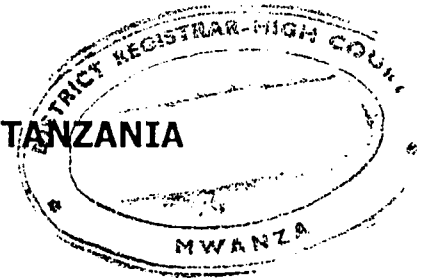


IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA



PC. CIVIL APPEAL NO. 23 OF 2007

((PC) Magu Civ. App. No. 69 of 2005, (DC) Magu Civ. App. No. 72 of 2005. Originating from Urban Primary Court Civ. Case. No.83/07 and Emp. Cause No. 27/04)

JOHN JOSEPH APPELLANT

Versus

SONGOMA LUFUNGULO..... RESPONDENT

28.09.2010 – 05.10.2010

JUDGMENT

G. K. RWAKIBARILA. J

Parties in both Mwanza High Court Zone Miscellaneous Civil Application No. 140 of 2003 and Mwanza High Court (PC) Miscellaneous Civil Appeal No. 23 of 2007 are the same. And the core of the dispute among them sparked from a contest to own a strip of land measuring about fifteen acres, situated at Nyashingwe Village in Magu District, within Mwanza Region. This is why it is convenient to write this single judgment in order to make a decision which shall enable the lawful owner of that suit plot to occupy it undisturbed.

In Mwanza High Court Zone Miscellaneous Application No. 140 of 2003, applicant John Joseph applied for leave to appeal to the Court of Appeal of Tanzania on ground that he had the point of law. Hon Madame A. N. M. Sumari, J in her well reasoned ruling of 29.08.2008 opined that there was no need to grant a leave of that kind because applicant relied on a forged document to seek leave to appeal to the Court of Appeal. In what fits to be a warning to applicant and his former Counsel, Mr. Muna, Madame Sumari, J remarked that:

"I wouldn't wish to keep a blind eye on this. This court expected the applicant and mostly his advocate to be honest and tell the truth to this court, to the contrary they have tried to convince this court to allow the application by cheating and giving false evidence in support of the applicant's affidavit. This is quite wrong and it is an offence in the eyes of the law. Both applicant and his advocate are strictly warned not to repeat such a wrong."

It is interesting to note that the said Mr. Muna has already ***"smelt the rat"*** and is no longer representing applicant now in this Mwanza High Court Zone Miscellaneous Civil Application No. 140 of 2003 where applicant's prayer to file a certificate out of time on the point of law u/s 14(1) of **The Limitation Act, Cap.89 (R. E. 2002)** was dismissed with costs. In this similar

application, applicant has not raised any new ground now to rebut what Madame Sumari, J clarified thereat and therefore this application is dismissed with costs, plus a recommendation that at this juncture, **the relevant police unit can take up this matter and look into whether applicant is fit to be prosecuted for presentation of a forged document in judicial proceedings.**

Next is Mwanza High Court (PC) Civil Application No. 23 of 2007. Its background is that, deceased Kadoshi Kalambo in the past settled in part of the suit strip during his lifetime. In the 1990's, his wife dissented him when he was too old and ailing. Appellant John Joseph took up deceased's care. Kadoshi Kalambo was staying in part of the suit fifteen acres plot by virtue of being a member of that clan.

After the death of Kadoshi Kalambo, appellant John Joseph sued respondent Songoma Lufunguro in Kisesa primary court Civil Case No. 41 of 2002 where judgment was entered for appellant. Judgment was also entered for appellant in the first appeal with No. 06 of 2001 at Magu District Court. But in the second appeal, judgment was entered for respondent Songoma Lufungulo after Hon. J. E. C. Masanche, J (rtd) found out that an **Exhibit PA** document which appellant relied upon to show that the suit plot was bequeathed to him (appellant) by deceased

Kadoshi Kalambo was a forged one. His Lordship on that occasion put it that:

"I have scrutinized this document Exhibit PA. There are a lot of indications in that letter to suggest that indeed it is a forgery. The year 1993 seems to have been changed from another year, possibly 1995 - the "3" is superimposed on another digit. Again, there were no witnesses to the signing of the document. I agree that the document, Exhibit PA is a forgery."

After the aforesaid observation, Hon. Masanche, J concluded that the suit fifteen acres strip of land belonged to respondent's clan, in a judgment which was delivered on 28.08.2003.

It appears appellant did not quit the suit fifteen acres strip of land after the judgment of Hon. Masanche, J (rtd) from August, 2003 because about one year after that High Court's judgment, he instituted a civil suit with No. 83 of 2004 at Magu Urban Primary Court, claiming Shs 2,400,000/= compensation which is an equivalent of 240 bags of cassava. That primary court in its decision found out that appellant partly proved his claim and awarded only Shs 360,000/= to appellant. But in two different appeals to the District Court at Magu which were instituted separately by appellant and respondent but consolidated in Civil Appeal No. 72 of 2005, the presiding

Principal District Magistrate (**Hon. I. O. K. Hozza, PDM**) found null and void proceedings of the lower primary court because the plaint which appellant presented at Magu Urban Primary Court was not duly signed by the (primary court) magistrate at the relevant portion spared for the same. Appellant felt aggrieved by that decision and lodged before this court what is Mwanza High Court (PC) Miscellaneous Civil Appeal No. 23 of 2007.

