

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 14 OF 2015

KASSIM KITISA.....APPELLANT

V.

SALUM PEMBE.....RESPONDENT

**JUDGMENT**

*Date of last Order*            /        / 2015  
*Date of Judgment*         /        / 2015

**Shangwa, J.**

This is an appeal from the decision of the District Court of Mkuranga entered on 13<sup>th</sup> October, 2003 in favour of the Respondent in Civil Appeal NO a of 2003. The dispute between the parties concern a piece of land. The delay in disposing of this appeal is the fact that the case file got misplaced in the Registry. The case file was forwarded to me by the Registry officer for writing judgment.

In its decision, the above mentioned District Court reversed the decision of the Primary Court of Mkuranga in original civil case NO 8 of 2002 and held that the piece of land which was allocated to the Respondent is  $\frac{1}{4}$  of an acre and not more.

On 6<sup>th</sup> August, 2008 this Court ordered that the appeal should be argued by way of written submissions. Whereas counsel for the Appellant Mr. Massawe filed his written submissions, Counsel for the Respondent Mr. Sengalawe did not file reply submissions on behalf of the Respondent. I interpreted his failure to do so as a whole sale acceptance of Mr. Massare's argument that the District Court Magistrate erred in law

and in fact in holding that the area belonging to the Appellant was  $\frac{1}{4}$  of an acre and not more.

In his written submissions, Counsel for the Appellant submitted that the correct decision is that of the Primary Court of Mkuranga which visited the locus in quo and found that the area in dispute belonged to the Appellant and it is  $\frac{3}{4}$  of an acre and that the decision of the District Court that the disputed area is  $\frac{1}{4}$  of an acre is incorrect.

In my view, based on evidence adduced by SM III Rajab Yusufu who is the Chairperson of the Village council who did the allocation of land and on evidence adduced by SM II Juma Ali that the Appellant was entitled to more than  $\frac{1}{4}$  of an acre, the trial Primary Court Magistrate was correct in

finding that the Appellant is entitled to more than  $\frac{1}{4}$  of an acre. Therefore, I quash the decision of the District Court of Mkuranga in Civil Appeal NO 9 of 2003 and restore the decision of the Primary Court of Mkuranga in Civil Case NO 8 of 2002.

**A. Shangwa**

**JUDGE**

14/12/2015

Delivered in open Court this 14<sup>th</sup> day of December, 2015 in the absence of the Parties and their Advocates.

A. Shangwa.

**JUDGE**

14/12/2015