

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CORAM: MUSTAFA, J.A.; MAKAME, J.A. And OMAR, J.A.

CIVIL APPEAL NO. 13 OF 1985

MAYO BURA. APPELLANT

VERSUS

BONDINI DAFI. RESPONDENT
(Appeal from the Judgment of the High Court
of Tanzania at Arusha) (D'Souza, Ag. J.)

in

(PC) Civil Appeal No. 49 of 1979

JUDGMENT OF THE COURT

OMAR, J.A.:

This is a third appeal from the suit filed in the Primary Court of Mbulu in Mbulu District. Bondini Dafi the present respondent claimed 14 head of cattle from his uncle Mayo Bura the present appellant.

It is Bondini's case that when he was very young his grandfather kept one cow named Ara with one Thuway Massay to be looked after by the latter. Soon afterwards his grandfather died and Bondini's father, who was the elder son inherited the cow. He too died and the cow devolved to his uncle Mayo Bura the present appellant who for some years gave to his nephew Bondini a half share in the off-springs of ARA. Between 1972 and 1973 the present appellant Mayo Bura appropriated all the 14 head of cattle to himself without giving the respondent his due share. The respondent Bondini filed a suit in 1978 claiming 14 head of cattle as his share as there was a total of 28 head of cattle at that time. The Primary Court awarded 7 head of cattle to the respondent Bondini. On appeal by Mayo this award was upset and Bondini was not awarded any cattle. On an appeal to the High Court the District Court judgment was set aside and the decision of the Primary Court was restored.

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In granting leave to appeal to this Court the High Court judge certified a point of law for determination by this Court. The point was stated as follows:

"Whether the suit was time-barred".

Apart from the mention ^{certain} / years there has been no evidence adduced as to when the cause of action actually arose. It is impossible for this Court to decide without any primary facts as to whether the original action filed was time barred or not. We are surprised in the circumstances of this case that the High Court gave leave on such a ground. This ground was never raised at any stage by either party and in the absence of definite dates it is not possible for us to decide such a point.

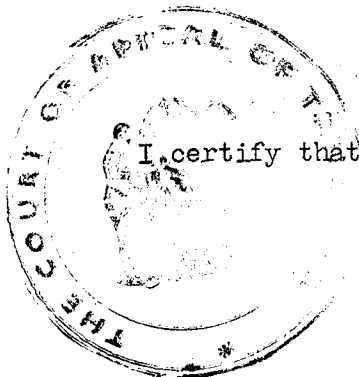
We are satisfied that the judgment of the High Court is correct. We confirm the order of the High Court and dismiss the appeal with costs.

DATED at ARUSHA this 26th day of July, 1986.

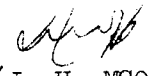
A. MUSTAFA
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL



I certify that this is a true copy of the original.


(J. H. MSOFPE)
DEPUTY REGISTRAR.