

TANZANIA / JUDGMENT

19740206 TZHC Mwanza

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TZHCDECIDED
6 February 1974

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-ç IN THE HIGH COURT OF TANZANIA AT MWANZA (PC) CIVIL -PPCiL No. 183 OF 1971 (From the decision of the District Court of Kigorna at Kigoma in Civil Appcal N60 23/71 Before M.S. Kabibi, Esq., D.M. and Ujiji Primary Court Civil Case No0 32/71) MOHAMEDI FARAJI MILA APPELLANT versus SALEHE MAKIJLA 000000.0000000000000000 RESPONDENT

- ∴ JUDGMENT PATEL, J.: This is second appeal0 Before the PrimdE'durt"of Ujiji, appellant filed a suit claiming a piece of land as his which then was being cultivated by the present respondent. Primary Court Magistrate held the land in question belonged to the present respondent and dismissed his claim 0 His appeal to the District Court at Kigoma was dismissed which upheld the judgment 6nd. 1.6rder of the Primary Court of Ujiji 'Hence the present appeal to this Court. Mr0 Tukunjoba for the appellant submitted that there have been two civil cases between the parties0 In 1968 appellant filed a suit before Primary Court of Mwandiga whereby he claimed a piece of shamba from present respondent which he alleged the respondent took possession of
- while he was away in Congo0 Appellant lost this suit and he appealed to District Court of Kigoma where he won the appeal. This was Civil Appeal No0 16 of 1970 before the District Court of Kigoma. But in 1971 present respondent went back to cultivate a piece of that shamba and appellant filed a suit before Primary Court of Ujiji seeking vacant possession. H9. lost this suit and his appeal to District Court of Kigoma too was dismissed and he now appeals to this Court. Mr. Tukunjoba submitted that the rasqns for disallowing appellant's claim by both the lower courts was that the piece of land of which this appellant sought vacant possession was not part of that Piece of land which the court earlier held belonged to him. Mr. Tukunjoha said unfortunately no boundaries were fixed or defined in earlier case and appeal when it.was held that the shamba in question belonged to the appellant. Mr. Tukunjoba then submitted that this casefile be sent back to.Kiqoma District Court with directions that borders of the shamba which was held to belong to appellant in Civil Appeal No. 16 of 1970 be viewed,, marked and defined and thereafter the casefile be sent back to) this Court to enable it to take a correct decision. I have gone through the record carefully and in my view the learned Primary Court Magistrate heard the case with extreme care and dealt with all issues before him. Both the learned assessors agreed with his finding.. He considered all evidence before him and then made his finding.With' respect to Mr.

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s: , : ! . * * : ' ! .. : , sS''' , ; ' , , , , , * ' : .. * " * " * " , , , , , .. ' j. " , : : ! !
" , " V" , : : " ! : . , sH. * " s, ' * ' s' ! : ! ' , : ' s' ! , i, : ..

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