

TANZANIA / JUDGMENT

19740308 TZHC Mwanza

COURT
TZHCDECIDED
8 March 1974

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40 Zar J- " IN THE HIGH COURT OF TANZANIA AT MWANZA (Pc)ciVIL APPEAL No 83 . OF 1971 (From the decision of the Distr1t ourt of Kigönia at Kigoma in Civil Appeal No0 23/71 BeforeM.S. Ka:bibi, Esq., D.M..ard Ujiji Primary Court Civil Case No0 32/71) MOHAMEDI FARAJI MILA APPELLANT versus SALEHE MAKULA RESPONDENT JUDGNEN' PATEL, J.: This is second appeal. Sefore the Primar Court of Ujiji, appellant filed a suit claiming a piece of land as his hich 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. His appeal to the District Court at Kigoma was dismissed which upheld the judgment and:rdor of the Primary Court of Ujiji. Hence the present appeal to this Court. - Mr. Tukunjoba for the appellant submitted that there have been two civil cases between the parties. 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 Congo. Appellant lost this suit and he appealed to District Court of Kigoma where he wn the appeal. This was Civil Appeal No, 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. He 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 reasons 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 niece 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 he sent back to Kigoma 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 hack to this Court to enable it to take a correct decision0 p 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. Tukunjoba, it is not correct when he said no boundaries were fixed or defined in earlier case and or appeal. On the contrary on 11/8/71 the learned Primary Court Magistrate, with assessors, parties and witnesses

- went to the shambas in dispute and in presence of about 30 persons examined, marked and defined .boundaries of shambas in dispute and also prepared a sketch plan which defines and fixes boundaries of all shambas in question0 From this it is clear that the shamba concerning which this appellant won the appeal earlier is not the same which is now in dispute. From evidence of record it is clear that both the learned Primary Court Magistrate and District Magistrate sitting in appeal were correct in saying that the , shamba now claimed by the respondent is different from what was held to belong to appellant in Civil Appeal No. 16 of 1970 and in fact it belongs to the present respondent. In my opinion learned Primary Court Magistrate dealt with exhaustively and has written a very careful and first class judgment when he held that the shamba in question belongs to the present respondent. I can see nothing wrong in his arguments, reasoning or conclusion. There is nothing in record, judgment or memorandum of appeal that will make me reverse lower court's finding. I do not see any reason as to why this casefile be sent hack to District Court of Kigoma to take I

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