

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

APPELLATE JURISDICTION

PC.CIVIL APPEAL NO. 215 OF 2004

*(Arising from Kwimba District Court in civil appeal No.20 of 2004 (before Hon.
R.R. Rukandiza DM) Originally civil Case No.52 of 2003 of Malya Primary court)*

NJILE NDATURUAPPLICANT

Versus

KASWAHILI KAGUNARESPONDENT

JUDGMENT

2/9/2008 & 6/11/2008

Nyangarika J.

On 24/11/2003, the appellant, filed a Land suit regarding a cause of action which arose at Mwabulumasi area – Kitunga village in Kwimba District against the respondent and in a judgment delivered on 20/4/2004, Malya primary court decided that the Land in dispute be returned to the appellant after paying the respondent Tshs. 200,000/= being costs for the development he has carried out therein.

On appeal, the 1st appellate court reversed the primary court decision on payments of Tshs. 200,000/= to Tshs. 500,000/= on the

ground that it was too little for the development carried out at the disputed land since 1998 by the respondent.

It is therefore on this finding of the first appellate court that the present appeal has been preferred.

The appellant has registered 6 grounds of appeal, but during hearing of the appeal, the parties addressed me generally on all grounds of appeal.

According to the appellant, he agreed with the respondent to clear his land of $4\frac{1}{2}$ acres and in consideration thereof he will be allowed to use part of the appellant's land comprising of $2\frac{1}{2}$ acres for a period of 2 years (i.e, from 2001 up to 2002). The appellant said that the respondent did not observe these conditions of the agreement and instead continued to farm in the farm land todate.

The appellant also complained that the two court's below were wrong to order compensation as the respondent earned a lot of money from the disputed land farm.

The appellant further said that, the two lower courts erred to order compensation because the respondent did not spend any money in making the ponds ("majaruba") as they were there since he bought the disputed farm. Infact, the appellant told the court that it was the respondent who should pay him for using the farm in excess of the period agreed upon.

On the other hand, apart from complaining that the appeal was time barred, the respondent said it is true that they reached an agreement for farming on the disputed land, but was not for two years but for all seasons.

The respondent also said that they also agreed that if the appellant will need his farmland back, then, he was supposed to pay compensation for the costs incurred by him in farming the land in all that period.

Finally, the respondent said that if he is paid Tshs. 500,000/= as ordered by the 1st Appellate court, then, he will immediately hand over the disputed land to the appellant.

I will start with the issue whether the appeal is time barred. or not. The record show that the judgment of the 1st appellate court was delivered on 16/7/2004 but the said judgment was typed and certified on 6/8/2004. The record also shows that the present appeal was filed on 24/8/2004.

Under the provisions of **Section 25(1)(b) of the magistrate Court Act 1984(Cap 11 R.E.2002)** an appeal originating from a district court while exercising its appellate jurisdiction from the primary court has to be filed in this court within a period of 30 days after the date of the decision or order of the District Court.

From 6/8/2004 when the judgment of the District court was certified up to 24/8/2004 when the appeal was filed is only 18 days and therefore the appeal was filed within the prescribed period.

This ground of appeal which appear on item 1 and 2 to the memorandum of appeal fails. This appeal is not time barred.

Both courts below had ordered that the respondent should surrender the land of the appellant on being paid Tshs. 500,000/= as compensation by the appellant.

I have failed to understand the basis of this order of compensation. The appellant cannot in law be forced to pay the respondent compensation simply because the respondent has been using the piece of land upon clearing and making ponds of it for his own benefits.

The parties are not at issue regarding the fact that the appellant is the owner of the piece of land measuring 2^{1/2} acres. There is also no dispute that the respondent was allowed to farm and use the disputed piece of land for a certain period, in consideration of accepting to clear the appellant's land measuring 2 acres.

The only disputed issue is regarding compensation and the period within which the respondent will surrender the piece of the disputed land to the appellant.

