

**IN THE HIGH COURT OF TANZANIA****AT DAR ES SALAAM****CIVIL APPEAL NO. 30 OF 2003****(Appeal from the judgment of District Court of Ilala at Samora in  
Civil Case No.40/2003, originating from Primary Court of Buguruni in  
Civil Case No. 94/2003)****FATUMA BONDEI..... APPELLANT****VERSUS****JUMA TEGULO..... RESPONDENT****JUDGMENT****MANENTO, JK:**

This is a second appeal. In Primary Court Case No. 94/2002 at Buguruni Primary Court, the appellant was the plaintiff. He instituted the civil case for the recovery of a piece of land which she alleged had been trespassed by the respondent, one Juma Tegulo. Judgment was entered for the appellant. Then the respondent being aggrieved by that decision, appealed to Ilala District court, Civil Appeal No.40/2005. Then the decision of the primary court was reversed. The appeal was allowed. The appellant was then aggrieved by that decision. She appealed to this court.

Before the primary court, she stated that she had been owing that piece of land since 1961. He had a house which fell down after the death of her husband. She did not tell the court when it happened. She said that she moved from that area, yet kept

maintaining it. She was surprised to see the respondent developing the piece of land by building a house therein. That is when she started looking for her rights. At first she pursued the matter by way of criminal complaint, yet, he lost the cases because the courts at all times ruled that the case was a civil one and not a criminal case. Thus the appellant ended at believing that the respondent had been using dubious ways in being found not guilty and acquitted. She then misled herself by complaining to the office of the Prime Minister. She was rightly directed to the High Court and subsequently to the primary court where he instituted the civil suit which led to this appeal.

The witnesses she called gave evidence to the effect that they were neighbours to the suit plot. They were surprised to see the respondent developing the place. Another witness was called as a witness when the respondent was charged in a criminal case. There was no more evidence for the appellant to connect her assertion.

On the other hand, the respondent had testified that she had bought the suit plot from one Lucian Mohamed way back in 1983. The purchase agreement was reduced into writing and witnessed by the Chairman of the Chama Cha Mapinduzi B. Kisiwani. Lucian Mohamed sold the area she had her fallen house while she was living at Mlandizi. There were unnamed fruit trees in the said plot. That the appellant had sued the said Lucian over that piece of land; but she lost the case. Likewise, one witness who testified for the respondent one Pius Henry testified that though he did not witness the purchase, yet he knew from the respondent that he had bought that piece of land from Lucian. They are neighbours. It was on the strength of that evidence that the trial primary court entered

judgment for the appellant. On the same evidence, and without giving reasons, the District appellate court reversed that judgment and allowed the appeal.

Before this court, the appellant urged that the District appellate court erred in failing to evaluate the evidence which was before the primary court on allowing the appeal.

Before this court, the appellant had nothing to add, other than her memorandum of appeal. But in reply to the submissions by the respondent, she said that she didn't know whether that respondent had bought that piece of land from Luciana Mohamed nor had Luciana Mohamed built any hut at that area in dispute. On the other hand, the respondent had insisted that he bought the piece of land in dispute for shs.5,000/= from Luciana who is now dead. Given the evidence in record, I am satisfied that the respondent bought the said piece of land from the late Luciana Mohamed and he developed it. He was a bona fide purchaser for value and there was no case against the said Luciana which ruled that the land Luciana sold was not her property. I am of the opinion that the respondent had proved on a balanced of probability that the suit plot belongs to him after he had lawfully purchased it from Luciana Mohamed. For that matter therefore, the appeal is dismissed and I don't see any good reason why I should make an order for costs. Thus, costs will lie where they fall.

  
A.R. Manento

**JAJI KIONGOZI.**

14/7/2005

14-7-2005

Coram: A.R. Manento, JK

For the Appellant)

For the Respondent) All present in person.

Court: The judgment is read in the presence of the parties in person.

  
A.R. Manento

**JAJI KIONGOZI.**

14/7/2005