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

**PC CIVIL APPEAL NO. 51 OF 2003
(Appeal from Civil Revision No.33 of 2002
in the District Court of Kinondoni District)**

NICOLAUS KAYOMBO.....APPELLANT

VERSUS

ASIA KIMANZI.....RESPONDENT

JUDGEMENT

ORIYO, J.

The dispute between the parties is over a piece of land which was at first adjudicated upon by the Village Council of Kimara Matangini followed by the Kimara Ward Tribunal. Both decisions were in favour of the respondent. The appellant defied the decisions and proceeded with activities in the disputed area. This forced the respondent to file CC 5/2001 at the Kimara Primary Court. Subsequently the appellant applied for and was granted leave to have the suit transferred from the Primary Court to the District Court of Kinondoni to enable him engage services of counsel. Apparently, instead of having suit transferred from the Primary Court to the District Court as ordered; the respondent filed Civil Reference No.33/2002 at the District Court of Kinondoni. The reasons advanced

for the revision included delays by the Primary Court to transfer the suit to the District Court which gave time to the appellant to proceed with construction activities at the disputed site. On the strength of the contents of the affidavit and the decisions of the Village Council and the Ward Tribunal; the District Court, (Kiseto, SDM) made a decision in favour of the respondent. Further orders were for the appellant to demolish the structure on the disputed land and to remove his blocks as well. This decision prompted the appellant to lodge this appeal.

The appellant was represented by Mr. Msafiri, learned advocate. For unknown reasons the respondent refused service according to the affidavits filed in Court by one **KIKWA**, a Court process server sworn on 17/11/2003 and 22/11/2004 respectively. The appellant was under the circumstances granted leave to argue the appeal, *ex parte*.

The Petition of Appeal consisted of 5 grounds, which I will deal with generally. But before I do so, I wish to clear a misconception by the appellant in his submissions when making references to the proceedings before the Village Council and the Ward Tribunal. The District Court merely made references to the decisions of those two quasijudicial bodies as gathered from the Primary Court record. The correspondence dated 5/2/2001 contained the decision of the Kimara Ward Tribunal over the dispute. A similar correspondence dated

8/5/1999 stated the decision of the Kimara Matangini Village Council on the dispute as well. Therefore, it is not correct on the part of the appellant to state that the District Court invented stories, evidence, etc. The District Court was correct in making references to the decisions of those two lower bodies.

However, I agree with the appellant that the District Court wrongly exercised its revisional powers in the matter at hand. According to the records, the initial orders were to transfer the proceedings in cc 5/2001 from the Primary Court to the District Court, or the respondent to reinstitute the suit at the District Court. I have stated earlier that the District Court was wrong; for two reasons. One was that it had no jurisdiction to order proceedings to be transferred to itself because under the then **SECTION 63(1)** of the Magistrates Courts Act, 1984 such powers were exclusively vested in the High Court. Secondly on the strength of the provisions of **SECTION 20(3)** of the Ward Tribunals Act, Cap 206 R.E 2002 which states :-

"Except on points of law where the final appeal lies to the District Court, decision of a Primary Court, on any appeal made to it shall be final and conclusive."

28/10/2005

Coram: Oriyo, J.

For the Appellant – Absent

For the Respondent – Absent

CC: Emmy

Court: Both parties were present when the judgment date was fixed; their absence has no explanation.

Judgment delivered in the absence of parties.

K.K. Oriyo

JUDGE

28/10/2005