

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

PC CIVIL APPEAL NO. 179/92
HALFANI SAIDIAPPELLANT
VERSUS
ALLY CHONDE.....RESPONDENT

RULING

KALEGEYA, J.

The Applicant, Halfani Saidi, having lost at all three stage: Primary Court, District Court and High Court is now seeking leave to appeal to the Court of Appeal which would be a third appeal and which requires a certificate by this Court that a point of law is involved.

Facts established indicate that the Applicant was settled on a piece of land in or around 1979 by one of the members of Visiga village leadership. Visiga is in Kibaha District. It would seem that although there were already some cashewnut trees Applicant cleared a sizeable part of the land and planted various perennial and annual crops. Thirteen years later, the Respondent who had been living in Dar es Salaam (and who at times, in between, had an occasion to visit Visiga village where his^M other lived) decided to sell the land in question under a claim that it belonged to his late father who died in 1979 and had therefore inherited it. The Primary Court found that as the land belonged to Respondent's father he was entitled to inherit it adding however that Applicant was entitled to some compensation for developments made though the value was not stated.

On Appeal to the District Court the said Court upheld the Primary Court finding. On further appeal to this Court, (Kyando, J.) the finding regarding the ownership of the shamba was confirmed but the other one concerning compensation was set aside. The High Court held that as the Respondent was young and lived in Dar es Salaam he could not have protested, and that neither could the mother who

resided in the same village for normally it is sons who inherit and not mothers. The Court concluded that compensation could not be ordered either because Applicant did not occupy the disputed shamba with the consent of the Respondent.

From these facts I consider that there is a point of law involved - that is, whether, where, in village communities, one occupies land with the authority of the village leadership and develops and occupies it uninterruptedly for 13 years and to the knowledge of a youngson and his mother, he should be ordered to vacate the said land on establishment that the said land belonged to the son's late father, and without compensation for the developments effected thereon.

I certify the above for consideration by the Court of Appeal and for that reason leave to appeal to the Court of Appeal is accordingly granted.

KALEGEYA

JUDGE

Delivered in the presence of Applicant and Respondent on

KALEGEYA

JUDGE