

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 32/99

BENEDICT NJAU..... APPELLANT

Versus

KASSIM ALLY MAONYA..... RESPONDENT

J U D G E M E N T

IHEMA, J:

The appellant Benedict Njau has appealed to this court challenging the decision of the District Court in Civil Appeal No. 1/1999. He was the successful party in the original Primary Court Civil Case No. 9/98 at Mikongeni Primary Court Morogoro Municipality.

The dispute the subject of the appeal is a piece of land which the appellant lays claim on out of the clan land of the respondent. Appellant claims to have been given the piece of land by the respondent's father and the respondent, while admitting so, contends that the appellant has extended his original offer contrary to what was intended and given. The Primary Court of Mikongeni upheld the appellant's claim and on appeal the District Court of Morogoro in Civil Appeal No. 1/1999 overruled the decision of the Primary Court, hence this appeal.

When I heard the appeal on 13/7/1999 I took the liberty to direct the District Court to make further findings on the disputed piece of land so as to establish the demarcations on the area in dispute. It is on record that Hon. R.S. Ruhumbika, SRM made a site visit on 25/5/99 with the parties and a sketch map was drawn. When hearing resumed on 26.10.99 the sketch map was contested by the respondent, despite his visit to the site on 25.8/99.

In view of the conflicting testimony of the case under reference I am minded that justice would be done and seen to be done if this case is remitted back to the Mikongeni Primary Court for retrial,

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by another Primary Court Magistrate. I make no order as to costs in this appeal and the costs below. It is so ordered.

S. IHEMA

S. IHEMA

JUDGE

3/12/1999.

Right of Appeal explained.

S. IHEMA

S. IHEMA

JUDGE

3/12/99.