

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL NO. 22 OF 2021

(Arising from the District Land and Housing Tribunal Land Appl. No. 16 of 2019)

ANDREA LUME.....APPELLANT

versus

ASTERIA AUGUSTINE & 3 OTHERS.....RESPONDENT

JUDGMENT

12nd & 22th July, 2021

RUMANYIKA, J.:

With respect to a parcel of land at Nyantimba villange, ward of Nyamtembo Chato district, the appeal is against judgment and decree dated 17th November, 2020 of the District Land and Housing Tribunal for Chato at Chato (the DLHT).

The four (4) grounds revolved around two (2) main points as under:-

- (1) That in respect of type of disposition and size of $\frac{3}{4}$ or 79 acres of the disputed land, by way of sale or adverse possession the DLHT improperly analyzed and evaluated the evidence.

(2) That the DLHT should have held that the natural love and affection influenced disposition of the disputed land actually required no formalities.

When, by way of audio teleconference the appeal was called on 12/07/2021 for hearing, Messrs Davis K. Muzahula and Y. Siwale learned counsel appeared for Andrea Lume and Asteria Augustine & 3 Others (the appellant and the respondents). I heard them through mobile numbers 0764634926 and 0764767672 respectively.

Mr. D.K. Muzahula learned counsel submitted; **(1)** that the doctrine of adverse possession was improperly involved against the vendor appellant **(2)** that it was actually 79 not $\frac{3}{4}$ of an acre say 19 years with well-defined boundaries previously established and witnessed under Deemed Right of Occupancy therefore informally owned without document much as also none of the respondents had proved the $\frac{3}{4}$ acre allegations.

In reply, Mr. Y. Siwale learned counsel submitted, that not only the appellant did not prove the alleged purchased 79 acres or something, but also the size wasn't stated in his application much as no local leaders or the vendor's relatives had witnessed it, the dispute only arose after the

alleged vendor's death and it was not clearly made by the appellant as to who received the heads of cattle, the deceased vendor, widow or the survivor children. He who alleges must prove **(2)** that with all that actually the DLHT properly evaluated the evidence and the respondents' evidence weighed heavier than that of the appellant as such one was given $\frac{3}{4}$ of an acre only for residential purposes.

A brief account of the evidence reads as follows:-

Pw1 Andrea Lume stated that he purchase a bare land from the respondents' late father (father in law) in 1999 and he paid consideration of 6 (six) herds of cattle initially 4 and during funerals 2 of them and he occupied it undisputed say for 20 years until 2019 which one, following the dispute the local ward tribunal found it was but 79 acres with well-defined boundaries. That Kumbi Kalanyi, Enos Mashimba and Suzan Peter (the appellant's wife) witnessed the sale agreement.

Pw2 Suzan Peter testified as a material replica as that of the appellant only that the respondents were her cousin brothers and sisters.

Dw3 Ng'mbi Karangi stated that the appellant arrived at the village in 1999 and purchased the land from Augustin Buzengano he generally testified as Pw1 and Pw2 did.

Dw4 Enos Mashimba stated that between the years 1989 – 1993 he was the local ten cell leader. That the appellant arrived there in 1999 and was hosted by the Augustine Buzengano and family until when he purchased the disputed land for six heads of cattle, 4 as advance payment and 2 during funerals of the late father that the disputed land was so big that he (Dw4) did not know its size.

D4 Bahati Augustine Buzengano @ Ng'ungo Augustine the elder son of the late father he stated that the appellant was his brother in law whom, on arrival in 1999 the family hosted him then the father gave him $\frac{3}{4}$ of an acre of the land only for residential purposes but he now claimed title. That in the years 2000 – 2005 the entire land was involved in a dispute to which the appellant wasn't a party (copy of the respective deed of settlement-Exh DE1).

Dw2 Daud Augustine he testified as per Dw's story that the appellant had not purchased the disputed land. Additionally that the entire land was

200 acres approximately which they discovered encroached by the appellant in 2016 upon death of the father.

Dw3 Nanetwa Sanyenge stated that she was widow of the late Augustine Buzengano that the appellant did not purchase the disputed land or at all, upon application the said Augustine Buzengano having had been allocated not less than 100 acres in 1988 by the local village authorities.

Dw4 Asteria Augustine stated that she was daughter of the late Augustine Buzengano (her testimony as per Dw1 and Dw2) materially. That is all.

The issue is whether the appellant's case was, on the balance of probabilities proved. This court actually it should not even have asked itself such question because very unusually it sounds to me that the appellant was not sure about the size of land that he claimed much as on that one in all fours his application, according to records lodged on 28/08/2019 it was silent. It means therefore, 79 acres it was both afterthought and exaggeration to say the list. Moreover, the appellant did not sufficiently dispute the $\frac{3}{4}$ of acre alleged by the respondents orally though it appears in consideration of natural love and affection given by the late father.

Like the learned chair of the DLHT argued, one may wish to remember that title on land was not established only by plain words but by cogent evidence showing the source of acquisition and occupation leave alone the long settled principle of law **he who alleges must prove** (S. 110(1) of the Evidence Act Cap. 6 RE. 2019 refers).

It is very unfortunate that if anything, the polygamist father had no single wife or child if at all witnessing the sale of such huge family land. In its totality therefore, the appellant did not actually prove his case on balance of probabilities except for the $\frac{3}{4}$ of an acre of land. I shall have no basis upon which to fault the well-reasoned judgment of the DLHT. The devoid of merits appeal is dismissed in its entirety with costs. It is so ordered.

Right of appeal explained.

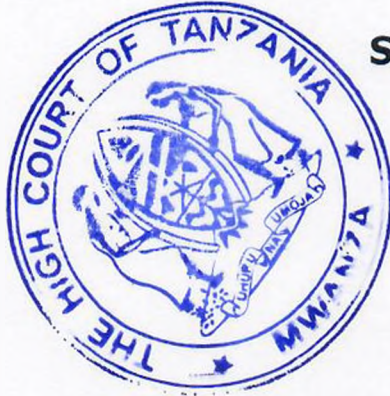


S.M. RUMANYIKA

JUDGE

12/07/2021

The judgment delivered under my hand and seal of the court in chambers this 22/07/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
22/07/2021