

**IN THE HIGH COURT OF ZANZIBAR
HELD AT CHAKE PEMBA
CIVIL APPEAL NO. 39 OF 2011
FROM ORIGINAL CASE NO 89/2007 FROM LAND TRIBUNAL
MACHOMANNE CHAKE CHAKE PEMBA**

OMAR BAKAR HAJI AND FOUR OTHERS }
(WAKISIMAMIWA NA OMAR BAKAR HAJI) } **APPELLANT**

V/S

3. **MOH'D ALI OMAR** }
4. **NASSOR ALI OMAR** } **RESPONDENT**

JUDGMENT

The appellants namely Omar Bakar Haji, Ali Bakar Haji, Hamad Bakar Haji and Shamata Hamad Haji instituted Civil Suit No. 89/2007 in the Land Tribunal at Machomanne Pemba against the respondents Mr. Mohammed Ali Omar and Nassor Ali Omar . The appellant' case was that the respondents have invaded the appellants' shamba situated at Mwane Kiungani Wete Pemba . It was their case that they have inherited the shamba from their late father which on 06/04/2007 was invaded by the respondents who built upon it a residential house and destroyed their fruit trees . The respondents denied the claim leveled against them insisting that their houses are on their shamba which was bought by their late father in 1966 . The Tribunal decided on the respondents' favour holding that there was no enough evidence to prove the appellants' claims . This appeal is against the Tribunal's judgment and decree .

The appellants' memorandum contain three grounds of appeal which can be freely translated as follows :-

1. The Honourable Deputy Chairman of the Land Tribunal did err in law in giving ownership of the shamba in dispute to the respondent without considering the evidence that what was sold to the respondents' father were coconut trees only and not the shamba (land).
2. The Honourable Deputy Chairman of the Land Tribunal did err in Law in failing to properly apply the maxim quid quid plantatur solo solo cedit forgetting that our laws allow trees to be separately owned .
3. The Honourable Deputy Chairman of the Land Tribunal did err in law in failing to properly apply the law of limitation .

The 1st appellant Mr. O,ar Bakar Haji who represented and argued for the appeal on behalf of other appellant asked this court to allow the appeal because the Tribunal did not do justice to them . He submitted that the respondents' father bought coconut trees only and not the land or shamba .

The respondents on their part prayed for the dismissal of the appeal arguing that they have been in possession and use of the disputed part of the shamba since 1966 when their late father bought it and that in 1984 they built upon it permanent residential houses without any resistance from the appellants . The respondents insisted that the evidence adduced by them was stronger than that adduced by the appellants and therefore that the Tribunal did not err in dismissing the appellant' suit .

The Tribunal's judgment and decree cannot be faulted . The evidence on record show that the appellant did not prove their claims against the respondents to the required standard . Apart from the fact that there was undisputable evidence that what the respondents' late father bought in 1966 were about 20 coconut trees and although this court agrees with the appellants' second ground that under the Land Tenure Act, 1992 (Act No. 12/1992) there is an exception to the maxim 'quid quid plantatur' solo solo cedit' because S. 19 (1) of the Act provide that trees can be owned and held separately from a right of occupancy in land still there are an abundant of evidence showing that the respondents have been in a peaceful possession and use of the shamba in dispute for many years .

The appellants' evidence was too weak compared to the evidence adduced and produced by the respondents. The Tribunal visited the locus in quo and observed that there were six permanent and old houses belonging to the respondents and their family upon the shamba in dispute. This was enough evidence to prove the respondents' contention that they have been in possession and use of the shamba in dispute for many years . As it was correctly found by the Tribunal, even the appellants' allegations that the respondents' late father built on the shamba in dispute on license was not supported by any evidence .

It is true that the Tribunal held among other things that the respondents were the lawful owners of the shamba in dispute because they have been there for many years but it is not true as it is suggested by the appellants in ground three of the appeal that the Tribunal decided for the respondents on a sole ground that they have been there for ten years .


The appeal therefore entirely fails and it is hereby dismissed with costs

SGD: ABRAHAM M. MWAMPASHI (J)
05/03/2013

Delivered in Court this 05th day of March, 2013 in the presence of the
1st appellant on behalf of other appellants and on his own behalf and also in
the presence of the respondents .

SGD: ABRAHAM M. MWAMPASHI (J)
05/03/2013

CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL


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KHAMIS R. ABDALLA (DR)

