

**IN THE HIGH COURT OF TANZANIA**

**SONGEA**

**LAND APPEAL NO. 7 OF 2006**

**EDWIN MAPUNDA .....APPELLANT**

**VERSUS**

**WINFRID NCHIMBI .....RESPONDENT**

**JUDGEMENT**

**FIKIRINI, J:**

This is an appeal by one Edwin Mapunda against the decision of the District Land Tribunal which entered decision in favour of the respondent one Winfrid Nchimbi, that the disputed piece of land was a subject matter in Civil Appeal No.15 of 1980 at the High Court at Mtwara before, Kwikima,J: as he then was. In that decision the land was declared to belong to the present respondent.

The appellant in this appeal had the following grounds of appeal: that the District land Tribunal erred by inviting and entertaining issue and evidence which was not before the Ward Tribunal including documents and the map drawn

when the locus in quo was visited. Another point raised was that the land in dispute subject of this appeal was

different from the one subject of appeal in Civil Appeal No. 15 of 1980 though the Tribunal considered them as one and the same.

The appeal was argued by way of written submissions. The appellant repeated what he stated in his grounds of appeal and only add that the disputed land was given to the respondent for two years use and not permanently as alleged. The respondent reacting to the appellant's submission submitted that the land in dispute in the present appeal is the same land which was in dispute between the present respondent and one Vicent John way back. That dispute resulted into Civil Appeal No. 15 of 1980 whereby the respondent won.

Further in his submission the respondent submitted that he had been in occupation of the said land for about 35 years now and not that he was given the said land for two years use. It was his further submission that all these years the appellant had not raised any claim until after his father's demise. Besides, it was the respondent's submission that the appellant had previously lost at the District Land Tribunal.

I have gone through the records involved and the documents annexed including the High Court judgment in Civil Case No. 15 of 1980. From the record it is evident

that the disputed piece of land in this appeal is completely different from the one involved above whereby the present

respondent Winfrid Nchimbi sued one Vicent John. I am convinced with the Myangayanga Ward Tribunal decision and the fact that they visited the dispute suit land. From the Ward record the present respondent did not challenge that fact.

The District Land and Housing Tribunal in considering an appeal filed by one Winfrid Nchimbi the respondent in the present appeal did as well visited the locus in quo. The District Land Tribunal did not in its judgment faulted or even discuss the map drawn by the Ward Trubunal. I am saying so because that could have showed if the disputed land was the one between Winfrid Nchimbi and Vicent John once before the court. As that was the main issue which had to be determined.

The failure by the District Land Tribunal to consider that has made me conclude that this appeal has merits. I therefore quash and set aside the Songea District Land and Housing Tribunal decision and restore the Ward Tribunal decision. The appeal is allowed with costs.

It is so ordered.

Judgment Delivered this .....of .....of  
2012 in the presence of parties.

P. FIKIRINI

**JUDGE**

3<sup>RD</sup> AUGUST, 2012

Right of Appeal Explained.

P. FIKIRINI

**JUDGE**

3<sup>RD</sup> AUGUST, 2012