

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 111 OF 2005**

**(Originating from Kibaha District Court Civil Appeal No. 3 of 2005)**

**MOHAMED MBEGU . . . . . APPELLANT**

**VERSUS**

**REHEMA MOHAMEDI . . . . . RESPONDENT**

Date of last order - 6/12/2006

Date of Judgment - 8/3/2007

**J U D G M E N T**

**MLAY, J.:**

The appellant MOHAMED MBEGU was the Defendant in MKUZA Primary Court Civil Case No. 14 of 2004 in which the present Respondent REHEMA MBEGU, successfully sued the appellant for possession of a Certificate of Title for a house No.18 situated at Plot No. 47 Block 5 Magomeni in Kinondoni District. The appellant being aggrieved by the decision of Mkuza Primary Court, appealed to the District Court of Kibaha. The District Court upheld the decision of the Primary Court and dismissed the appeal. The appellant has now

come to this court having filed a position of appeal containing the following grounds:

*"1. The learned Magistrate grossly misdirected himself in law to uphold the judgment of the lower court which reached its decision basing on mere allegation of the respondent and the Chairman of local Government that the petitioner herein agreed that the certificate of title is within his possession without taking into consideration the strength of the petitions evidence adduced in a trial court."*

At the hearing of the appeal the respondent who was served with the notice of hearing, did not appear and this court ordered the hearing to proceed on the absence of the respondent.

In his oral submissions the appellant told the story leading to the present appeal. He told this Court that the respondent had applied for the letters of administration of the estate of her mother the late MTUMWA SAID. He contended that he and his relatives went to the Primary Court. He alleged that he and his relatives are the grandchildren of MTUMWA SAID while the respondent and his brother ABDALLAH MBEGU are the daughter and son of the deceased MTUMWA SAID. The appellant contended that the Primary Court decided that the respondent and her brother were the rightful heirs. The appellant told this court that the respondent went to him to claim the certificate of title of the house of the late MTUMWA SAID and the appellant denied to have it and as the result, the respondent instituted proceedings against him in the Primary Court. He contended that the Primary Court ordered him to surrender the Certificate of title to the respondent. He appealed to the district court which upheld the decision of the Primary Court and that is why he has now appealed to this court.

The facts have been effectively given in the appellants submissions. The respondent who was appointed the administrator

of the estate of the late MTUMWA SAID, sued the appellant for the certificate of title. At the hearing of the suit the respondent gave evidence that the certificate of title was kept by the father of the appellant and after the father died the appellant took the certificate title from where it was kept by his late father and kept it somewhere else. The respondent testified further that the appellant had told her that he had kept the certificate at a secret place. When the respondent later asked the appellant to give the certificate to her, the appellant promised to do so but did not honour his promise as the result of which, she reported the matter to the Kitongoji Chairman. The respondent testified that the appellant promised before the Kitongoji Chairman to bring the certificate of title but did not do so, as the result of which she instituted the proceedings in court. The Kitongoji Chairman gave evidence as PW 2 and confirmed the testimony of the respondent.

The appellant gave a contradicting story about the certificate of title. He testified that he was surprised by the respondent's claim because he was not her brother. He further testified that before his father died the appellant had stated that the appellant's father had

the certificate of title. The appellant said as the result he did not know where his father had kept the certificate of title as he was not concerned with that house.

However, the appellant went on to state that he remembers that when his father died on 22/4/2001 the respondent was present as the chairperson and all the property left behind by the appellants deceased father were listed, including the certificate of title for the house of the late Mtumwa Said. The appellant went on to state that the respondent saw the certificate of title and she took it claiming it was the property of her mother. He claimed he was present when the respondent took a radio, a bicycle and a watch/clock, claiming they were her inheritance. Upon cross examination by the respondent the appellant claimed that he was sure the respondent took the certificate of title.

Upon being examined by the court, the appellant alleged that he did not have the certificate of title because the respondent had taken it and that there are witnesses who were present when she took the certificate of title. However, the appellant finally stated:

**“Nakubali kuwa hati ya nyumba hiyo nilikuwa nayo sasa sijui nilipoiweka labda itafutwe”** The English rendering of this admission can be: **“I admit that I had the certificate of title of that house at the moment I do not know where I have put it unless it is looked for”.**

The appellant called his brother Ramadhani Abdallah Mbegu who gave evidence to the effect that he remembers the respondent had asked about the certificate of title and that he remembers that the respondent had taken the certificate of title.

Having considered the evidence from both sides, the Primary Court in its judgment made the following finding:

*“Mahakama hii inakubaliana kuwa kwa mujibu wa ushahidi wa mdai pamoja na mdaiwa mwenyewe amekubali kuwa hati inayodaiwa anayo isipokuwa hajui alipoiweka.*

*Kwa mujibu wa ushahidi wa upande wa  
mdai ni kuwa mdai anayo haki na mdaiwa  
ameshindwa atafute hati anayodaiwa na  
kumkabidhi mdai mara moja."*

In effect the Primary Court accepted the evidence offered on behalf of the respondent and also the appellants admission that he had the certificate of title and ordered the appellant to look for the certificate of title and surrender it to the respondent.

The District Court found **"more of the appellants grounds in appeal is worth substances,"**

Having perused the record of the Primary Court and the evidence before it as I have set it out in this judgment, I would say the appellant's single ground of appeal to this Court is devoid of any merit. The trial court which saw and had heard the evidence offered by witnesses on both sides, believed the respondents evidence. This court as a second appellate court is not better placed than the Primary Court to determine which of the two versions to believe.

Considering the appellants own admission that he had the certificate but did not remember where it was, the finding of the Primary Court if fortified. In fact if the Primary Court had considered the contradictory evidence given by the appellant when he stated that he did not know where his deceased father had put the Certificate of title, and then his testimony that the respondent took the certificate of title, the appellants version and the supporting evidence from his brother, cannot be worth of any belief.

In the final analysis this appeal has no merit and it is dismissed, with costs.

  
**(J.I. MLAY)**  
**JUDGE**

**8/3/2007**

Coram: Mlay, J.  
For the Petitioner }  
For the Respondent } Absent  
C.C.: Masebo



**Order:** Judgment is delivered in the absence of both parties, as that is the second time that they are absent.

  
**(J.I. MLAY)**

**JUDGE**

**8/3/2007**

1,328 Words.