

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

CORAM: MUSTAFA, J.A.; MAKAME, J.A. And OMAR, J.A.

CIVIL APPLICATION NO. 8 OF 1986

BETWEEN

C. M. NYIRABU. . . . . , APPLICANT

AND

M. P. NYAGASWA. . . . . RESPONDENT  
(Application for Additional evidence in Civil  
Appeal No. 14 of 1985 from the Decision of the  
High Court of Tanzania at Dar es Salaam)  
(Bahati, J.) dated the 17th day of January,  
1985

in

Civil Case No. 61 of 1986

R U L I N G

MUSTAFA, J.A.:

This is an application by the respondent in this appeal for an order of additional evidence to be taken. The applicant alleges that the land in dispute was within the jurisdiction of Mbezi Village which he alleges was registered under the Village and Ujamaa Villages (Registration, Designation and Administration) Act 1975 at the material time. That fact was not made a point in issue at the trial, and Mr. Mkatta for the applicant submitted that it is an important legal point, and although no evidence was led at the trial, opportunity should now given for such evidence to be taken as it involves the question of consent or approval by the Village Council in respect of any disposition of land in a registered village. Mr. Mkatta submitted that such evidence was omitted from the trial because of an oversight then on the part of the /counsel for the respondent.

Mr. Muccadam for the appellant in this appeal objects to the application. He contended that such evidence could and should

have been adduced at the trial, and that such evidence was available at the material time. He also stated that it has not been established that such evidence was necessary or important for the decision of the appeal.

Even at the hearing of this application there is controversy as to whether the disputed plot is situated at Kawe or the Mbezi Beach area. The location of the disputed plot is, at this stage, in issue. However there is a registered plan No. 17448 which puts the disputed plot in a certain area.

We think that the additional evidence, if it pinpoints where the disputed land is, will be important and useful. If the plot is situated in a village, the evidence <sup>that</sup> that such village is registered or not and whether such transfer of village land needs Village Council approval or not, becomes relevant and indeed necessary for the determination of this appeal.

In all the circumstances, especially in view of the legal point involved, we think we should allow the application for additional evidence to be taken.

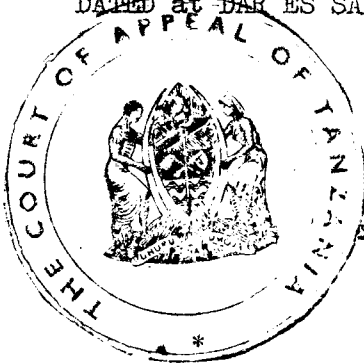
This Court itself will take the additional evidence. The deponent of the affidavit filed with the application for additional evidence Fidelis Paulo Kilulumo is to ~~appear~~ appear before this Court on due date to testify to the following matters, and will be subject to cross-examination;

- (1) If and when Mbezi Village was registered and incorporated under the Village Ujamaa Act 1975.
  - (2) Whether the disputed plot, as contained in the registered plan No. 17448, is situated in the Mbezi Village.
  - (3) How does Mbezi Village, if registered, approve a transfer
- ......./3.

of part of its land, assuming that the disputed plot is  
in Mbezi Village.

The applicant is to take steps to summons his witness Fidelis  
Kilulumo to appear on due date after such date has been fixed by the  
Registrar. Costs of this application to be in the cause.

DATED at DAR ES SALAAM this 14th day of May, 1986



A. MUSTAFA  
JUSTICE OF APPEAL

L. M. MAKAME  
JUSTICE OF APPEAL

A. M. A. OMAR  
JUSTICE OF APPEAL

I certify that this is a true copy of the original,



(J. H. MSOFFE)  
DEPUTY REGISTRAR.