

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

P.C. CIVIL APPEAL NO. 76 OF 2005

***(From the Decision of Chusi RM in Civii Appeal No.48
of 2004)***

RAMADHANI HAMISIAPPELLANT

VERSUS

HABIBA KIBARUARESPONDENT

J U D G M E N T

A.Shangwa,J.

In this matter, the Appellant Ramadhani Hamisi was not satisfied with the decision of the District Court of Morogoro in Civil Appeal No 48 of 2004 which gave judgment in favour of the Respondent Habiba Kibarua who was declared to be the owner of a shamba with coconut trees, mango trees and banana trees which measures 4 ½ acres. This shamba is located at Mafisa area within Morogoro Municipality.

The Appellant and the Respondent are brother and sister born of the same father and mother. The land dispute between them was first referred by the Respondent to the Primary Court of Morogoro urban where she filed civil case No. 87 of 2003. The Court heard them and entered judgment in favour of the Respondent. Thus, the Respondent was the winner both in the Primary Court and the District Court.

The Appellant lodged six grounds of appeal in this Court. Ground number one is the most important one. It reads as follows: **That the Magistrate Miss Chusi erred by neglecting the law of Limitation as the Appellant held ownership and developed the piece of land under dispute for over sixty years from 1942 to 2003.**

Before the Primary Court of Morogoro Urban, the Respondent who testified as P.W.1 told the trial Magistrate

Mrs Kisinda that the Shamba in dispute was given to her by her father before his death in 1977. She said that after her father's death, it continued to be in her possession and that in 2000 she was surprised by the Appellant who started to interfere with her rights over it and took it from her.

Her testimony was supported by P.W.2 Mohamed Hamisi and P.W.3 Ally Hamisi who are the brothers of the Appellant born of the same father and mother. P.W.1 herself is their sister born of the same father and mother.

In addition to that, P.W.1's testimony was supported by P.W.4 Athumani Ally who is her son and to some extent it was supported by P.W.5 who told the trial Primary Court Magistrate that in 1986 he hired part of the shamba in dispute from the Respondent for cultivating vegetables and that after sometimes he cultivated sugar canes on it.

In his defence, the Appellant told the trial Primary Court that the Respondent is her sister born of the same father and mother and that he was given the shamba in dispute by his grand father. He told a similar story to this Court when presenting his appeal. Before the Primary Court he called three witnesses namely D.W.2 Hamisi Shomari, D.W. 3 Nassoro Hamisi Kapanda and D.W.4 Maria Magdalena Mkangira.

I have read the testimonies of D.W.2, D.W.3 and D.W.4 who were called by the Appellant in his defence before the trial Primary Court and found that none of them is supporting him in no uncertain terms that he was given the shamba in dispute by his grand father. For me, I think he has come to this Court in order to waste its time.

P.W. 2 Mohamed Hamisi and P.W. 3 Ally Hamisi who are his blood relatives are saying that this shamba does not

belong to him and that it belongs to the Respondent who is his sister. Upon their evidence, I agree with the decision of both lower Courts that the shamba in dispute belongs to the Respondent. Both Courts had jurisdiction to deal with this land dispute. For this reason, I hereby dismiss the Appellant's appeal with costs.


A. Shangwa, J.

8/12/2005

Delivered in open Court this 8th day of December, 2005


A. Shangwa

JUDGE

8/12/2005