

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

**PC CIVIL APPEAL NO. 7 OF 2006  
MBINGA D/C CIV. APPEAL NO.5/2005  
(ORIGINAL PR/C.CIV.C.NO. 172/2002)**

**1. VENANT KOMBA            }  
2. ALOIS PANDAPANDA }.....APPELLANT**

**VERSUS:**

**FRANCIS NCHIMBI .....RESPONDENT**

**12/4/2007 - Hearing Concluded  
16/8/2007 - Judgment Delivered**

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

**KANGANDA, J.**

Francis Nchimbi who stands as the respondent, filed a suit at Mbinga Primary Court against the appellants Venant Komba and Aloyce Pandapanda. This is a second appeal on being aggrieved by the District Courts judgment. He sued over some land alleged to have been allocated to him by Prisons Force/Authority at Mkwaya Prisons. The Primary Court gave verdict against the respondent partially as well as the appellant. The District Court upheld that decision hence this appeal. The trial court had also ordered the appellants to remain on the disputed land where as the

respondent were ordered to vacant area “A” and “B” to 1<sup>st</sup> appellants and harvest his permanent crops (trees) as well as the seasonal crops. The judgment and orders were controversial and its worthy<sup>te</sup>/<sub>n</sub> enlighten it. It reads as follows:-

**“Baada ya Mahakama hii kuangalia kwa undani zaidi kuhusu matukio makuu, Mahakama imeona Kuwa awali kabisa maeneo hayo yalikuwa ya S.M.1 baada ya kupewa na watu wa Magereza, mahakama pia imeona kuwa wadaiwa hawa maeneo hayo walipewa na watu wa kijiji baada ya wao kufukuzwa eneo ambalo ni la Magereza pia ushahidi unaonyesha kuwa Mdai wakati eneo hilo wanapewa watu, tayari alikuwa amepanda mazao ya kudumu kwa mafano, miti na kadhalika .....Mahakama inaona kuwa kosa kubwa walifanya watu wa kijiji kwani wao walipokuwa wanagawa walikuwa wanaona fika kuwa kuna mali za mtu hivyo S.M. 1 alipaswa kupewa taarifa ya kushiriki siku hiyo jambo ambalo Serikali ya kijiji halikufanya hivyo.....”**

Legally the trial court was in the correct direction but for no good reasons it went on Misdirecting itself and stated:-

**“.....Mahakama hii inaamini wazi kuwa kweli  
wadaaiwa hawakuvingia maeneo hayo bali wao  
walipewa na Serikali ya kijiji baada ya kueleke-  
zwa na Mkuu wa Wilaya.”**

I have no doubt that the court was wrong because earlier on it had blamed the village government for re-allocating the same land to another person without the owner's consent. It should be noted that the wrong done remained a sin as such it could not be blessed by the village authority which had acted wrongly or by the District Commissioner orders. Those orders should never have been allowed to override the statute law. The trial court went further after the judgment to give illegal orders as well, it ordered as follows:-

**“1. Mdai aache eneo la Mdaiwa No. 1 toka  
Barabara “A” hadi “B”.**

**2. Kuna miti ya Mdai, aito, mihogo akivuna  
amwachie Mdaiwa No. 1.**

**3. Miti iliyopandwa mpakani ambayo ni miku-  
bwa ibakie kwa Mdai hadi atakapovuna miti  
hiyo.....”**

I did not see the legality of the District Court upholding such orders. That is because once a court has held that the land was allocated to the plaintiff by the prisons authority prior to re-allocation by the village government to the defendants then the matter should have ended there and then.

According to the evidence adduced, there was no dispute at all, that the land had hitherto been under the use of the respondents. There was also no dispute that, the respondent had planted permanent crops there on i.e. trees plus seasonal crops as well. Also that the re-allocation by the village authorities to the appellants was effected without the respondents consent.

There was no doubt that, the village government knew very well when re-allocating the land to appellants that it was in the possession and use by the respondent. The trial court Magistrate's note was clear when he stated in his judgment that:-

**“Pia Mahakama inaona kuwa Serikali ya  
kijiji ilifanya kosa kukabidhi maeneo ya  
watu pamoja na mali zilizomo, Mahakama  
hii inaona hilo linaweza kusababisha mauaji  
kwani mtu alipanda mali zake tayari alipa-  
nga mali hizo zitamsaidia vipi sasa mali  
hiyo aje apewe mtu tena.....”**

The reasoning was so perfect but that court did not settle its mind as it had reasoned. In the case of *Chairman Mateka V.A. Hyera* (1988) TLR. 188. That Court held among other things that:-

**“Village government had no right to  
allocate developed land without the  
Prior consent of the owner”**

Further it was observed that, common sense and equity forbid a village government to allocate land within its jurisdiction which is under:

**“The possession of another villager who is developing it without the prior consent of that village ..... Such an action would not only bring landlessness and anarchy to the village but would also retard the development of the villagers .....”**

A better clarification was later on held in the case of Amani Rajabu Njumla V Thomas Amri (1990) TLR. 58. The Court held that:-

**“The village government may allocate land to anyone. But that does not mean that the village government has power to take away land from one person and give it to another. The appellant and his relative are competent to succeed to their late father .....”**

In that case the right was even extended to the heirs of the right full owner.

In the case at hand there was undisputed evidence that the respondent, acquired the land from the prisons authority and later registered himself to the village government. The village government therefore knew that the land was owned by the respondent and it ought not to have tampered with. It should be noted that under the rule of law observed by this country everyone is under the law as such they should abide to it. No authority has unlimited power under the principals of the rule of law. Since the village government had prior knowledge of the respondents title to the disputed land, then it should not have re-allocated it to another villager.

What ever destruction made to the respondents property must be equally compensated by the appellants.

In the event the appeal is dismissed with costs for this court, and the courts below.

Right of appeal to the court of appeal explained.



**S.S. KAGANDA,**

**JUDGE.**

**9/6/2007**

**16/8/2007**

Coram: Hon. S.S. Kaganda, J. i/c.

1<sup>st</sup> Appellant: Present in person

2<sup>nd</sup> Appellant: Present in person

Respondent: Present in person

C/C: S. ndunguru

**Court:** Judgment read over and delivered this 16/8/2007 in the  
Presence of both parties.

**S.S. KAGANDA,**

**JUDGE.**

**16/8/2007.**

**SSK/ESY.**