

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CORAM: MUSTAFA, J.A.; KISANGA, J.A. AND OMAR, J.A.

CIVIL APPEAL NO. 27 OF 1984

BETWEEN

OMARI YUSUFU. APPELLANT

AND

1. MWAJUMA YUSUFU | RESPONDENT
2. FATUMA YUSUFU |

(Appeal from the Judgment and Decree of
the High Court of Tanzania at Dar es Salaam)
(Mr. Justice Kimicha) dated 19th day of
September, 1981

in

High Court (PC) Civil Appeal No. 20 of 1981

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

This matter arose in a Primary Court, in a Probate matter. Omari Yusufu succeeded in claiming a house, No. 4 in Muhoro Street, Dar es Salaam, as his property, and not part of the estate of Yusufu Selemani, deceased. After evidence was taken by the Primary Court, it decided that the house in question had been transferred to Omari by the deceased before the deceased died. Mwakuma Yusufu, one of the daughters of the deceased was dissatisfied with the decision of the Primary Court, and appealed to a District Court.

The District Magistrate upheld the decision of the Primary Court. Mwakuma Yusufu then appealed to the High Court (Kimicha, J.).

The High Court, instead of hearing the appeal and deciding on it, took a most unusual course. The Judge, in his judgment, said that the records of the primary and district courts were not before him.

He nevertheless proceeded to call, on his own motion apparently, two so-called additional witnesses. He believed these witnesses and set aside the concurrent findings of both the Primary and District Courts. He did so apparently on the ground that the appellant Omari had told lies

The Judge did not hear and decide an appeal; he held a trial, an original trial, ignoring totally the evidence which was adduced at the trial from which the appeal before him emanated. The course adopted by the judge was totally outside any procedure known to the law, and clearly the proceedings before him and his judgment must be a nullity.

We are satisfied that what was decided by the Judge was a nullity. Mwajuma Yusufu before us stated that the record of appeal is not correct and does not contain the true facts. We cannot accept this contention.

In the event, we allow the appeal, set aside the judgment and decree of the High Court as a nullity and direct that the appeal be restored for hearing in the High Court before a judge. No costs need be paid by the appellant concerning the new hearing.

We make no order as to costs.

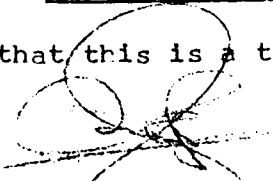
DATED at DAR ES SALAAM this 5th day of June, 1985.

A. MUSTAFA
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(B. P. MOSHI)
SENIOR DEPUTY REGISTRAR.