

TANZANIA / JUDGMENT

BOMBOO

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THE JUDICIARY OF TANZANIA IN THE H IGH COURT OF TANZANIA AT MANYARA LAND
APPEAL NO. 000024677 OF 2024 BOMBO B A R IECOMPLAINANT /
APPELLANT / APPLICANT / PLAINTIFF VERSUS TANO O N A RESPONDENT /
DEFENDANT

JUDGMENT

KAMUZORA, J, 26th February & 12th March 2025 The appellant herein is challenging the decision of the District Land and Housing Tribunal for Manyara (hereinafter referred to as the trial tribunal), which declared the respondent as lawful owner of two pieces o f land measuring 1.4 acres and 2.9 acres both situated at Chemchem village within Mutuka ward in Babati district (hereinafter referred to as the suit land). Standing as administratrix of the estate of the late father Barie Qaduwe Shang’we, the appellant alleged that, the suit land was previously owned by the late Barie Qaduwe Shang’we who acquired it through operesheni vijiji in 1974. According to the appellant, her father died in 1998 and the respondent trespassed into the suit land sometimes in 2008 and started farming activities. The appellant instituted a suit, Land Application No. 82 of 2018 but the same was dismissed for lack of locus standi. She then instituted another suit, Application No. 56 of 2020 which is the subject of the present appeal. In his written statement of defence, the respondent claimed to have purchased the suit land from the wife of the late Barie Qaduwe one Mandoo Tluway in

1998. He disputed the claim for trespass into the suit land. After hearing the evidence from both parties, the trial tribunal held in favour of the respondent. The appellant was displeased with the trial tribunal’s decision and preferred the instant appeal with three grounds of appeal as follows; 1. The chairman of the trial tribunal erred in law and in facts by failure to properly evaluate the evidence adduced by the parties. 2. That, the chairman of the trial tribunal erred in law and in facts to decide the matter in favour of the respondent basing on the sale agreement which was void and illegal. 3. That, the chairman o f the trial tribunal erred in law and in facts by failure to consider that the respondent’s evidence was contradictory, uncertain and ambiguous. When the appeal was called for hearing, the appellant appeared in person while the respondent was represented by Mr. Kuwengwa Ndonjekwa, learned advocate. In her submission in support of the appeal, the appellant adopted and submitted jointly to all grounds of appeal. In addition to the grounds of

appeal, she pointed out two inconsistencies in the respondent's evidence; one, she challenged the sale agreement on the ground that it was void and illegal for it contained no office stamp of the hamlet chairman but it contained a stamp for the executive officer with no signature. Two, the appellant challenged the proceedings of the trial tribunal on the reasons that it allowed the testimony from the witnesses who were present when other witnesses were testifying before the trial tribunal. Based on the grounds of appeal and the above inconsistencies, the appellant urged this court to evaluate the evidence and make decision by allowing the appeal. In reply, Mr. Ndonjekwa submitted that the trial tribunal properly evaluated the evidence. He refuted the appellant's claim that witnesses were present when others before the trial tribunal when others were testifying. As regard to the validity of the sale agreement, the learned advocate submitted that, such argument should have been raised before the trial tribunal. He was of the view that, the argument that the sale agreement was illegal cannot be brought at the appellate stage. That, the appellant had a right to cross examine the witness on the legality of the said agreement but she did not exercise that right before the trial tribunal. To buttress his arguments, Mr. Ndonjekwa referred the case of *Reni International Company Ltd. Vs Geita Gold Mine Ltd, Tanzlii [2022] TZCA, 245*. The respondent's counsel further submitted that, the trial tribunal found the suit as time barred because the record shows that the owner of the suit land demised on 12/11/1998 and the farm was sold on 01/08/1998 meaning that the farm was sold even before the owner of the farm died. That, the records show that the respondent has been using the suit land for all that period and no one acted until 2018 when the dispute was referred to the trial tribunal after the lapse of 12 years. He argued that, as per Item 22 of the schedule to the Law of Limitation [Cap 89 R.E 2019], (hereinafter referred to as the LLA), the time limit for recovery of land is 12 years. That, section 9 (1) of the LLA is clear that right to sue accrues from the time of death of the deceased. That, if the deceased was unable to file a case, his survivors could have filed a case after his demise. He referred the case of *Yusuph Same and other Vs Hadija Yusuph, [1996] TLR 347*, in which it was observed that, the right to sue accrues from the date of death of the deceased. He insisted that, in this matter, almost 20 years have already passed from the time of the deceased's death that, is from 1998 to 2018 when the suit was first instituted before the trial tribunal. He was of the view that, the trial tribunal was correct in its decision thus, he urged this court to uphold the trial tribunal's decision and dismiss the appeal with costs. In rejoinder, the appellant added that, when her father died, the suit land was handed to her brother one Magire to take care of the same. That, after Magire's death in 2011 she took over the duty after she was informed that the respondent invaded the suit land in 2015. By that time, she was taking care of her mother thus, she had to wait for her recovery. She disputed the allegation that, the suit land was sold before her father died and claimed that the sale agreement was forged because the suit land was not sold to anyone. Before going to the merit of the case I would like to address the claim by the appellant that some of the witnesses were present during hearing and still were allowed to testify before the trial tribunal. The record does not reflect that fact for nothing shows that the appellant raised such inconsistency before the trial tribunal. Since the record is silent on what transpired, this court is not in a good

