

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MWANZA**  
**AT MWANZA**

**P.C CIVIL APPEAL NO. 51 OF 2008**

*(From original Civil case no. 21 of 2007 of the Primary court of Kisesa and D.C  
Appeal No. 56/2007 at Magu D/ Court )*

**ENOCK LUKOBYA MALABA.....APPELLANT**

**VERSUS**

**BUCHILU BUHOYI .....RESPONDENT**

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

8/9/2009 & 30/10/2009

**Sumari, J**

The respondent Buchilu Buhoyi successfully prosecuted the appellant one Enock s/o Lukobya Malaba in Criminal Case 112/2006 before Kisesa Primary Court for malicious damage to property c/s 326 of the Penal Code and written threats to Murder c/s 89 (2) of the Penal Code. The appellant was alleged to have cut trees in the shamba of the respondent. Having been convicted appellant did not appeal against the judgement. Thereafter the complainant one Buchilu Buhoyi decided to file a suit against the appellant claiming a total of 1,000,000/= (one million shillings) being the value of trees alleged to have been damaged, in the same shamba. After hearing evidence from both sides, the trial court found that the plaintiff/respondent had proved his claim on balance of probabilities

however, he was granted shillings seven hundred thousand (700,000/=). The defendant/appellant found that justice had not been done on his part, so he unsuccessfully appealed to the District court. He has now come before this court over the same complaint that the judgment in Criminal Case No. 112/2006 did not settle the dispute over the land and the district court failed to observe that.

At the hearing appellant reminded the court of the findings of the case of **SYLIVERY NKANGAA v RAPHAEL ALBERTHO 1992 TLR 110 (HC)** where it was held among others that *"(iii) a Criminal Court is not the proper forum for determining the rights of those claiming ownership of land. Only a Civil Court via a civil suit can determine matters of land ownership"*.

As I earlier pointed out which fact also noted by the learned District Magistrate, appellant did not appeal to challenge the primary court's judgement in Criminal Case 112/2006. The fact that he did not appeal means that he was satisfied with the judgement. As such appellant cannot complain about the said judgment at this stage as well put by the learned district magistrate.

Again noted is that this is a second appeal, in which case this court has to entertain only where point of law is raised. I am not convinced that there is point of law or error on the part of the decision reached by both lower courts. Both courts below evaluated the evidence on

record properly and by passing I'm satisfied that there is ample evidence that the appellant did harvest trees in the shamba of the respondent. This been the position respondent is entitled to compensation; which was not awarded in the criminal case. For the reasons this appeal lacks merits and I accordingly dismiss it with costs.

  
*A. N. M. Sumari*

*JUDGE*

**Delivered in presence of both the appellant and respondent.**

**At Mwanza**

**30/10/2009**