

THE HIGH COURT OF TANZANIA

AT KYELA

(Original Jurisdiction)  
(Mbeya Registry)

(PC) CIVIL APPEAL NO. 81 OF 1996

(From the decision of the District Court of Rungwe  
at Tukuyu in Civil Appeal No. 31 of 1996)

ADAMSON MWAKASALA ..... APPELLANT

Versus

REBEKA BULILI ..... RESPONDENT

JUDGEMENT

MWIPOFO, J.:

The appellant ADAMSON S/O MWAKILASA is the caretaker and user of the area in dispute which involves land covered by a contour planted with trees which are ripe for lumbering therefore a gold mine worth pegging a claim on it. From the testimony of DW.1 Adamson s/o Mwakasala and DW.2 Hezron s/o Kasunga the area in dispute and the precious trees on its contour was owned and planted with trees by their fathers who were brothers, both of whom are now dead. But, the elder brother of the appellant one Yotham Kasunga before he died got into dispute with one Asagwile s/o Mwasumbi and ended up in court which reached this court by way of appeal in (PC) C. A. No. 19/1995 Yotham Kasunga V. Asagwile Mwasumbi the judgement of which was produced by the appellant in this appeal at this stage and this court on calling for the relevant records has confirmed that the cited appeal has correctly been quoted by the appellant and is relevant to this suit.

The respondent Rebeka d/o Bulili has exposed herself during the hearing of this appeal as having become interested in the land in dispute being the inheritor of the estate of her late husband who died in Chunya and was buried there in 1994. For more than 17 years they have lived in Tabora and Chunya.

In her testimony as PW.1, she was supported by PW.2 Asagwile s/o Mwasumbi and PW.3 Amenye s/o Mwakikato who testified that the trees in dispute belonged to the respondent.

The suit was filed as a claim over trees only, not over land as per plaint of the respondent whereas the appellant claimed both land and the trees as having been their father for about ½ century now since the 1940's. The Primary Court of Kandete presided over by the learned Mr. L.M. Kalenzi (PCM) sitting with gentlemen assessors Mwakyusa and Mpungunyufu after visiting the land of dispute held that this land was the same one already held by this court in the above cited (PC) Civil Appeal No.19/1995 that it belonged to Yotam s/o Kasunga and not to Asagwile s/o Mwasumbi. The same court also held that even the evidence on record proved that the land in dispute belonged to the Kasunga's and the appellant.

On appeal to the District Court of Rungwe District the learned Mr. D.D. Komba (DM) erroneously did not see and deal with the issue of this case being bound by the principle of res-judicate. Even on evidence on record the 1st appellate court believed the testimony of the plaintiff, the present respondent and his two PWs named hereinabove although it was scanty and dry as to how the land in dispute became the property of the respondent. Actually, PW.3 when cross-examined admitted that the big trees belonged to the father of the appellant. On calling for records of the (PC) Civil Appeal No. 19/1995 I have found out that that case involves the same disputed land and trees as the present appeal as held by the Primary Court when it visited the land and trees in dispute as shown in the sketch plan drawn by the primary court and filed herein as part of the trial courts below.

That being the case, this case should not have been admitted for trial in the first place. One Asagwile s/o Mwasumbi is a notorious villager who used the respondent, a widow, to re-claim the same trees and land already decided upon by this court between himself and Yotam s/o Kasunga in the above cited appeal. The respondent's narration in this court though not part of the record exposed herself as a woman who depended entirely on what Asagwile s/o Mwasumbi was teaching her to do, for even the farm in dispute she said was left in the hands of the said Asagwile s/o Mwasumbi for over 17 years. Had Asagwile s/o Mwasumbi won the suit in (PC) Civil Appeal No. 19/1995 I don't think he would have called up the respondent from Chunya to file this suit. He would have annexed that land and trees to himself. The respondent is just been used by Asagwile s/o Mwasumbi for his own interests on the trees and land in dispute. Her unholy alliance with Asagwile s/o Mwasumbi will cost her dearly in terms of costs of this case she opened up with an unlawful purpose.

This land in dispute and the trees thereof belong to the late Yotam Kasunga and his inheritors. The care-taker, the present appellant is lawfully occupying and utilizing that land as permitted by Hezron s/o Kasunga the inheritor of this estate of Yotam Kasunga. This appeal is allowed with costs both in this court and both lower courts. The files (PC) Civil Appeal No. 19/95 and its District Court and Primary Court files be returned to the relevant courts for safe custody.

E.L.K. MWIPOPO,

JUDGE

10/4/97

10/7/97

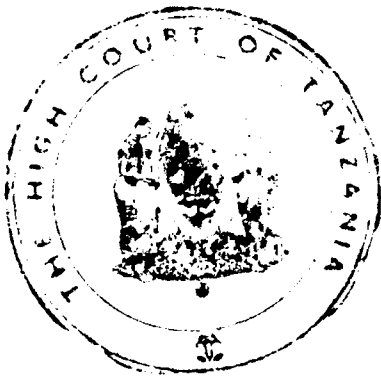
Mwipopo, J.

Appellant: Adamson s/o Mwakasala - Present.

Respondent: Rebekah d/o Bulili - Present.

C/C. Ms. Ngogo.

Court: Judgement delivered in their presence. Right of Appeal explained.



E.L.K. MWIPOPO,

JUDGE

10/7/97