

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

MISC.CIVIL APPL.NO. 03 OF 2006

*(Arising from High Court of Tanzania Mwanza Civil App.No.124/1997,
Sengerema D/Court, Civil Appeal No.28/2005. Originating
from Kasungamile P/Court Civil Case No.01/2003)*

DALALI NG'AMBUYA.....APPLICANT

Versus

SIMEO NYIKUNDI.....RESPONDENT

25/07/2006 & 19/09/2006

JUDGMENT/RULING

RWEYEMAMU,J:

This matter came to this court by way of Chamber application, but it is infact an appeal against the Sengerema District Court (DC) judgment in civil appeal 28/2005. I have decided to deal with it as an appeal for reasons I shall explain later, now I find it better to begin with a brief background of matters in issue.

The appellant/applicant **Dalali Ng'ambuya** filed a suit against the respondent **Simeo Nyikundi** in Kasungamile Primary Court (PC) Civil Case 9/1996. She was seeking a declaration from the court that she was a lawful owner of a piece of land about 1 acre. She lost.

Dalali's appeal in Sengerema District Court (DC) civil appeal 36/97 was unsuccessful, but she ultimately worn on appeal in the High Court (HC) - (PC) Civil Appeal 124/1997. In a judgment delivered on 26/6/2001, that court quashed judgments of the two courts below, set aside the courts' consequential orders and awarded costs to **Dalali**.

substantive justice (which is what they both seek from this court) without prejudicing interest of either of the parties; and last, I believe such a course is within inherent powers of this court.

First, I wish to point out that the DC judgment subject matter of this appeal/application by **Dalali** was correct in law, and for that reason her appeal fails and is dismissed with costs.

If I stop here, both parties may not know what next? What are the rights of each? I have therefore decided to point out in plain language the rights of each party. They are as follows:-

1. Dalali is entitled to costs in PC Civil case 9/1996, DC Civil Appeal 36/1997 and (HC) PC Civil Appeal 124/2001. She should file her bill in the High Court if she so wish.

2 Simeo is entitled to cost in PC civil case 1/2003, DC civil appeal 28/2005 and HC Misc civil application 3/2006 (the matter I treated as an appeal). He too can file his bill to the High Court if he so wishes

3. Dalali can file a suit for her alleged claim for compensation for non use of land if she wishes in the Primary Court.

"It is so ordered".

Sgd: R. M. RWEYEMAMU
JUDGE
19/9/2006

Date: 19/9/2006

Coram: Hon. R. M. Rweyemamu, J

Applicant: Present in person

Respondent: Present in person

Following that, **Dalali** filed a suit in the PC (Kasungamile PC Civil Case 01/2003) against **Simeo** claiming for the costs awarded by the HC, she put the sum at Shs.600.000/=. In that case she also claimed compensation in the sum of Shs.1.000.000/= being damages for none use of her land for a period of five (5) years the same was occupied/used by **Simeo**.

In a not too clear judgment, the PC unanimously granted her T.Shs.300,000/= only. Dissatisfied, **Simeo** appealed that decision in DC Civil Appeal 28/2005. The DC on appeal quashed the PC decision and held that the PC had no jurisdiction to adjudicate on the issue of costs – in a case which had ended in the High Court, and that as regards compensation, **Dalali** should have filed a separate claim. That decision aggrieved **Dalali** hence this application/appeal.

Now **Dalali** should have come to this court by way of appeal against that DC decision instead of an application supported by affidavit as she did; and to which **Simeo** filed a counter affidavit. That procedure was wrong and I should have dismiss **dalali's** application and order her to file proper pleadings if she so wish; but I have decided against such a course of action. Why?

The two parties were unrepresented and clearly appear to be indigent lay persons. I have therefore decided to deal with this matter as though it was an appeal because for one, the so called application was in its content drafted as an appeal and replied to as such; two, the alternative I have chosen will not only enable faster resolution of the dispute between the parties but will also deliver

B/Clerk: J. Lwiza

Court: Judgment/Ruling delivered this 19/9/2006 in the presence of both parties. Right of Appeal Explained.

Sgd: R. M. RWEYEMAMU
JUDGE
19/9/2006