

TANZANIA / JUDGMENT

## 20170127 TZHC Mwanza

COURT  
TZHCDECIDED  
27 January 2017

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IN THE HIGH COURT OF TANZANIA AT MWANZA MISC. LAND APPEAL NO. 67 OF 2013 (Arising from the District Land Housing Tribunal for Mara at Musoma in Land Appl. Mo.146 of 2014. Original Land Case No.01/2013 before Isorya Ward Tribunal} JOYCE MBONABIBI CHILAMBO ..... ~ ..... APPELLANT VERSUS DOMINICO MAYALA I ... I I I ... I ..... I ... I ... I I.,. ... RESPONDENT JUDGMENT OF THE COURT 09/11/2016 & 27/01/2017 GWAE,l The dispute between the appellant and respondent has its own kind of history, however it is not complicated, it is as follows; that the appellant, Joyce Chilabho (now named as Joyce Mbinabibi ,Chilambo) initially instituted a criminal case on criminal trespass c/ s 299 of the Penal Code against Julius Chilabho (Criminal Case No. 77 of 2013), her biological · brother of the appellant before Nansimo Primary Court at Bunda District, the primary court on its judgment not dated found the said Julius guilty · and proceeded declaring· the heirs of the deceased person (appellar\ts l a t e ~ 1 \_.><,.>,' ..;"~----' . .,√ (.1, -.t"! father, Chilabho) a lawful owners of the land in dispute (allegedly trespassed) and made an order restraining the said Julius (convict) from selling or dealing with any activity in the suit land. That following undisputed fact the appellant and his sister known by names of Tereza on 03/12/2013 went to the suit land and cultivated thereon, the respondent who claims to have purchased the land in dispute since 2006 from Julius Chilabho lodged a land dispute before Kisorya Ward Tribunal (trial tribunal), The dispute was registered a Land Case No. 01 of 2014 against the appellant and another person called Mbinabib Chilabho who is unfortunately not clearly appearing or the names are reflecting one person and not two person as appearing in the trial tribunal file, in this appeal however by necessary implication or out of the knowledge of the appellant's advocate who drafted her petition of appeal, appellant being Joyce· Mbonabibi Chilabho ·meant to include Mbinabib Chilabho. as one person as opposed to trial tribunal record. That the trial tribunal heard the dispute and eventually found itself bound by the decision of Nansinio Primary Court at Bunda District, it therefore went on declaring the appellant to be a lawful owner-of the suit land, the respondent was aggrieved by the trial tribunal findings as a result appealed 2 I to the District Land and Housing Tribunal for Musoma at Musoma ,J (appellate tribunal-DLHT), the appellate tribunal held that the appellant was aware of the sale and that there was no proof that t~ere was a meeting held by the deceased person's heirs with consensus not to sell the family properly, the verdict was cons~quently entered in favour of the respondent by allowing the respondent's appeal with costs. Aggrieved by the appellate tribunal's decision, the appellant filed three grounds of appeal, notably;

1. That, the DLHT erred in law and fact for holding that the respondent had proved his case on balance of probabilities as required by the law
2. That, the DLHT erred in law and fact when it held that there was no evidence that the family members sat and decided not to sell any family property contrary to the evidence of Kikao cha Familia a Marehemu Chilabodated 22nd August 2011
3. That, the DLHT erred in law and fact by holding that the respondent bought legally the disputed property from the vendor, Julius ~ Chilabho. .... 3 I At the hearing of this appeal, the appellant and respondent had no legal representation, appellant when entertained to argue her appeal, she submitted that she was appointed administratrix by her family members though she admittedly argued that she had no letters of administration and that her brother, Julius who sold the land in dispute had run away before institution of this dispute by the respondent while on the other hand the respondent admitted to have bought the piece of land in question but he contended that if the deceased heirs are after redemption of the same, they should pay back his money in the appropriate current value of the suit land, according to him he should be paid Tshs. 850, 000/= Having summarized what transpired before the trial tribunal, appellate tribunal as well as before this court, I have now to determine appellant's grounds of appeal. It is trite law that whoever comes to court of law or quasi judicial body seeking justice must prove his or her case to the required standard. In our case it is lucidly clear that the trial tribunal wrongly relied on the Primary court decision which proceeded declaring the heirs of late Chilabho to be lawful owners of the suit land without jurisdiction, see section 4 (1) of the Land Disputes Courts Act, Cap 216 R. E, 2002 ~ 'I which ousters jurisdiction of ordinary subordinate courts (Magistrates' Courts) and section 167 of the Land Act, Cap 113. : I say that the trial tribunal erred in law for reason that the matter before it was not a criminal one as was the case before the Primary Court of Nansimo but land matter with different parties and with different interests. Moreover the Primary court was not justified to pronounce a lawful owner of the suit land as it was dealing with a criminal case and not civil matter, As to the finding of the 1st appellate tribunal, in respect of deemed sale agreement, I say deemed sale agreement simply because I have made my efforts to look at the said sale agreement allegedly entered between the respondent and appellant's brother but in vain. Thus, it is not safe to hold with certainty that the respondent entered into a sale agreement with the said Julius and the same was made in writing however according to the evidence on record, the pleadings and the parties' verbal submission, it is not in dispute therefore that the respondent purchased the suit land from Julius Chilabho. 5 I Regarding the 2nd ground of appeal, I have also tried to look the said meeting allegedly held on 22nd August 2011 but without success, thus the appellant's assertion that there was a meeting remains mere speculation, supported with no documentary evidence. Though there would be a need to proceed evaluating evidence on record to ascertain if the respondent legally purchased the suit land or not due to the reason that that issue is not in dispute as earlier stated, still this court has to look at limitation of time, though the appellant was wrongly sued by her own names, yet it is the opinion of this court the mistake is on the one who initiated (respondent) the proceeding and not the

appellant. the evidence on record clearly reveals that the respondent purchased the suit land since 2006 and he instituted the matter on 12/12/2013 immediately after the alleged trespass by the appellant and another on 03/12/2013, hence not more than seven years. In *Salim v aboyd and another* (1971) 1EA 550, The High Court of Kenya held that: "The applicant must prove that he has had exclusive uninterrupted possession of the land for 12 years and ~ 1111114 without fraud". " ~ 6 i'i ,! In our instant dispute, it is clear that 12 years had\_ not elapsed since the ! I ' respondent entered into the possession of the land in dispute as required under item 22 of part 1 of the 1st schedule/of the Law of Limitation, Cap . I 89 R. E, 2002. Since courts are always reluctant to disturb long possession . I I , by adverse possessor equally the same c9urts should not hesitate to I ' allow a party who is aggrieved by adverse possession by intruder or purchaser of family land without consent. Jf family members or deceased person's heirs as in our case. I I .. It is worth noting that the trial tribunal/ was also wrong to declare the j appellant as a lawful owner instead of d~clarin~ the suit land to be lawful I property of the heirs of the late Chilabho,i by declaring her a rightful owner, I , that in future may lead to deprivation of trig ht of other heirs over a piece of ' land in dispute. / I I . ' . In the final event, this appeal is partially allqwed to the above extent, the ! ' I land in dispute can be redeemed by the heirs of Chilab~o, the appellate . I I inclusive upon payment of Tshs. 800,000/=(let's say eight hundred I . thousand Shillings) being estimated iurrent value of the suit land. In the I circumstances of this dispute each pi~ to bear its own costs. ~ I I I ; 7 I I I I !. It is so ordered. M.R.~ JUDGE 27/01/2017 Right of appe·al to any aggrieved pa cy ex lained. JUDG 27/01/2017 JU, 27/01/2017 8

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