

TANZANIA / JUDGMENT

LAND APPEAL NO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (KIGOMA SUB-REGISTRY) AT KIGOMA LAND APPEAL NO. 6700 OF 2024 TANU KISOGI APPELLANT VERSUS ZERIDA KWANGULA RESPONDENT (Appeal from the Judgment and decree of the District Land and Housing Tribunal for Kasulu at Kasulu) (Maurice Egbert Sekabila, Chairperson) Dated 29th day of February 2024 In (Land Application No. 118 of 2023)

JUDGMENT

Date: 10/07 & 12/08/2024 NKWABI, J.: The appellant lodged a land application in the trial tribunal pursuing to be declared owner of the disputed piece of land, costs and any other reliefs the tribunal would deem fit to grant. Owing to failure to prove the suit, the application was dismissed on merit. The trial tribunal found that the appellant's evidence was contradictory on material particular thus incapable of being relied upon. In addition, it found that the evidence of the respondent was credible. He was terribly aggrieved by the decision of the trial tribunal. In this appeal, he has tabled four grounds of appeal to enable him to clinch victory against his adversary. They are thus: 1

1. That the honourable chairman of the trial tribunal erred in law and fact for failure to note that either party had no locus standi to sue and to be sued over the land alleged to belong to the deceased.
2. That, the honourable chairman of the trial tribunal erred in law and fact to have not found that the appellant has been in possession of the suit land uninterrupted for over twelve (12) years, thus he has obtained ownership through adverse possession of land.
3. That the honourable chairman of the trial tribunal erred in law for failure to note that the purported seller of the suit land was a necessary party through his legal representative, non-joinder of which nullifies the entire proceedings.
4. That, the honourable chairman of the tribunal erred in law and in fact for faulting and disregarding the credible and cogent evidence adduced by the appellant and his witness, repercussions of which ended up delivering unfair decision against the appellant. When the appeal was called up for hearing, both parties appeared in person, unrepresented. The hearing of the appeal proceeded by oral

submissions.

Expounding his appeal in submission in chief, the appellant contended that the tribunal erred in giving decree in favour of the respondent without 2 justification. He said that the chairperson did not consider the time the appellant had been in occupation of the piece of land. He also maintained that the respondent is not interested in the suit (has no locus standi). He was of the firm view that his evidence was very heavy but was neglected by the trial tribunal. Responding to the submission in chief, the respondent claimed that this case is not a probate matter. She added that her father just invited the appellant. She further maintained that when her father died, the ownership of the piece of land turned into them. She also elaborated that the appellant is the son of their step mother but the step mother was divorced. She also stated that their mother stopped the appellant to continue cultivating, only to allow him to cultivate for one year. It was a further contention of the respondent that when their mother died, they stopped the appellant from cultivating the shamba. It is when the appellant claimed to have purchased it from his step-father. There was no settlement in the ward tribunal and the district land and housing tribunal decided in our favour. The respondent added that the appellant appealed to this Court. 3

Reinforcing his appeal in rejoinder submission, the appellant claimed that exhibit P .2 indicates that he has been cultivating the piece of shamba since the year 1989 and that there was no any interference. He finally prayed for justice. I will navigate through the 4th ground of appeal first, which is that, the honourable chairman of the tribunal erred in law and in fact for faulting and disregarding the credible and cogent evidence adduced by the appellant and his witness, repercussions of which ended up delivering unfair decision against the appellant. On this ground of appeal, while the appellant testified that when he bought the suit land in 1989 at T.shs 6000/= from Kwangula Ndakize, there was an oral contract with no witnesses. PW.2 said she witnessed the transaction with a number of other witnesses one of them being PW.3. The trial tribunal was, therefore, justified to dismiss the suit of the appellant on merit. Even an adage bears the testimony which is "One lie is enough to question all truths." That resonates what was stated in *Bahati Makeja v. Republic*, Criminal Appeal No. 118 of 2006 (unreported) where it was stressed that: 4 "It is settled law that a witness who tells a lie on the material point should hardly be believed in respect of other points. f/ Admittedly, oral evidence is capable of grounding verdict in favour of the person testifying as stated in *Abas Kondo Gede v. Republic* [2020] 2 T.L.R. where it was stated that: "Oral evidence if worthy of credit like in circumstances obtaining in the present case is sufficient without documentary evidence to prove a fact or titte, thus where a fact may be proved by oral evidence it is not necessary that documentary evidence must supplement that evidence as this is the other method of proving a fact. f/ See also *Engen Petroleum (T) Limited v. Tanganyika Investment Oil & Transport Limited*, Civil Appeal No. 103 of 2003, CAT, (unreported) where it was held that: 11 We are satisfied that the transaction involving the parties to this suit was an oral sale contract of petroleum products under which the appellant supplied petroleum products to the respondent for the due price of money in US Dollars, end. or local currency. f/ 5 But the contradiction on material particular in the evidence of the appellant leaves the case crushing to the ground against him. The 4 th ground of appeal is unmerited, it is dismissed. Regarding the 2nd ground of appeal which is that, the honourable chairman of the trial tribunal

