

TANZANIA / JUDGMENT

# LAND APPEAL NO

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© THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA LAND APPEAL NO. 000007924 OF 2024 LENARD JOHN NGOKEYE COMPLAINANT/ APPELLANT/ APPLICANT/ PLAINTIFF VERSUS JOSAPHAT KIBARUMWE RESPONDENT/ DEFENDANT

## JUDGMENT

A. K. RWIZILE, J, This appeal arises from the decision of the District Land and Housing Tribunal of Kasulu. Parties to this appeal have been locked in this litigation over a piece of unsurveyed land with an approximation of two acres. It is situated at Buhilima, of Kanazi village, ward of Ruhita in Kasulu district. It has been recollected from the appeal records that the respondent obtained a judgement first before the Ward Tribunal of Ruhita over the same land, after he successfully proved that the appellant trespassed into it. It was in application No. 15 of 2021. However, that decision, which was delivered on 20th April 2021, did not last long. It was set aside on jurisdictional ground by the District Land and Housing Tribunal in Land Appeal No. 48 of 2022 at the instance of the appellant. Following that decision issued on 26th October 2022, the appellant, this time filed Application No. 96 of 2023, before the District Land and Housing Tribunal. In its decision dated 27th February 2024, the tribunal was certain that the appellant had no right over the land. His application was dismissed. He was not satisfied by that decision, hence this appeal. Before this court, the appellant has put forward 6 grounds of appeal as hereunder; I. That, the trial tribunal grossly erred in law and facts for failure to hold that the appellant had proved his case on balance of probabilities as required in civil trials.

2. That, the trial tribunal erred both in law and facts for failure to comply with the decisions of all assessors without any justifiable and reasonable cause.
3. That, the trial tribunal erred both in law and facts for failure to hold that the appellant's father was in occupation of the disputed premises from the year 1975 and the appellant had personally been in use of the same from 1990 to date hence the principle of adverse possession applicable.
4. That, the trial tribunal erred in law and facts for failure to find that there were permanent crops like mango trees, bananas, avocado trees, eucalyptus trees planted by the appellant's father in those dates.

5. That, the trial tribunal erred both in law and facts for failure to hold that the appellant's evidence was well corroborated by his witnesses' evidence. Page. 1 were of the view that the appellant had proved his case. This is a legal issue. It is governed by section 24 of Land Disputes Courts Act, 2002, [Cap 216. R.E 2019], which provides that in reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairm an shall in the judgment give reasons for differing with such opinion. With respect, the law does not bind the chairperson to follow the opinion of the members of the tribunal. All is required, is to give reasons as to why he opted to depart from their way. The judgement shows; after analyzing evidence of both parties, he was of the opinion that the evidence by the appellant did not prove the case and so was not ready to go by the opinion of the assessors. It is shown on page 7 of the impugned judgement. In fine, I find no merit in this ground of appeal. It is dismissed. Moving further, it is opportune to deal with the rest of the grounds, which as I have said, will be determined together. The same hinge on if the case was proved by the appellant. The appellant, as it is recorded tendered three witnesses. In his evidence, he testified that his father acquired that land in 1975. On page 4 of the typed proceedings, he said; " ... Baba alikuwa akipalima mazao, mazao ya kudumu yalikuwa maembe.parachichi, mikaratusi, na migomba, rnazao hayo yapo tangu mwaka 1975. Majirani wa sharnba hili, mashariki Manifred Mhofo, magharibi mto Buhilima, Kaskazini ni Mzee Diwa, kusini ni Mzee Mjiji ... " The above extract of the evidence of the appellant literally means, that his father started cultivating the land by planting permanent crops such as mangoes, eucalyptus, and bananas. Other crops have been there since 1975. Neighbours are on the East, Manfred Mhofo, West, is river Buhilima, North is Mzee Diwa and South is Mzee Mjiji. He was clear that the respondent has never had land on the premises. His evidence was supported by Helena Kilengere (Pw2) who also claimed to be the neighbor to that shamba, just right on the side and Kasilino Ndahilo (Pw3) who also said is his neighbor. But further, according to Pw3, their shambas are one acre each. The appellant claimed, the respondent does not own land there because he has never been seen working on same. The respondent on his side claimed; on page 11 of the typed proceeding that his shamba is bordered on the East side by Manfred and John Ngokeye(father of the appellant) but they are separated by the Bubilima stream, on the North side is Chimpaye, while on the South is Mjiji. From this plain evidence, it seems, the appellant called to testify people he did not mention as his neighbors because, according to him, they are Manfred, Mzee Diwa and Mjiji. Those who came to testify on his side are Helana and Kasilino. None of them stated which side of the shamba they are neighbors. The evidence of Pw2 and Pw3 therefore does not clearly support the case of the appellant. It seems, Mjiji (Dw3) testified for the respondent and supported the case on that side. Dw2 as well. In all, the evidence of appellant did not plainly say, the respondent does not own land around there. But all they are saying is that, they have never seen the respondent work on that land. But his (respondent) evidence is plain again that he acquired that land from his father when he got old and was on and off. Page. 3

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