

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

PC. CIVIL APPEAL NO. 68 OF 2002

RASHIDI S. KATUNGUNYA.....APPLICANT

VERSUS

ABDALLAH S. KATUNGUNYA.....RESPONDENT

JUDGMENT

ORIYOJ

The parties are blood brothers. They had a dispute over a piece of land which formed part of the estate of their late father, SALUM SEIF KATUNGUNYA.

According to the record, the dispute was first adjudicated on by a Ward Tribunal on a date which is not clear. Whatever decision was reached by the first Tribunal; it was not capable to settle the matter. Subsequently on 20/5/98, another Tribunal meeting was held where the respondent challenged the Exhibits admitted at the first Tribunal meeting. The Tribunal considered the dispute and decided that since it had adjudicated on the matter once in favour of the respondent; it was in the best interest of parties to refer the matter to a court of law.

Civil Case No. 8 of 2000 was filed in the Kinondoni Primary Court by the Appellant. On 11/9/2000 the court found as a fact that the appellant had trespassed onto the respondents portion of land. Accordingly the appellant was ordered to demolish the structure he had put up on the respondents portion of land. Dissatisfied the appellant appealed against the Primary Court decision to the Kinondoni District Court in Civil Appeal No. 82 of 2000. On 26/10/2001, the second appellate court (learned Mbuya, RM) dismissed the appeal with costs; hence the third appeal to this court.

As already pointed out, the matter originated from a Ward Tribunal. SECTION 20 (3) of the WARD TRIBUNALS ACT, CAP 206, R.E. 2002 provides:-

"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".

The above provision is categorical that appeals on matters originating from Ward Tribunals do not come to the High Court. The appeals end in the Primary Courts unless a point of law is involved.

In the matter at hand, the District Court had jurisdiction over the points of law only. There were two points of law in the appeal before the District Court. The first was on the issue of the jurisdiction of the Trial Primary Court. The second was on the issue of Res Judicata. Both points of law were determined by the District Court and the decision was final: The appeal is therefore incompetently before the Court.

In the event, the appeal is struck out with costs.

K.K. Oriyo

JUDGE

9/2/2007