erred in law and fact to have not found that the appellant has been in possession of the suit land uninterrupted for over twelve (12) years, thus he has obtained ownership through adverse possession of land. The ground of appeal reminds me of a proverb that goes, "a drowning man clutches at a straw. // I am of the firm view that the 2nd ground of appeal is misconceived and is inapplicable. One cannot have a defence of adverse possession at the same time claim he bought the piece of land. In Hon. Attorney General

- v. Mwahezi Mohamed (as administrator of Estate of the late Dolly Maria Eustace) & 3 others, Civil Application No.314/12 of 2020, CAT (unreported) it was observed that: "Apart from being from a foreign Jurisdiction/ the said decision based on Article 65 of the Indian Limitation Act; 1963 to opine that once the right; title or interest is acquired through adverse possession/ it can be used as a sword by the plaintiff as well as a shield by the defendant 6 It is very unfortunate that in our country; we do not have a similar law. /r The law as to adverse possession was also clearly expounded in Registered Trustees of the Holy Spirit Sisters Tanzania v. January Kamili Shayo & 136 Others, Civil Appeal No. 193 of 2016, (unreported) CAT where it was stated that: "Possession could never be adverse if it could be referred to a lawful title ... It has always been the law that permissive or consensual occupation is not adverse possession. Adverse possession is occupation inconsistent with the title of the true owner, that is, inconsistent with and in denial of the right of the true owner of the premises (see the referred English cases of *Moses v. Lovegrove* and *Huges v. Griffin* (supra). F/ A relevant authority against the appellant in respect of his claim of adverse possession can be seen in *Masumbuko Kwolesya Mtabazi v. Dotto Salum Chande Mbega*, Civil Appeal No. 44 of 2013, CAT where it was underscored that: '1/Je that as it may, this argument only serves to cement the fact that the appellant is not confident about his ownership of the disputed land. It also strengthens the 7 respondents case which was supported by proprietary documents including the offer of the right of occupancy as well as the certificate of title to the disputed land. // In the same vein, the second ground of appeal fails. Next, I canvass the 1st ground of appeal which is that the honourable chairman of the trial tribunal erred in law and fact for failure to note that either party had no locus standi to sue and to be sued over the land alleged to belong to the deceased. This is a mere desperate attempt to salvage his case. How could he say he had no locus standi to sue while he claimed to have purchased the land? In regard to the complaint against the respondent, it is the appellant who sued her in her person capacity, he is the one who is a wrong doer here, if any wrong was committed and cannot benefit from his own wrong. See *Kig Bar Grocery & Restaurant Ltd v. Garabaki & Another* [1972] E.A. 503 where it was held that: '∴ .. no court will aid a man to drive from his own wrong.' It should be noted that parties are bound by their own pleadings and the tribunal too was bound by the pleading of the appellant. All along, the appellant had painted the respondent to be a trespasser in a piece of land which he claims he had bought long ago from the deceased. How can then both parties lack locus standi to sue or be sued. This line appears have 8 been invented, at this stage, by the appellant in a desperate attempt to salvage his case which he miserably failed to prove. How can he flip the wrong to the respondent anyway. He was the one who filed the case, how can he claim to have no locus

standi during the appeal stage. The respondent was painted a trespasser, she had locus standi to defend herself. The ground of appeal is unmerited. It crumbles to the ground. rd In the 3 ground of appeal, the appellant is lamenting that the honourable chairman of the trial tribunal erred in law for failure to note that the purported seller of the suit land was a necessary party through his legal representative, non-joinder of which nullifies the entire proceedings. But where the trial tribunal did not purchase his story that he bought the piece of land, why to bother any legal representative if any? That would amount to a shot in the air. This ground of appeal is also unmerited. It crushes to the ground. In the end, on account of the above exposition of the law, I find that the appeal is unmerited. I dismiss it with costs. It is so ordered. DATED at KIGOMA this 12th day of August 2024. ffeik-J(/h J. F. NKWABI JUDGE

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