

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY AT
DAR ES SALAAM

CIVIL APPEAL NO:- 95 OF 1994

ORIGINAL FROM RM'S COURT KISUTU CIVIL CASE

NO:- 491 OF 1993

ISSA ATHUMAN APPELLANT

Versus

ALI SAID HUSSEIN RESPONDENT

J U D G M E N T :-

E. A. KILEO - PM (EXT. JURISDICTION),

Issa Athumani who is the appellant in this appeal was sued in the Resident Magistrate's court of Kisutu by Ali Said Hussein who claimed for a declaration that a certain house No. 19/30E at Ipokolo street, Mwananyamala area, Kinondoni District in Dar es Salaam was lawfully sold to him and therefore was entitled to it. Ali said Hussein also prayed for an order for vacant possession of the suit premises against the appellant. Ali Said Hussein won in the suit and the appellant being dissatisfied has appealed against the finding of the trial court. The memorandum of appeal consists of nine grounds of appeal which, when summarised fall on two main grounds. The first main ground based on a point of law is to the effect that there was a gross error of procedure committed by the trial court which negates the whole proceedings in that judgment in the case was written by a magistrate who did not hear the evidence. The second main ground of appeal is that the learned magistrate erred on a point of fact by failing to properly evaluate the evidence adduced before the court.

Regarding the first ground of appeal, the record of the lower court shows that the case was heard by S. Kiwango, Resident

Magistrate, who, after the case was assigned to him framed the issues and heard the evidence of both the plaintiff and the defendant up to the close of the defendant's case. At the close of the defendant's case he set the case for judgement on 28th September, 1994. However, he did not deliver the judgement as apparently he had not written it. The case was re-assigned to another magistrate for reasons that are not disclosed in the court record. The magistrate to whom the case was re-assigned went on straight to write judgement and delivered it without explaining to the parties that it was his own judgement he was delivering and not the judgement of the trial magistrate. Below is -- briefly what transpired:-

Date: 21/9/94

Coram:- S. Kiwango - RM

For Applicant/Plaintiff: Ngatunga

Defendant:- Present in person.

DEFENCE CASE CONTINUES

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Order:- Judgement on 28th September, 1994.

(Sgd) S. Kiwango

R. H.

21/9/1994

Date: 29/9/94

Coram:- J. E. Ruhangisa - RM

For Plaintiff: Present in person

For Defendant:- Present in person.

COURT:- Noted that the file has been re-assigned to me this morning.

Order:- Judgement on 17th November, 1994.

(Sgd) J. E. Ruhangisa

R. M.

29/9/94


It is obvious from the record that no reasons were given why the case had to be re-assigned to another magistrate after all the evidence had been heard by one magistrate. In any case, the law is quite clear regarding who is to write/deliver judgement in a case. The relevant provisions of the law are found in rules 1 - 3 of Order XX of the Civil Procedure Code which provide as hereunder:-

- "1. The court, after the case has been heard, shall pronounce judgement in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.
2. A Judge or magistrate may pronounce a judgement written but not pronounced by his predecessor.
3. The judgement shall be written by, or reduced to writing under ^{personal} ~~the~~ direction and superintendence of, the presiding Judge or magistrate in the language of the court and shall be dated and signed by such presiding Judge or magistrate as of the date on which it is pronounced in open court and, when once signed shall not afterwards be altered or added to, save as provided by section 96 or on review."

Mr. Ruhangisa who wrote and delivered judgement in the lower court did not preside over the case. He was therefore, not legally empowered to write judgement in ^{view} of rule 3 of order XX of the CPC cited above. It is very unfortunate that it is not even indicated in the record as to why it became necessary for the case to be re-assigned to another magistrate after all the evidence had been

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taken down by one magistrate. As it is, one can only speculate. However, justice is not to be dispensed with through speculation. In view of the provisions of the law with regard to who is to write and to pronounce judgment of a case, I am satisfied that the appellant's first main ground of appeal is meritorious and I agree with him that non-compliance with the law by the lower court vitiated the whole proceedings. The error that was committed by the learned trial magistrate, in my view cannot be cured by provisions of section 96 of the Civil Procedure Code. For the above reason alone, I would allow the appeal, declare the judgment of the learned Resident Magistrate to be of no effect, and set aside all the orders that emanated from the same. Having found as above, I see no reason why I should labour myself to consider the other grounds of appeal raised considering that my findings upon them would not have any bearing on the decision that I have already arrived at. Consequently, I, for reasons given above, allow the appeal by Issa Athumani with costs in the appeal. It is ordered that the case be heard de novo, and for the ends of justice it is further ordered that it be heard by another magistrate of competent jurisdiction other than Mr. Kiwango or Mr. Ruhangisa.


(E. A. KILEO)

PRINCIPAL RESIDENT MAGISTRATE
(EXTENDED JURISDICTION)


18/7/95

Before E. A. Kileo, FRM, (Ext. Jurisdiction)

Appellant:- Present

Respondent:- Present

Court:- Judgment is delivered this 18th day of July, 1995
in the presence of both parties.


(E. A. KILEO)

PRINCIPAL RESIDENT MAGISTRATE
(EXTENDED JURISDICTION)

18/7/95