

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

HC. CIVIL APPEAL NO. 28 OF 2007

(Originating from Musoma RM's Court Civil Case No. 12 of 2003)

1. SANJAWA KUNYONGA 2. MALIBWA MUGOMBYA 3. MATARA MALIBWA	} APPELLANTS
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Versus

MUSSA MUYENJWA RESPONDENT

RULING

G. K. RWAKIBARILA. J.

This is an appeal from a decision by the Resident Magistrate's Court of Musoma in Civil Case No. 12 of 2003. That case was instituted by three plaintiffs namely **Sanjawa s/o Kunyonga, Malimbwa s/o Mugombya** and **Matala s/o Malibya**. They were in that case claiming mainly land of about 20 acres, situated at Wanyere village in Musoma (R) district from respondent **Musa s/o Munyenjwa**.

The trial Resident Magistrate in that case (Hon. M. M. Mang'ana, RM) in his judgment which was delivered on 28.02.2007 did not adjudicate on who had the better title to the suit land on ground that the same should remain stayed pending results of the Tanzania Court of Appeal's decision in an appeal whose notice of appeal was lodged vide an Exhibit R1 document.

Plaintiffs were dissatisfied by that decision and lodged this appeal in which **Sanjiwa s/o Kunyonga, Malibwa s/o Mugombya** and **Matara s/o Malibwa** are **Appellant No.1, Appellant No.2** and **Appellant No.3** respectively. That is why defendant in that suit namely **Mussa s/o Muyenjwa** is currently the respondent in this appeal.

When this appeal was due for hearing on 04.11.2008 before this court, respondent informed the court how he lodged an appeal before the Court of Appeal on this matter and offered to bring in court a document to verify that contention. And on 19.03.2009 this respondent produced before this court as Exhibit R1, a document which is his notice of intention to appeal. On that occasion, appellant and respondent were represented by learned counsels Messrs Kitwale and Mhingo respectively. Both learned counsels applied successfully before this court for leave to search in the Mwanza Court of Appeal sub-registry in order to trace whereabouts of the said Civil Appeal. On 15.05.2009 both learned counsels attended in court and disclosed how there was no appeal in the said sub-registry which concerned parties mentioned on the Exhibit R1 document.

The procedure to lodge an appeal in civil matters to the Court Appeal of Tanzania is outlined in the **Tanzania Court of Appeal Rules, GN. 102 of 1979**. Relevant provisions on how to lodge such an appeal are found from Rule 75 to Rule 79 in those

never followed the procedure stipulated therein and instead, delayed Musoma Resident Magistrates Court from 28.08.2007 up to date on the pseudonym of waiting for results of an appeal which was not existing.

In order to cure the mischief which this appellant caused, the following are ordered.

- (a) The file for Musoma Resident Magistrates' Court Civil Case No. 12 of 2003 is returned to that Court with instruction to the trial magistrate to complete adjudication on that suit. The trial magistrate (Hon. M. M. Mang'ana, RM), his successor or any other magistrate with competent jurisdiction at Musoma who is duly assigned can fulfil that task.
- (b) Costs for this appeal for appellant. It means for clarification, cost which appellant incurred from 28.08.2007 when allegations of an appeal to the Tanzania Court of Appeal were made should be *shouldered by respondent.*
- ~~(c) Shouldered be respondent.~~

G. K. Rwakibarila
JUDGE
19.05.2009

Date: 19.05.2009

Coram: G. K. Rwakibarila, J

1st Appellant: }
2nd Appellant: } Present
3rd Appellant: }

Respondent: Present in person

B/C: Leonard

Court:

Ruling delivered at Mwanza this 19th day of May, 2009 and right to appeal in time has been explained thoroughly.

G. K. Rwakibarila
JUDGE

At Mwanza
19.05.2009