If I was to decide this appeal on merit, in my view, I think the amount of payment of Tshs. 500,000/= or Tshs. 200,000/= to the respondent has no basis.

There is no evidence led to support that the respondent was entitled to be paid the amount of Tshs. 500,000/= or Tshs. 200,000/= as ordered in terms of either costs incurred, labour hired or any other expenses involved. **(See the case of Rajabu Hassara versus Saraya Rashid [1983] TLR 111 HC)**

If it wasn't the decision which I will make later on in this judgment, I would have said just in passing, that, the decision of 1st appellate court and the primary court, that, the respondent shall only surrender the appellant's land on payment of Tshs. 500,000/= or Tshs. 200,000/=:, respectively, as compensation, has no basis in any standard.

As I have already said, the appellant filed a Land suit against the respondent at Malya primary court in Kwimba District on 24/11/2003, while, the Land Act No. 4 of 1999 had commenced and the village land council was in operation as from 1/10/2003.

Under the provisions of **section 167 of the Land Act 1999**, the jurisdiction on land matters is exclusively vested on the court of

appeal, High Court of Tanzania (Land Division), District Land and Housing Tribunal, ward, land Tribunal and Village Land Council.

The Village Land Council was in operation on 1st October 2003 and therefore the Primary Court entertained this land suit on 24/11/2003 while it has no jurisdiction.

Section 3(1) and (2) of the Land Disputes Court Act GN. No.225/2003 provides as follows.

Section 3(1): "Subject to section 167 of the Land Act 199, and section 62 of the Village Land Act, 1999, every dispute or complain concerning Land shall be instituted in the court having jurisdiction to determine Land disputes in a given area.

Section 3(2): The court of jurisdiction under subsection (1)

include:

- (a) The village Land Council
- (b) The Ward Tribunal
- (c) The District Land and Housing Tribunal
- (d) The High Court (Land Division)
- (e) The court of Appeal of Tanzania.

In our case at hand, the cause of action arose of Mwabuluma's ares, Kitunga village in Kwimba District herein Mwanza, therefore the appellant was supposed to file his land suit at the village land Council

of Kitunga village and not at Malya Primary court which lacks jurisdiction to determine the Land dispute or complain in the circumstances of this case.

In the case of **Yakub Beg and Others Versus Sikander [1955]**

HCD 197 it was held as follows:-

"If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders however precisely certain and technically correct are mere nullities and not only voidable, they are void and have no effect either as estoppel or otherwise, and may be declared void by every court on which they may be presented."

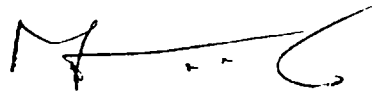
In our land case at hand, both the primary and 1st appellate court lacked jurisdiction to entertain the said suit and appeal, respectively, in the circumstance of this case.

I therefore declare that the proceedings judgment, and decree of both the Primary court and District Court were a nullity.

I hereby quash all the proceedings, judgments, decree and orders made by Malya Primary court and Kwimba District court. There will be no orders as to costs as the issue of jurisdiction were

never raised by either of the parties in this appeal and the courts below.

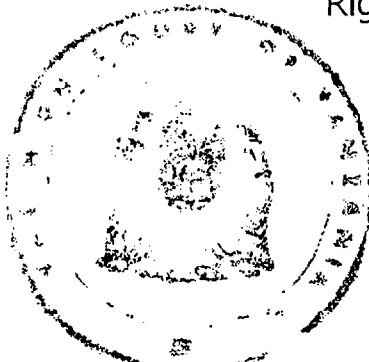
Order accordingly.



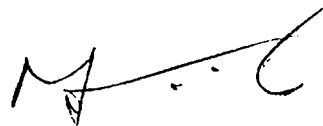
K.M. Nyangarika
JUDGE

Judgment delivered today in chambers in the presence of the appellant and respondent in person.

Right of appeal fully explained to both parties.



At Mwanza
6/11/2008



K.M. Nyangarika
JUDGE