position to verify that fact therefore, I find such argument unattainable. Turning to the merit of the appeal, from the grounds of appeal and the submissions by the parties, two issues need the court's attention; one, time limitation and two, appraisal of evidence. Starting with the first issue on time limitation, this emanates from the tribunal's conclusion that the suit was filed out of prescribed time of 12 years. The basis of that conclusion was that, the respondent acquired the suit land in 1998 and occupied it for over 20 as the dispute was first referred before the trial tribunal in 2018, after lapse of 12 years prescribed by the law. It is on record that, initially the respondent raised a preliminary objection that the suit before the trial tribunal was time barred. After hearing the parties, the trial tribunal overruled the said preliminary objection and held that the suit was not time barred. In its ruling, the tribunal Considered the appellant's pleadings showing that the respondent trespassed into the suit land in 2008 and concluded that the suit filed before the trial tribunal was within the period of 12 years. After receiving the evidence, the trial tribunal was satisfied that it was proved otherwise that the suit was time barred basing on the principle of adverse possession. Upon considering the reasoning put forward, it is my considered view that, there is a clear misapprehension on the applicability of the principle of adverse possession. Principally, Item 22 part 1 of the schedule to the LLA is a general provision on the limitation period for filing a suit for recovery of land which is 12 years. However, the basis for the claim may differ and where the basis for the claim of land is adverse possession, it must be established that a person occupied someone's land without permission, and the property owner did not exercise his right to recover it within 12 years. In the above circumstance, a person (the adverse possessor) acquires ownership by adverse possession. In its holding in the case of Bhoke Kitang'ita Vs. Makuru Mahemba, Civil Appeal No. 222 of 2017 (unreported) the Court of Appeal insisted that, the adverse possessor have to be in uninterrupted occupation of the property. The principle of adverse possession does not apply where there is a claim of purchase therefore, the respondent having claimed to have purchased the suit land, his mode of possession could not fall under adverse possession. In that regard, the trial tribunal misdirected itself in referring the respondent's claim for ownership under adverse possession. However, adverse possession was not the only reason considered by the trial tribunal in concluding that the Respondent was the rightful owner of the suit land. The trial tribunal also considered other evidence including the sale agreement dated 01/08/1998 to conclude that the respondent is the lawful owner of the suit land. The appellant challenged the legality of the sale agreement and claimed that the decision of the trial tribunal was based on the sale agreement (exhibit D 1) which was void and illegal for it contained no office stamp of the hamlet chairman who signed the agreement but it contained a stamp for the village executive officer without the signature of that officer. It is unfortunate that the issue on the legality of the said exhibit was never raised before the trial tribunal. The proceedings of the trial tribunal show that on 29/07/2022 when the said document was admitted as exhibit, the appellant was well represented by Mr. Paschal Peter, learned counsel. He never raised any objection to its admission but he cross examined the witness on the inconsistencies found in that document. The inconsistencies including, lack of stamp by the hamlet chairperson

