

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC . CIVIL APPEAL NO. 30 OF 2005

(From the Decision of Morogoro District Court Civil Appeal

No.83 of 2003 Mrs. H. Riwa, RM)

RAJABU S. MKANGALAAPPELLANT

VERSUS

ABDALLAH KIBIGA.....RESPONDENT

J U D G M E N T

A.Shangwa,J.

On 2nd December, 2005 when this appeal was called for hearing, the appellant Rajabu Shomary Mkangala told the Court that he has nothing to add to his grounds of appeal. He raised four grounds of appeal. Out of these it is only the third ground which is important. It reads as follows:

“That, the position of land sold by the respondent to other people is the property of the appellant from the beginning”.

By this ground it is meant that the District Court of Morogoro erred in declaring that the land in dispute belongs to the respondent who was the appellant before it. I have decided to dispose of this appeal by considering this ground only.

The dispute between the parties started a long time ago. It was referred to the Primary Court of Mvuha on 20/3/2003 and dealt with in civil case file No.22 of 2003. From the record of the said Court and the record of the District Court of Morogoro in Civil Appeal No.83 of 2003, it can be gathered that right from the beginning until now, the appellant is claiming that he inherited the piece of land in dispute from his father Mkangala and it is for burial purposes.

Before the Primary Court, the respondent Abdallah Kibiga claimed that he was given the piece of land in dispute which is two acres by his friend called Hamisi Makere in 1974 and that it was given to him as a gift. Before this Court, he said that it was allocated to him by the village Government in 1974.

The primary Court's record shows that the respondent Abdallah Kibiga was the first defendant. There were other defendants namely Mohamed Nyandikila and Sofia Mgongolwa who were recorded as second and third defendants respectively. The two defendants told the Primary Court that the piece of land in dispute was sold to them by the first defendant and that they did not know that it has a dispute.

The primary Court visited the locus in quo in order to see the area in dispute. Upon the evidence which was tendered by the appellant himself and P.W. 2 Omari Madenge, the Primary Court found that the piece of land in dispute belongs to the appellant and ordered that the 2nd and 3rd defendants should be refunded their money by the respondent who sold the land in dispute to them secretly.

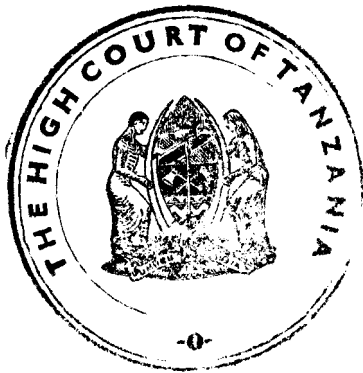
The decision of the Primary Court was overturned by the District Court on appeal to it. In doing so, the District Court held that the piece of land in dispute which was sold by the respondent to Mohamed Nyandikila and Sofia Mgongolwa who were the 2nd and 3rd defendants before the Primary Court belongs to the respondent as it was given to him by Hamisi Makere in 1974.

In my considered opinion, the piece of land in dispute belongs to the appellant who inherited it from his father the late Mkangala . The District Court erred in declaring that it belongs to the respondent. By so declaring, it had no sufficient basis upon which to base its declaration.

The evidence of Abdallah Kibiga who alleged before the Primary Court that he was given the piece of land in dispute by D.W.2 Hamisi Makere as a gift in 1974 was believed by the District Court but it was disbelieved by the Primary Court. Whereas the District Court had no justification in disbelieving the evidence of Abdallah Kibiga (respondent), the Primary Court had such justification as it had the opportunity to visit the locus in quo, heard evidence from both sides, observed the demeanour of all witnesses who testified before it and finally believed

that the piece of land in dispute belongs to the appellant.

For these reasons, I quash the District Court's decision and restore the decision of the Primary Court. Finally, I allow this appeal with costs.




A. Shangwa, J.

24/5/2006

Delivered in open Court this 24th day of May, 2006.


A. Shangwa,

JUDGE

24/5/2006.