IN THE HIGH COURT OF TANZANIA

AT ARUSHA.

PC CIVIL APPEAL NO. 37 OF 2007

(Originating from C/F Arusha District Court Civil Appeal NO.564/2003 Original Enaboishu Primary Court civil case NO.6/2003)

TITUS KELLE .....APPELLANT

VERSUS

NAROPILAIYO KELLE.....RESPONDENT

(Decision of Appeal from D/Court of Arusha)

(P.W.D. MBUGE (SDM)

Dated 18th June, 2004 – 17th September 2004

JUDGMENT OF THE COURT

12TH December, 2008 to 9th February, 2009

SAMBO, J.

The appellant, Titus Kelle, through their learned advocate, Mr. Merinyo, lodged this appeal against the decision of the first appellate Court, Arusha District Court, dated 17th September, 2004, in civil appeal No.54 of 2003. He raised five grounds as follows:-

1. The district Court Magistrate judgement is not judgment in law in that it does not contain reasons for the same.
2. That the District Court Magistrate erred in law and in fact in failing to consider the issues framed by the trial court Magistrate.
3. The District Court Magistrate erred in law and in fact in failing to analyse evidence adduced in the trial court that the claim was of a ¼ of an acre against both appellants and one Julius Kelle, but as the proceedings continue it was the finding of the trial court that the respondent herein is claiming areas marked "A", "C" and "D" in the sketch map drawn by the trial Court.
4. The District Court Magistrate erred in law and in fact by not analysing the evidence adduced in the trial court before delivering his decision thus causing justice not to be done for the appellant.

5. The District Court Magistrate erred in law and in fact by totally ignoring the evidence of the defendant side (Appellant herein) and his witnesses, otherwise it would have up held the trial court's decision.

By order of this court, this appeal was argued by way of written submissions. The learned counsel for the appellant, Mr. Merinyo, filed his submissions on the 3rd day of June, 2008, and the learned advocate for the respondent, Mr. Oola, filed his submissions on the 5th day of September, 2008.

Thereupon, I carefully read the reasoned submissions of the learned counsels as well as the judgment of the District Court. I am convinced that if the first ground of appeal is positively answered, there would be no need to deal with the rest four grounds. Submitting on this point, Mr. Merinyo, advocate told the court that the judgment of the District Court contravened the decision of this court in

the case of **Lemanga Lodenanga V. Paulo Lesian and another, civil Appeal No.33 of 1991,** (Arusha) (unreported) where it was insisted that:-

> "essentially, a judgment of a court means the reasons leading to a decision in a case. In the absence of reasons there can not be a court judgment according to law"

He submits further by saying that the judgment of the District Court does not contain reasons for the same, bringing injustice to the appellant.

On the other part, Mr. Oola, learned advocate for the respondent submit to the effect that the said judgment is proper and contains reasons in respect of the law.

Having read the reasoned submissions of the learned advocates, I carefully considered the provisions of Order XX Rule 4 of the Civil Procedure Code, CAP 33 R.E. 2002, on contents of judgments. It provide thus:

"4. A judgment shall contain concise statement of the case, the points for determination, the decisions thereon and the reasons for such decision."

n view of the above quoted provision of the law, any udgment must contain a concise statement of the case, he points for determination, the decision thereon and he reason for such decision. Looking at the said judgment of the District Court, I don't see any "concise statement of he case." If this case was not an appeal, issues of the case vould be the points for determination and in our case, the grounds of appeal are the points for determination. There must be reasons for the decision on each of the grounds raised. In the instant case, though the appellant raised five issues, the honourable Senior District Magistrate did to attempt to consider them, that's giving reasons for the decision in each of the grounds. On the contrary, he simply made a baseless conclusion that "there was no evidence adduced by clan elders that respondent was

lawful in possession of the disputed land which was given to appellant by her mother ..." For these reasons, I hold that the said judgment is no judgment in law and do nullify it together with the whole of the proceedings. I accordingly Order a retrial of the appeal case before another Magistrate with competent jurisdiction.

In the result and for the reasons given herein above, I allow the appeal but make no orders as to costs because no one among the parties is to blame for the resultant Order.

K.M.M. SAMBO

JUDGE

3/2/2009

Delivered in chambers in the presence of the parties and their learned advocates Mr.Merinyo for the appellant and Mr. Moses Mahuna for the respondent this 9th day of February, 2009.

K.M.M. SAMBO

JUDGE

9/2/2009

I hereby certify this to be a true copy of the original.

DISTRICT REGISTRAR

ARUSHA

/mm