

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

**PC CIVIL APPEAL NO 4 OF 2005
MBINGA DISTRICT COURT CIVIL APPEAL NO.57 OF 2004
(ORIGINAL MKUMBI PRIMARY COURT CIVIL
CASE NO.5 OF 2003)**

BRUNO S/O KOMBA.....APPLICANT

VERSUS

CASBERTH S/O KOMBA.....RESPONDENT

30/8/2007 HEARING CONCLUDED

13/11/1007 JUDGMENT DELIVERED

J U D G M E N T

HON. UZIA, J.

The appellant, Bruno Komba has filed this appeal to this court after he lost in the District Court at Mbinga. (W.A Chullu DM). The respondent, one Casbert Komba unsuccessfully sued the appellant in the Primary Court at Mkumbi, where by a piece of land, the property of Yohana Mapunda was given to him, and later taken by the appellant;

The District Court (by A.W. Chullu) reversed the decision of the Primary Court;

In his memorandum of appeal, and oral submission during the hearing of the appeal; The appellant Bruno Komba, submitted that, there was a contradiction in respect of the evidence of the respondent's appellant during trial, that his witness one Yohana Mapunda informed the court that he gave the piece of land to the respondent way back in 1936 and the respondent informed the court that was 1976.

He further submitted that, the piece of land was given to him by his father one Filbert Komba in 1991.

The facts of the case can simply be stated as follow:

The appellant, Bruno Komba is a son of Filbert Komba, and the respondent is the brother of Filbert Komba. They are claiming a piece of land, the property of their mother known as Yohana Mapunda.

Going by the trial court's record, it further reveals that, Yohana Mapunda informed the trial Court that, she decided to give a piece

of land to the respondent. When she later went to live in Mbinga town, she lent the piece of land to the appellant, the son of Filbert Komba for cultivation. Upon coming back, the respondent found the piece of land in the hands of the appellant. He decided to sue him but was unsuccessful. He appealed to the District Court, the decision of the Primary Court was reserved and declared that the piece of land is the property of Casbert Komba (respondent).

Bruno Komba, being dissatisfied with the decision of the District Court he appealed to this court.

I have gone through the two records, I found that the decision of the District Court sound, Yohana Mapunda, being the owner of the piece of land, decided to give it to the respondent on her free will; In this respect the appellant cannot be heard complaining against that decision, because it was her property. That being the case, I tend to think that the appellant is ploughing sand, because being a mere son of Filbert Komba, was not in the position to know why Yohana Mapunda decided to give that piece of land to Casbert Komba instead of Filbert Komba,

The appeal is without merit. I dismiss the same with costs.



L.M.K. UZIA

JUDGE

13/11/2007.

