

TANZANIA / JUDGMENT

19700428 TZHC Mwanza8

COURT
TZHCDECIDED
28 April 1970

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IN THE HIGH COURT OF TANZANIA (In the District Registry) AT MWANZA. APPELLATE JURISDICTION. (nc) CIVIL APPEAL NO. 33 OF 1970 (From the decision of the District Court of Bukoba District at Bukoba in Civil Appeal No.316 of 1969. Original Civil Case No.93 of 1969 of the Primary Court of Ndwani.) CYPRIAN MABEBO. APPELLANT (Original Defendant) vs. MRS. FELISTA FRANCIS. RESPONDENT (Original Plaintiff);

JUDGMENT.

This appeal arises out of a disputed portion of a shamba. It seems that the appellant claims this disputed portion which is separated from the undisputed part of his shamba by a narrow pathway (eilembo). The respondent (Original plaintiff) claims that the disputed portion is part of her shamba which the appellant has attempted to take over by wrongfully crossing the eilembo and planting boundary trees on a portion of her shamba. She prayed the court for an order for the removal of the fence erected on the boundary of her shamba. The assessors of the primary court, after viewing the site and hearing the parties and the respondent's witness Kitwaro s/o Itembwe both found for the respondent. However the primary court magistrate differed on the ground that the pathway (eilembo) belongs not to the respondent but to the public and the disputed portion beyond it does not belong to the respondent. The District Magistrate on appeal visited the site and heard additional evidence, including that of the ten cell leader, Peter Magongo and Kitwaro Itembwe, a neighbour of both parties. All the additional witnesses heard by the district magistrate, including Peter Magongo called by the appellant, found that the land on which the appellant planted the boundary trees was Kitwaro's, not the appellant's. Hence the District Court reversed the decision of the primary court and made the order in favour of the respondent as prayed. It seems that the preponderance of the evidence is that the disputed portion of land is not the appellant's and he had no right to cross the eilembo and plant the boundary trees where he did. The appeal is accordingly dismissed. The respondent will have shs.39/- costs of this appeal as well as her assessed costs in the lower courts. Delivered in Court this 28th day of April, 1970 - (ii.. SnATON.) JUDGE. S

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Prepared on 13 October 2026 · Esheria