and signature of the village executive officer were well explained by the respondent and his witnesses who claimed to have witnessed the sale agreement. They claimed that the agreement was executed in the presence of the hamlet chairperson who also signed it but it was just stamped by the village executive officer. The evidence shows that the hamlet chairman one Sisti Silvery (DW3) who signed the agreement testified before the trial tribunal and verified to be the one who signed it. The fact that the agreement lacked the stamp of the hamlet chairperson does not in itself invalidate the agreement unless shown that the same was never executed. Since there is no dispute that the person who signed it was a hamlet chairman, the omission to stamp it does not invalidate parties' intention to that agreement bearing in mind that even in the absence of the written document, the intention of the parties to the agreement can be proved by oral evidence. This court therefore is satisfied that the trial tribunal correctly referred the said agreement. Apart from the sale agreement, there is other evidence and in my assessment to the evidence in totality I discovered that, on one hand, the appellant claimed that the suit land belonged to her late father and it was never sold to the respondent. She testified that the respondent trespassed into the suit land in 2008 and demolished a house therein. She filed a suit before the trial tribunal in 2020 after she was appointed the administratrix of her father's estate. That, she was appointed by family members to care for the deceased's properties in 2004 after the death of her brother Magira Barie who was prior assigned such responsibility. AW2, Hiiti Wema supported the appellant's evidence on who was the original owner of the suit land for he worked for the deceased in 1980's. According to his evidence, he basically knew nothing of what happened in 1990's after he left. On the other hand, the respondent claimed to have purchased the suit land from the appellant's mother one Mandoo Tluway and appellant's brother one Hiiti Barie. As per the respondent's evidence, the suit land was sold to him after the death of the appellant's father one Bariye Page. 3 Qaduwe Shang'we on 01/08/1998 and he tendered the sale agreement (exhibit D 1) to that effect. Although the trial tribunal concluded that the suit land was sold before the death of Bariye Qaduwe Shang'we for he died on 14/11/1998 and exhibit D1 was executed on 01/08/1998, I find no evidence on the date of death for there was no death certificate which was admitted as exhibit to verify that fact. I am convinced with the respondent's evidence that he purchased the suit land from the deceased's wife one Mandoo and her son Hiiti after the death of Barie Qaduwe Shang'we. His evidence was also supported by three other witnesses; Tsino Ona (DW2), the hamlet chairman one Sisti Silvery (DW3) and Bombo Kokumo (DW4) who was the neighbour to the suit land. They all claimed to have witnessed the sale agreement between the respondent and the appellant's family members; Mandoo Tluway and Hiiti Barie. The sale agreement was admitted as exhibit D1 to support the respondent's evidence and it was signed by two among the respondent's witnesses; Tsino Ona (DW2) and the hamlet chairman, Sisti Silvery (DW3). The respondent's evidence was considered by the trial tribunal as proving that the respondent purchased the suit land on 01/08/1998. Upon appraising the evidence in totality, I also agree with such conclusion because, despite few inconsistencies observed in the sale agreement, there is clear evidence from the respondent and his witnesses that the respondent purchased the suit land from the

appellant's mother and brother. The mere fact that the hamlet chairman signed without stamping the agreement does not in itself invalidate the agreement much as there is no dispute that he was the hamlet chairman at that time. The evidence also shows that, the appellant was aware of the sale and that is the reason she never acted when the respondent started using the suit land before her mother's death. The evidence further shows that, the respondent has been in occupation and use of the suit land for so long and that was in the knowledge of the appellant. The appellant claimed that she was assigned by family members to care for her father's properties in 2004 and the respondent trespassed into the suit land in 2008, but she never acted until 2018. It was expected for her to assign the reasons in her evidence as to what stopped her from taking action. Her claim that she was caregiving for her sick mother was never raised in her evidence rather, it was raised during rejoinder submission on appeal before this court hence, an afterthought. This raises a presumption that the respondent was telling the truth and the appellant never acted knowing that her mother and brother sold the suit land. Despite the fact the sale was not made under administration capacity, the suit property was considered as a jointly owned property between the deceased and his wife and that is why no probate matter was preferred when the appellant's mother was still alive. This also convinces this court to believe that the appellant knew that the deceased's wife (her mother) had mandate to dispose of the suit land being a surviving spouse upon death of the deceased husband and that is why she never acted when her mother was still alive. From the above discussion, I find that there was evidence on balance of probabilities proving that the respondent is the lawful owner of the suit land measuring 1.4 acres for one piece and 2.9 acres for another piece as verified by the trial tribunal during visitation of the locus in quo. I therefore see no reason to interfere with the conclusion of the trial tribunal declaring the respondent as lawful owner of the suit land. The appeal is therefore dismissed with costs. Dated at THE HIGH COURT OF TANZANIA AT MANYARA this 12th of March 2025 D. C KAMUZORA
JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria