

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MWARIJA, J.A., KOROSSO, J.A., And KITUSI, J.A.)

CIVIL APPEAL NO. 35 OF 2019

**1. AMINA MAULID AMBALI
2. ROSE KASHINDE APPELLANTS
3. MASAKI KASHINDE**

VERSUS

RAMADHANI JUMARESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Mwanza)**

(Makaramba, J.)

**dated the 1st day of April, 2016
in**

Land Case No. 68 of 2014

JUDGMENT OF THE COURT

28th October, 2019 & 25th February, 2020

MWARIJA J.A.:

The appellants, Amina Maulid Ambali, Rose Kashinde and Masaki Kashinde were the defendants in the High Court of Tanzania at Mwanza in Land Case No. 68 of 2014 (the suit), the decision of which has given rise to this appeal. The suit filed by the respondent, Ramadhani Juma involved a dispute over ownership of a piece of land, Plot No. 16 Block "M" with CT No. 033013/27, L.O No. 28617 situated at Sukuma Street within the Mwanza City (hereinafter "the suit property").

In the suit, the respondent prayed for the following reliefs:-

"(i) vacant possession from the suit premises.

- (ii) Payment of mesne profit by the defendants from the date of judgment till vacant possession is secured by the plaintiff.*
- (iii) Court interest at 7% on (ii) above from the date of judgment till the vacating from the suit premises.*
- (iv) Costs of the suit.*
- (v) Any other reliefs as this Honourable Court may deem fit to grant."*

The appellants disputed the claim by the respondent that he was the lawful owner of the suit property. They contended that the property was part of the estate of the late Juma Mwango, (the deceased) who is the father of the respondent and the late Kashinde Juma, the husband of the 1st appellant. They claimed that, through fraudulent means, the respondent registered the property in his name. The appellants also raised a point of law that the suit was filed out of time.

In its decision, the High Court found that, since the appellants were occupying the suit property not as tenants but at the respondent's will, the limitation period of twelve years provided under item 22 of the schedule to the Law of Limitation Act [Cap. 89 R.E. 2002] did not apply. On whether or not the respondent was the lawful owner of the suit property, after having considered the evidence of the respondent and the appellants' witnesses, the trial Court found that the property was given to the

respondent by the deceased and therefore, the respondent was the lawful owner thereof. It therefore granted the respondents' prayer for an order of vacant possession against the appellants. The trial court declined however, to grant the other reliefs sought by the respondent.

The appellants were aggrieved by the decision of the High Court hence this appeal. In their joint memorandum of appeal, they raised three grounds as follows: -

- "1. That the trial court Judge was erred (sic) in law to support the plaintiff evidence and PW2, to the fact that the suit property was given to the plaintiff by his father one Juma Mwangi when he was alive as gift and transfer title deed without knowledge of the deceased family or administrator of the late estate but only PW2 by way of a 'word will' and without prove (sic) each element of the claim.*
- 2. That the trial court Judge was erred (sic) in law to entertain the suit which was out of time of twelve (12) years and had no jurisdiction to entertain the claim which time barred (sic) from 1974 up to 2014.*
- 3. That the trial court Judge was erred (sic) in law to exercise jurisdiction and entertained the plaintiff claim after found (sic) that since 1974 the defendants were not tenants of the plaintiff and there is no a tenancy agreement between*

the plaintiff and defendants for forty (40) years and the plaintiff not taking any action against the wrongful occupiers of the suit premises since 1974.”

At the hearing of the appeal, the 1st and 2nd appellants appeared in person, unrepresented. The 3rd appellant did not appear although he had a notice of the date of hearing. According to the 2nd respondent, the former informed them that they could proceed with the hearing of the appeal in his absence. In actual fact, the appellants lodged a joint written submission in support of their appeal. On his part, the respondent was represented by Mr. Constantine Mutalemwa, learned counsel.

In their submission, the appellants reiterated what they stated in their defence at the High Court; that the suit property was a family property and the same had never been given by the deceased as a gift to the respondent. They stressed that, no sufficient evidence was tendered by the respondent to substantiate his claim. Referring to the principles of Islamic law, the appellants added that, in any case, the respondent could not have been given more than 1/3 of the value of the suit property whether being by a Will or otherwise, the fact which they contended, the High Court did not make a finding on it. They raised yet another issue; that the suit property was matrimonial asset and as such, the respondent

would only be entitled to a portion of its value. They stressed that the suit property remained to be part of the estate of the deceased as evidenced by the decision of the District Court of Nyamagana in Probate and Administration Appeal No.3 of 2007.

In the 2nd ground, the appellant re-iterated the submission they made in the trial court that the suit was filed out of time. It was their stance that the learned trial Judge erred in finding that the suit was brought within time while the same was filed after about 40 years from the date of the death of the deceased in 1974. On the 3rd ground, they argued that the trial court did not have jurisdiction to order them to give vacant possession of the suit property while according to the evidence, they were not tenants but the heirs of the deceased who have vested interests in the property.

In his reply submission, the respondent opposed the arguments made by the appellants. He maintained the claim which he made in the trial court, that the suit property was given to him by the deceased as a gift and thereafter he transferred it into his name. Countering the argument by the appellants that he did not tender sufficient evidence proving ownership of the suit property, he submitted that the evidence of registration of the property sufficiently established that he was the lawful owner thereof. In support of his argument, he cited *inter alia*, the case of

**Leopold Mutembei v Principal Assistant Registrar of Titles,
Ministry of Lands, Housing & Urban Development and the
Attorney General**, Civil Appeal No. 57 of 2017 (unreported).

On the 2nd and 3rd grounds of appeal, the respondent submitted in reply that the appellants occupied the suit premises at his will, not as tenants and therefore, the limitation period for instituting the suit did not apply. He stressed that in this case, the cause of action accrued in 2012 when he required the appellants to give vacant possession of the suit property. On the question of jurisdiction of the trial court, Mr. Mutalemwa argued in his oral submission that the High Court had jurisdiction because the dispute involved ownership of a landed property to which the respondent sought an order of eviction against the appellants who were in its occupation at the respondent's will.

We have duly considered the submissions made by the appellants and the counsel for the respondent. To start with the 1st ground of appeal, whereas the appellants' contention is that they have a right over the suit property by virtue of inheritance, on his part the respondent tendered documentary evidence showing that he has a certificate of title in respect of the suit proper; that is, CT No. 033013/27, L.O No. 28617 (Exhibit P.1). In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken

to be a lawful owner unless it is proved that the certificate was not lawfully obtained. In the case of **Leopold Mutembei** (supra) cited by Mr. Mutalemwa, the Court cited with approval the following excerpt from the book titled **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W. Tenga and Dr. S.J. Mramba, Law Africa, Dar es Salaam, 2017 at page 330:-

"... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."

The appellants have argued that registration in the name of the respondent was done fraudulently. That is an allegation which ought to have been proved through cogent evidence at the trial and it ought to have involved the filing of a counterclaim and joining of the relevant authority which was responsible for registration of the plot in the name of the respondent. As it stands however, the available evidence on the record supports the finding of the learned trial Judge that the respondent is the

lawful owner of the suit property. The 1st ground of appeal is for that reason, devoid of merit.

Having determined the 1st ground of appeal in the manner stated above, we need not be detained much in answering the 2nd and 3rd grounds of appeal. There is no dispute that the appellants were not staying in the suit premises as tenants. Having found, according to exhibit P1, that the respondent is the lawful owner of the suit property, it goes without saying that the appellants were mere licensees. The long period of their stay in the suit premises did not entitle them to ownership by virtue of an adverse possession as they tried to depict. As held in the case of the **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 Others**, Civil Appeal No. 193 of 2016 (unreported):-

*"It has always been the law that permission 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 case of **Moses v. Lovegrove** [1952] 2 QB 533 and **Hughes v. Griffin** [1969] 1 All ER 460)."*

On the basis of the above stated reasons, we agree with the respondent's counsel that the suit was not barred by limitation. The 2nd and 3rd grounds are thus also devoid of merit.

In the event, we find that the appeal is lacking in merit and the same is thus hereby dismissed. Given the relationship of the persons who were involved in the dispute, we make no order as to costs.

DATED at DAR ES SALAAM this 7th day of January, 2020.

A. G. MWARIJA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Judgment delivered this 25th day of February, 2020 in the presence of first appellant appeared in person, absence of 2nd and 3rd appellants and Mr. Musa Nyamwelo holding brief for Mr. Mutalemwa, counsel for the respondent is hereby certified as a true copy of the original.


F. H. Mahimbali
DEPUTY REGISTRAR
HIGH COURT OF TANZANIA MWANZA