

IN THE HIGH COURT OF KENYA

AT SUBWANGA

ORIGINAL JURISDICTION

(Neyo Registry)

(PC) CIVIL APPEAL NO. 55 OF 1994

(From the decision of the District Court of S/wanga
at Subwanga in Civil appeal No. 50 of 1993)

SALISI WABULA APPELLANT

Versus

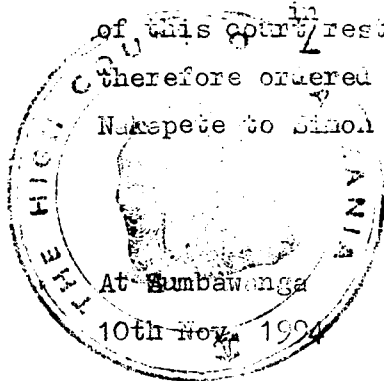
MELISSA KAMUPETE RESPONDENT

J U D G M E N T

MWIPPOPO, J.:

After going through the proceedings and hearing the parties on appeal I have no doubt in my mind that the 1st appellate's Court's decision was erroneous because PW.2 did not establish that he had the authority to sell the land in dispute and that the decision of the trial court was the correct one. I therefore allow this appeal with costs.

In a way the respondent Methew Kamupete will suffer as a result of this decision which issue was ^{not} deliberated upon by the trial court. The respondent produced enough evidence as supported by DW.2 - Simon Tamba that he paid Shs.5,000/= to the same DW.2 - Simon Tamba as purchase price for the portion of land which was completely ^{by the appellants land} ~~surrounded~~ as per sketch map of the land in dispute drawn by the Primary Court. The same DW.2 did not show any power of attorney to sell the land in dispute from his Augustino Tamba whom he purported to be the true owner of the land in dispute, nor did the defendant call the same Augustino to come and testify to be the owner of the land in dispute and to have authorized PW.2 to sell it for him. Therefore, since this court has found that the land in issue belonged to the appellant it is only fair for the respondent to have the assistance of this court ⁱⁿ ~~of this court~~ restoring the purchase price he paid to PW.2. It is therefore ordered that the shs.5,000/= paid by the respondent Methew Kamupete to Simon Tamba shall be refunded to him by the same Simon Tamba.



E.L.K. MWIPPOPO

JUDGE