

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

PC CIVIL APPEAL NO.99 OF 2002

**(Original Civil Case No.6/2000 Manyovu Primary Court
and Civil Appeal No.23/2002 Kasulu District Court)**

MUNZU S/O ADAMU APPELLANT

Versus.

MAGOMELA S/O RUHAZA.....RESPONDENT

JUDGEMENT

20th July, 07 & 31st May, 07

MZIRAY, J.

In civil case No.61/2000 of Manyovu Primary Court in Kasulu District, the appellant successfully sued the respondent claiming two parcels of land measuring roughly half an acre situated at Bukuba village. On appeal initiated by the respondent the District Court of Kasulu reversed the decision of the trial court and decided in favour of the respondent. The decision of the District Court aggrieved the appellant who preferred appeal to this court.

The evidence presented by the appellant before the trial court was that the disputed land which comprises of two plots measuring about half an acre was allocated to him by the Village authority while still a virgin land in 1978. He cleared the land and planted bananas, cassava and some groundnuts. He has been in peaceful occupation of the disputed land until in September, 2000 when the respondent who owns a plot adjacent to the disputed land, trespassed and harvested some bananas in the disputed land. He then took the matter before the trial court. Similar version is given by PW2 Malira Balagula who testified for the appellant. Under cross – examination this witness denied the assertion that the respondent inherited the disputed land from his deceased father and support the view that the respondent is just a trespasser to the disputed land.

The version given by the respondent is to the effect that he inherited the disputed land from his deceased father in 1980 and has been in continuous occupation until the year 1992 when he borrowed the disputed land to the appellants' mother as a licensee on condition that she plants only seasonal crops but for the bananas were to be under the control of her mother who had the right to enjoy the fruits therefrom. Upon the demise of his mother in 1999 he informed the appellant to return back the disputed land but

the latter resisted and from there this dispute arose. His evidence is supported by the evidence of DW2 Wilson Ndumilije who gave more or less similar version to that of the respondent.

The trial court after balancing the two opposing versions given was inclined on the appellant's side and was of the view that there was no sufficient evidence to prove that the disputed land belonged to the respondent.

The district court in reversing the decision of the trial court was of the view that the disputed land belonged to the respondent after he had inherited it from his deceased father.

The appellant has filed three grounds of appeal which could be combined in one ground that the district court decided against the weight of evidence adduced before the trial court.


It is apparent from the record that the evidence by parties before the trial court gave two opposing versions. The version of the appellant on one side is that he cleared a virgin land in 1978 and took possession after there has been authority from the Village Council. On the other side the

version of the respondent is that he acquired the disputed land in 1980 by way of inheritance. The trial court must have been faced with a predicament to determine which among the two versions was likely hence probable. The trial court, I believe, must have considered and evaluated the evidence, assessed the demeanour of the witnesses from the two sides and then came to the conclusion that the appellant and the witness who testified for him were credible. Having been so satisfied, the trial court arrived at a conclusion that the appellant is the rightful owner of the disputed land.


The Kasulu District Court being an appellate court could not have interfered with the decision of the trial court simply on reason that matters of credibility are the domain of the trial court which had the advantage of assessing the demeanour of the witnesses and evaluating the credibility of such evidence. Moreover, any judicial decision must be backed by reasons. In this case, the district court did not give reasons to reverse the decision of the trial court.

There were therefore no reasons for the district court to interfere with the decision of the trial court. I quash and set aside the decision of the district court. The decision of the trial court which found the appellant to be the lawful

owner of the disputed land is restored. Appeal allowed with costs.


R.E.S. MZIRAY
JUDGE
31/5/2007

Right of appeal explained.


R.E.S. MZIRAY
JUDGE
31/5/2007