

H/c Mbinga

IN THE HIGH COURT OF TANZANIA

AT SONGEA.

PC. CIVIL APEAL NO. 8 OF 2006.

DC CIVIL APPEAL NO. 58 OF 2004

(ORIGINAL MBINGA URBAN PRIMARY COURT

CIVIL CASE NO. 29 OF 2003)

DOMINIC HYERA -----APPELLANT

VERSUS

DAVID NGONYANI-----RESPONDENT

DATE OF LAST ORDER – 10/7/2008.

DATE OF JUDGMENT – 19/8/2008.

JUDGMENT

L.M.K. Uzia,J.

Having been dissatisfied with the decision of the appellate District Court of Mbinga, and the decision of the Primary Court is now asking this court to decide in his favour.

The appellant filed a memorandum of appeal contained nine grounds of appeal, essentially, he attacked the decision of the Primary Court and that of the District Court.

In the trial court, the appellant was ordered to pay shs. 150,000/= being compensation for the destroyed banana trees in the Respondents piece of land. The evidence was that, the District land officers informed the appellant by a letter dated 6th/4/2004, that he should compensate the Respondent shs. 150,000/=. For the

sake of clarity, part of the letter reads as follows in Kiswahili language.

**"Ndugu Dominic Hyera anatakiwa
amlipe Ndugu David Ngonyani
Tshs. 150,000/=."**

The appellant disregarded the order, decided to uproot banana trees and continued to clear the farm. The courts below decided in favour of the Respondent, that the compensation was supposed to be done before embarking himself on uprooting banana trees.

On appeal, the appellant attacked the decision of the court below that the trial Magistrate failed to consider the evidence of the witnesses brought to testify in his favour.

Having gone through the two records below, I found that the decision of the two courts below had substance, because, the District Land Officers surveyed the area before they ordered the appellant to pay compensation of Tshs. 150,000/= to the respondent. Instead of paying the compensation, the appellant decided to uproot banana trees. To me, that was illegal possession of land and fortunately the courts below reached at a concurrent decision which I find no reason of disturbing it.

For the reasons stated, I dismiss the appeal with costs.



L.M.K. UZIA

JUDGE

19/8/2008



Right of appeal explained.



L.M.K. UZIA

JUDGE

19/8/2008

MMS/

