

**IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR**

(CORAM LUBUVA, J.A.; MROSO, J.A., And MSOFFE, J.A.)

CIVIL APPEAL NO. 6 OF 2004

BETWEEN

ABDALLA BAKAR ABDULRAHMAN APPELLANT

AND

**1. MARYAM MAKSOUD MOH'D] RESPONDENTS
2. MRAJIS WA NYARAKA, ZANZIBAR]**

**(Appeal from the decision of the High Court
for Zanzibar at Vuga)**

(Dahoma, J.)

~~dated the 5th day of September, 2003~~

in

Application for Review in Civil Case No. 55 of 2002

JUDGMENT OF THE COURT

LUBUVA, J.A.:

This appeal arises from the decision of the High Court of Zanzibar (Dahoma, J.) of 5.9.2003 in an application for review filed in connection with Civil Case No. 55 of 2002.

In High Court Civil Case No. 55 of 2002, the appellant, Maryam Maksoud Mohamed, applied for the revocation of a deed of gift she had made in favour of the donees, the appellant, Abdallah Bakar Abdulraman, her son, and Chausiku Bakari Abdulrahman, her daughter. The deed of gift which was duly registered in the office of

the Registrar General on 20.6.2000, concerned house No. 13/1 at Kilimani within the Municipality of Zanzibar. The revocation of the deed of gift against the appellant was based on the ground that the appellant was not taking care of the 1st respondent, the donor, an old and sickly lady. Resisting the application the appellant firmly maintained that the deed of gift could not be revoked because there was no condition attached to the deed for the appellant to take care of the donor, the 1st respondent.

The learned judge, Mshibe, J. took the view that as the transfer of the immovable property, namely a house, had been effected by a duly signed and registered instrument, the deed of gift could not be revoked. Consequently, on 19.2.2004 the application was dismissed with costs.

On 11.3.2003, about twenty days after the dismissal of the application for the revocation of the deed of gift, the respondent filed an application in the High Court of Zanzibar seeking the review of the High Court decision of 5.3.2003. The application for the review was made under the provisions of Order L Rules 1 and 2 of the Civil Procedure Decree, Chapter 8 of the Laws of Zanzibar.

Dealing with the application for review, Dahoma, J. held that the deed of gift to the donees was invalid in law. The decision of the High Court of 19.2.2003 was reversed and the deed, Registration Number 156 of 2.3.2000, Vol. I Book A of 10.2.2000, was cancelled. The appellant was aggrieved by the decision, hence this appeal has been preferred.

In this appeal, the appellant was unrepresented. He filed four grounds of appeal in his memorandum of appeal. From these grounds, two essential points are raised. First, that the learned judge erred in hearing the application for review in contravention of the provisions of Order L Rule 5 of the Civil Procedure Decree. Second, that the learned judge erred in dealing with the matter to review and reverse the decision of a fellow judge of the High Court with similar powers of jurisdiction.

Mr. Jadi, learned State Attorney, represented the 2nd Respondent, the Registrar General of Zanzibar. On his part, he said he was not resisting the appeal. He further stated that as he had done in the High Court at the hearing of the application for review, it was his view that Dahoma, J. had no jurisdiction to deal with the

matter on review. He maintained that in terms of the provisions of Order L Rule 5 if at all the review was warranted, Mshibe, J. should have heard the application. He said what Dahoma, J. did amounted to hearing an appeal from the decision of a fellow judge with similar jurisdiction. The decision arising from the proceedings before Dahoma, J. was null and void, it should be set aside, he urged.

It is common ground that the application for the revocation of the Deed of gift in respect of the appellant was heard and determined by Mshibe, J. on 19.2.2003. It is also not disputed that the same matter was dealt with and decided on review by Dahoma, J. on 5.9.2003. The issue falling for consideration is the propriety of the proceedings for review before Dahoma, J. As said before, the application was filed under the provisions of Order L Rule 5 of the Zanzibar Civil Procedure Decree which provides:-

5. Where the Judge or Judges or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after

the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same. (emphasis supplied).

In this case, it is not disputed that when the application for the review was presented, Mshibe, J. was still attached to the Court and was not in any way precluded by absence from the court. It is therefore inexplicable that the application for review in this matter ~~was dealt~~ with by Dahoma, J. Quite clearly this was, in the circumstances, a violation of the mandatory provisions of Order L Rule 5 of the Civil Procedure Decree. With respect, Dahoma, J. had no jurisdiction to deal with the application for review of a matter which appropriately should have been dealt with, if at all, by Mshibe, J. As Mr. Jadi, learned State Attorney correctly observed, as the learned judge lacked jurisdiction, the proceedings before him were a nullity. The resulting decision was likewise, null and void.

Having taken this view in this matter, it becomes unnecessary to deal with the other points raised in the memorandum of appeal. However, we wish to make the following two observations which are

not necessary for the determination of this appeal. First, in this matter, what the learned judge (Dahoma, J.) did amounted to hearing an appeal from another judge with the same jurisdiction. This was, to say the least, improper and unwarranted. Two, even assuming that the learned judge was vested with jurisdiction to deal with the application, none of the circumstances set out under Order L Rule 1 of the Civil Procedure Decree for the general powers of the court to invoke the powers of review were available in this case.

For the foregoing ~~reasons~~, we allow the appeal, set aside the decision of the High Court of 5.9.2003 and restore the decision of Mshibe, J. of 19.2.2003. ~~Costs~~ are awarded to the appellant.

DATED at ZANZIBAR this 26th day of November, 2004.

D. Z. LUBUVA
JUSTICE OF APPEAL

J. A. MROSO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

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



(S. M. RUMANYIKA)
DEPUTY REGISTRAR