

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

**(PC) CIVIL APPEAL NO. 10/2006
CIVIL CASE NO. 4 OF 2004
(ORIGINAL PR/COURT LANGIRO CIV.C. 139/2003)**

**OSKARI KAWINDA
MAPUNDA.....APPELLANT**

VERSUS:

**JOSEPH MASALIGENI
MAPUNDA.....RESPONDENT**

**2/10/2007 - Hearing Concluded
22/11/2007 - Judgment Delivered**

J U D G M E N T

KAGANDA, J.

This is a second appeal, the first was filed before Mbinga District Court. The appellant was dissatisfied hence this appeal. The suit originates from Langiro Primary Court. It was filed before that court 23rd September, 2003 where as the land law became in force on 1st October, 2003 as such the Primary Court had jurisdiction to determine the matter. I have found it better clear on that issue before embarking to the appeal.

The parties in this case are in dispute over a piece of land, which each, claim to be holding legal title to it. The appellant has advanced five grounds of appeal on that the district court erred in law by upholding that the disputed land belong to the respondent. Second, that the sketch map to disputed land was not correct because the appellant, has occupied the land since 1971 but the map showed that he had no Land at that area. That, he had two witnesses before the trial court who were competent and reliable. Lastly that he had used the land since 1971 when he got it from his father. Before this court he claimed that he objected for the village chairman to testify before the trial court but was overruled by the court. The appellant and respondent are brothers sharing same grand parents.

On the other hand the respondent did not dispute on their relationship but claimed that he was given the disputed land in 1967 by the appellants father. The Respondents father and appellants, were blood brothers. He further claimed that, the land was part of his inheritance from his own grandfather. His testimony was as follows:-

“Nakumbuka 1967 bustani hiyo nilianza

kutumia kwa kufuga mifugo,mimi

nilichimba bwawa la samaki, pia

kutengeneza mifereji na kulima

bustani.....”

On cross examination he further

claimed that: *“Bustani nilipata kwa Babu*

yangu, kaka yangu hatuelewani

.....”

The appellant on the other hand claimed to have obtained that from his father in 1971. Both parties had two witnesses. The court moved to the scene and drew a sketch map showing a small area which the respondent alleged to have given to the appellants father and later he inherited it. Both party being conversant to the disputed land named their neighbours to that land.

The trial court evaluated the evidence and answered the three issues framed in favour of the respondent. The District Court up held that decision, by reasoning that, the area was uncared for, as such the appellants claim, that he used the land since 1971 could not be true. I agree with that wisdom because even the respondent claimed that he sent his grand children to clear the land. Further the trial court which had a chance to visit the disputed land drew a sketch map showing the appellants land adjacent to the disputed land.

The trial court had a chance of seeing both the disputed land and the witnesses credibility. In the case of Ali Abdallah Rajabu V. Saada Abdallah Rajabu & others (1994) TLR No. 132 the Court of appeal, among other things held that:-

“Where the decision of a case is wholly based on the credibility of the witnesses then it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcript of the record.”

Similar view was held in Omari Ahmed V.R. (1983) TLR. 52 where it was stated:-

“The trial court’s finding as to credibility of witnesses is usually binding on appeal Court unless there are circumstances on an appeal court on the record which call for a reassessment of their credibility.”

In the case at hand, both sides had two witnesses, it is the trial Magistrate who observed their credibility and I can’t disturb his trust on their testimony. Also having visited the status in quo, I find no reason to disturb that

decision which was also upheld by the District Court. In the event the appeal is dismissed for lack of merit. Costs follow the event as from this court to the courts below.

Right of appeal on point of law explained.


S.S. KAGANDA,

JUDGE.

21/11/2007.

22/11/2007

Coram: Hon. L.M.K. Uzia, J.

Appellant: Present

Respondent: Present

C/C/ Zena

Judgment read in chambers today 22/11/2007 in present of all parties.

L.M.K. Uzia,

JUDGE.

22/11/2007

SSK/ESY