

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

**PC . CIVIL APPEAL NO.87 OF 2004**

*( From the Decision of the Morogoro District Court in  
Civil Appeal No.62 of 2002 Mzonge, SDM )*

**RAMADHANI MAKANGIRA .....APPELLANT**

***VERSUS***

**OMARY RAMADHANI.....RESPONDENT**

**J U D G M E N T**

**A.Shangwa,J.**

The dispute between the parties in this appeal commenced over ten years ago. It was referred by the Respondent OMARY RAMADHANI to the Primary Court of Mkuyuni, Morogoro District. He did so on 26/1/1995 by filing Civil case No.4 of 1995. The dispute itself concerns a

piece of land measuring four acres which is located at Misala village in Morogoro District.

The Primary Court of Mkuyuni heard both parties and gave judgment in favour of the Respondent. That was on 16/5/2002. The Appellant RAMADHANI MAKANGIRA was not satisfied with the decision of the said Primary Court and appealed to the District Court of Morogoro on 22/10/2002. His appeal was registered as Appeal No 62 of 2002.

On 28/4/2003 , Mrs Yusuph , DM dismissed his appeal for non appearance in Court. On 6/8/2003, the Appellant filed an application supported by affidavit for setting aside the dismissal order of his appeal.

On 1/10/2003, Mrs Yusuph disqualified herself from dealing with the dispute between the parties. Thereafter, the

case was assigned to Mr. Mzonge, SDM. On 25/11/2003, he recorded as follows and I quote:

**"Court:** The case is for hearing the application for leave to appeal out of time.

**Applicant:** I have nothing to add.

**Respondent:** I have nothing to add.

**Order:** Ruling on 15/12/2003...

Sgd Mzonge, SDM"

The ruling was written and at the end of his ruling which he delivered on 29/1/2004, Mr Mzonge, SDM concluded as follows and I quote:

"...Application for leave to appeal out of time is hereby dismissed with costs. It is so ordered".

The District Court's record shows that when Mr. Mzonge, SDM was assigned that case, the Appellant's application which was pending before the Court was not for leave to appeal out of time against the decision of the Primary Court of Mkuyuni. It was for setting aside the Court's order passed on 6/8/2003 in which his appeal against the decision of the said Court was dismissed for his non appearance.

From the District Court's record, it can be seen that Mzonge, SDM misconceived the Appellant's application which was pending before Court to be an application for leave to appeal out of time, whereas, in fact, it was an application for setting aside the dismissal order of the Appellant's appeal.

As the District Court's decision is based on something which did not exist on record, I hereby quash it and order

that the Appellant's application for setting aside the dismissal order of his appeal should be heard and determined on merits by another Magistrate with competent jurisdiction. As the land dispute between the parties has been pending in Court for over a decade, hearing of the Appellant's application must be conducted as expeditiously as possible.

For the reasons I have given, I do allow this appeal and order that each party should bear its own costs.



**A. Shangwa, J.**

**6/12/2005**

Delivered in open Court this 6<sup>th</sup> day of December, 2005.



**A. Shangwa**

**JUDGE**

**6/12/2005**