

IN THE HIGH COURT OF TANZANIA

AT MWANZA

(LAND DIVISION)

MISC. LAND APPEAL NO. 24 OF 2009

**(Appeal from the Judgment of the District Land and Housing Tribunal for Tarime
at Tarime in Land Appeal No. 118/2008)**

MARWA MAGORO.....APPELANT

VERSUS

MWITA GHATI.....RESPONDENT

JUDGEMENT

Latifa Mansoor, J.

Mwasanyia Advocate represented the Appellant and the Respondent appeared in person. The Appellant raised four grounds of appeal. He argued ground No 1 and 2 together that the Chairman of the District Land and Housing Tribunal erred in giving his decision based on adverse possession. The Chairman of the District Land and Housing Tribunal had held that the Respondent had occupied the land for more than 12 years uninterrupted, and hence he owns the land by adverse possession. The Counsel for the Appellant submitted that for the doctrine of adverse possession to operate there must be right, and that right must be inconsistent with the right of the owner. The Counsel for the Appellant cited the

case of Reuben Maro vs. Hubert Sebastian, Civil Appeal No. 84/2004, unreported, in which it was held that:

“in adverse possession there must be an act or conduct on or relating to the property which is inconsistent with the rights of the owner and which is not authorised by the owner”

And the case of Amandus Msuha vs. Josephat Komba, High Court, Land Appeal No. 2/2005, unreported at page 4:

“Permission to use land negates the doctrine of adverse possession”

The Counsel for the Appellant submitted that the father of the Respondent was given this piece of land by the father of the Appellant to use it. The Respondent decided to plant eucalyptus trees. He said, the Appellant’s father was given this land during ujamaa villagelization in 1974. He submitted that the doctrine of adverse possession cannot be invoked if the person claiming to be the adverse possessor was permitted by the owner to use the land.

On ground No. 3, the Advocate for the Appellant submitted that the records of the Ward Tribunal proves that the land was owned by the Appellant’s father , and he passed it over to the Appellant and his family by inheritance. The Appellant’s father had given a small piece of land to the Respondent’s father for agricultural use.

On ground No. 4, he said that the judgment of the District Land and Housing Tribunal did not conform to the law. He cited Regulation 20(1) of GN 174 of 2003, and Order XX (4) of the Civil Procedure Code, and submitted that the judgment of the District Land and Housing Tribunal violates these provisions of the law. He said the judgment did not have the statement of facts; it only gave

decisions without giving reasons for the decision. To support his arguments he cited the case of Tanga Cement Co. Limited vs. Christopherson & Co. Limited, Court of Appeal, Civil Appeal No. 77/2002 at page 9, unreported, in which the Judges strike out an appeal since the judgment of the lower court was defective.

The Respondent submitted simply that the land is his, as it was given to him by his father since 1992; he said nobody gave this land to his father. He said in 1973, his father had cleared this land and his father has been using this land since then, and planted eucalyptus trees. He said the Appellant's father was a soldier; he was not living in the village, he retired in 2000 and came back in the village in 2000. The Appellant's father bought the land on the lower side (bondeni), which has banana trees, and that his land is located on the upper side where there are eucalyptus trees. He said the Appellant's father started claiming for his land and started spoiling his trees; the village leaders had punished the Appellant for this in 2008. He submitted that he never claimed adverse possession, as this land was his since 1973.

Our Law of Limitation of Actions prohibits a person to claim right over land after the expiry of twelve years. And in order to be entitled to the land by adverse possession the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by the discontinuation of possession by the owner on his own violation. The Respondent is definitely entitled to this land by adverse possession.

I have given due consideration to the submissions by the Appellant's Counsel. The Appellant claims that his father has been allocated this land during ujamaa villagelization in 1974. The Appellant further deposes that his father had given a piece of his land to the Respondent's father. There was nothing on record to prove that the Appellant's father had given this land to the Respondent's father. In reply the Respondent says that his father owned this land since 1973, and it was never given to his father by the Appellant's father. The records of the Ward Tribunal did not address this issue. That it was never proved that the Respondent's father was either the lessee or the borrower or the invitee to the land, and if he was only allowed to use the land, at what consideration, and for how long. It is further on record that the Appellant's father never claimed for ownership of this land, it is only the Appellant who claims that this land belongs to his father and that it was given to the Respondent's father without giving any proof thereof. Actually, the Appellant never gave any proof before the lower Tribunals if he was ever the administrators of his father's estate or appointed as the representative of his father (if the father is alive) to entitle him to claim that parcel of land.

It is thus clear that Appellant and his father had no interest in this land. It is not therefore factually correct to say that the Appellant's father gave this land to the Respondent's father without adducing any proof to that effect.

The Appellants submission that the Respondent's father entered onto the land as the invitee is rebutted by the Respondent. Since

there is no credible evidence of permission to use this land given by the Appellant's father to the Respondent's father and since that there is enough proof that the Respondent took possession of the land and has been in occupation of the land since 1973 and that the Respondent continued occupying the land and is still in occupation, he is actually in adverse possession for over 12 years.


I therefore agree with the decision and findings of the Chairman of the District Land and Housing Tribunal, that the Appellant is time barred to claim any right over this land as twelve years have expired since the Respondent is in possession of this land.

On the issue of the defective judgment, I would say that the basis of the court's consideration in any case was the application of law and principles of justice, founded on the actual facts and circumstances of the case. The function of the court was to resolve disputes judicially; this was done by the Chairman of the District Land and Housing Tribunal. His judgment contained the statement of facts, and he gave the grounds for his decisions. The notion that a court's decision was open to challenge on appeal because it did not contain the elements which the Counsel for the Appellant would

have preferred that they should have been in the judgment in the course of its deliberations of a case was very farfetched.

Accordingly, for the reasons given above, this appeal lacks merits and is dismissed with costs. The decision of the District Land and Housing Tribunal is hereby confirmed.

Appeal dismissed with costs.


Latifa Mansoor
JUDGE
25 OCTOBER 2012