The major ground of appeal by appellant now is No.3 in his memorandum of appeal where he stated that:

"The appellant says the issue of framing his plaint in Magu Urban Primary Court Civil Case No. 83 of 2004 was properly drawn signed (sic) by the appellant and nothing was defective as states (sic) by the appellate Principal District Magistrate. The appellant attaches a copy of the plaint in support of his argument. The same marked annexure D.I."

Upon perusal in appellant's memorandum of appeal, his so called **annexture D.1** is not there. He merely attached thereon copies of (i) the judgment of Magu District Court in Civil Appeal No. 72 of 2005 and (ii) an Exchequer Receipt for Shs 1,000/= of 15.05.2007 which was issued to him when he instituted that appeal.

Thereafter this court combed in records of Mwanza Urban Primary Court Civil Appeal No. 83 of 2004 and found out that the original plaint of 15.07.2004 was there but not signed by the (primary court) magistrate. Therefore appellant is also trying to cheat in court for the third time in his endeavours to block and frustrate efforts to let respondent Songoma Lufungilo and clansmen to enjoy quietly occupation of the suit fifteen acres strip of land.

For purposes of clarification, three instances where appellant John Joseph has manipulated to cheat in order to deprive respondent Songoma Lufungiro and his clansmen to enjoy quietly occupation of the said fifteen acres strip of land are as follow.

In Mwanza High Court Zone (PC) Civil Appeal No. 55 of 2001, Hon. J. E. C. Masanche, J (rtd) found out that appellant forged an **Exh. PA** document to show that deceased Kadoshi Kilambo bequeathed to him (appellant) the suit fifteen acres strip of land.

Then in Mwanza High Court Zone Miscellaneous Application No: 140 of 2003, Madame A. N. M. Sumari, J found out that appellant and his Counsel forged an **annexture C** document in their futile attempt to move the High Court to certify a point of

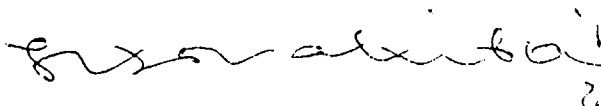
law and enable him (appellant) to appeal to the Court of Appeal out of time.

Both Hon. J. E. C. Masanche, J (rtd) and Hon. A. N. M. Sumari, J smartly detected appellant's deceptive endeavours and rejected them. And in his third gesture, this time appellant is alleging in ground No.3 of his appeal that he attached a copy of an **annexture D.1** plaint which was endorsed by the (primary court) magistrate. But he didn't attach a copy of that plaint to his memorandum of appeal and, in fact, the records in Magu Urban Primary Court Civil Case No. 83 of 2004 have revealed that even the original plaint in that primary court was not signed or endorsed by the (primary court) magistrate.

It follow that this appellant **cum** applicant John Joseph has manipulated three times to deceive before Hon. Masanche, J (rtd), Hon. Sumari, J and before this presiding judge in both Mwanza High Court Zone Miscellaneous Civil Application No. 140 of 2003 and Mwanza High Court (PC) Miscellaneous Civil Appeal No. 23 of 2007 to block respondent Songoma Lufungulo and his clansmen to regain possession of the suit fifteen acres strip of land. This appellant **cum** applicant at this juncture does not deserve any more sympathy or blessing of any court of law to enhance his wicked habits. So that both Mwanza High Court Zone Miscellaneous Civil Application No. 140 of 2003 and Mwanza High Court (PC) Miscellaneous Civil Appeal No. 23 of

2007 where this John Joseph was an applicant and appellant respectively are dismissed with costs.

It is clarified that this judgment is intended for both Mwanza High Court Zone Miscellaneous Civil Appeal No. 140 of 2003 and Mwanza High Court (PC) Miscellaneous Civil Appeal No. 23 of 2007. Therefore copies of this judgment shall be made available in files of both cases and fixed therein.



G. K. Rwakibarila
JUDGE
02.10.201

Date: 05.10.2010

Coram: G. K. Rwakibarila, J

Appellant: Present in person

Respondent: Absent

B/C: Leonard

Court:

Judgment delivered at Mwanza this 5th day of October, 2010 at presence of appellant **cum** applicant and absence of respondent. And right to appeal in time has been explained thoroughly.



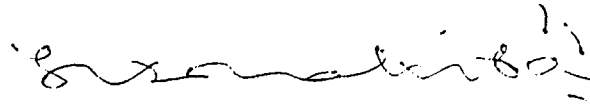
G. K. Rwakibarila
JUDGE
05.10.2010

NB:

Handwritten judgment is available in file of Mwanza High Court Miscellaneous Civil Application No. 140 of 2003.



AT MWANZA
05.10.2010

A handwritten signature in black ink, appearing to read "G. K. Rwakibarila".

G. K. Rwakibarila
JUDG