appellant started to claim that he holds the land in dispute. Hence the trial Tribunal correctly evaluated the evidence as the law required. The respondent prayed that; the appeal be dismissed with costs.

In re-joining, the appellant stated that it is true, he lived in those years but he received it from one of his friends.

Having dispassionately examined closely the three grounds of appeal levelled by the appellant, the issue for determination is whether the grounds are meritorious.

It is clear that all three grounds of appeal are challenging the DLHT chairman's decision regarding the respondent being an adverse possessor of the disputed land, therefore, my assignment for consideration and determination is to see whether the *doctrine of adverse possession* was properly invoked by the 1st appellate tribunal Chairman.

The doctrine of adverse possession allows a person who is in possession of a piece of land for an uninterrupted given period, which according to

section 3(1) of the Law of Limitation Act, Cap. 89[R.E 2019] read together with Part I item 22, Part I of the Schedule of the same Act is twelve years. To become the owner of the land if the prescribed period coupled with other conditions lapses.

It is a settled principle of law that a person who occupies someone's land without permission and the property does not exercise his right to recover it within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession. As pointed out by the learned Chairman, a mere uninterrupted possession in itself is not the sole factor for adverse possession; the possession must be subject to the conditions magnified in the case of **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 Others**, Civil Appeal No. 193 of 2016, CAT (unreported) which quoted with approval the Kenyan case of **Mbira v. Gachuhi [2002] E.A. 137 (HCK)** in which again, reliance was made on the cases of **Moses v. Lovegrove [1952] 2 QB 533** and **Hughes v. Griffin [1969] 1 All ER 460**. 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 the 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."*

Now the question that comes in this court is, did Juma Kihanga (respondent) prove the above-listed conditions before the District Land

and Housing Tribunal? Basing on the above-listed conditions it is apparent that the nature of the dispute between the appellant and the respondent qualified for the doctrine of adverse possession to be invoked. In the presence of cumulative proof of the factors listed hereinabove on the part of the Juma Kihanga, it was justifiable for the appellate tribunal to reverse the decision of the Ward Tribunal.

As pointed out by the Chairman I quote ;

“Kimsingi Mjibu rufani Said Issa hana haki ya Kudai ardhi aliyoitelekeza kwa takriban miaka 32 toka 1987. Badala yake Mrufani kwa kuwa amekaa kwenye eneo hilo kwa zaidi ya miaka 12 anakuwa ndiye mmiliki halali wa ardhi yenye Mgogoro na si vinginevyo.”

This court having perused through the court proceedings noted that the appellant in his evidence at the trial tribunal testified that in 1987 he left Igagala for his village Kigoma but did not hand over his property to anyone until 2019 when he filed a case at the Ward Tribunal for trespass it was almost 32 years. In the case of **Lemayani v Mhani** [1972] HCD No. 149, similarly in the case of **Shaban Nassoro v Rajabu Simba** [1967] HCD No. 233 Said, J that;

"The Court will always be reluctant to disturb a person who occupied the land and developed it over a long period".

Therefore from the above-guided authority, I subscribe to the decision of the appellate DLHT since the respondent had lived for almost 12 years uninterrupted. I find no reason to interfere with the decision of the appellate court. Consequently, the appeal is hereby dismissed. Given the circumstances of this case, I award no costs.

Order accordingly.



A.BAHATI SALEMA

JUDGE

17/2/2023

Court: Judgment delivered in presence of both parties.



A.BAHATI SALEMA

JUDGE

17/2/2023

Right of Appeal fully explained.



A.BAHATI SALEMA

JUDGE

17/2/2023

