

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

CIVIL REVISION NO. 59 OF 2003

MUSSA RAJABU & 3 OTHERS APPLICANTS/PETITIONERS

VERSUS

M/S ALLIANCE FRANCAISE RESPONDENT

RULING

ORIYO, J.:

These are revisional proceedings which were initiated by the trial court, the resident magistrate's court at Kisutu; by its order dated 19 February, 2003.

Employment Cause No.362 of 1997 was filed at the Resident Magistrate's Court of Dar es Salaam at Kisutu. Initially, the matter was presided over by resident magistrates. Mediation was unsuccessful and the trial was taken over by a district magistrate, Kiseto, SDM. Apparently, only one witness testified for the complainants and the defendant did not testify in support of its case for reasons not quite clear on record. Anyway, after several adjournments, the trial magistrate fixed the case for judgment on 19 February, 2002. The judgment was then adjourned on a number of occasions and on 4 June, 2002 it was adjourned for the 13th time. Eventually, it was delivered in favour of the complainants on 11 June, 2002.

In the course of handling subsequent applications for orders, the learned Mbilinyi, RM, ordered that the matter be referred to this court to cure an error apparent on record in that the case was tried by and the judgment was delivered by a court without jurisdiction.

SECTION 6(1) OF THE MAGISTRATE'S COURTS ACT, 1984,
provides as hereunder:-

“6. – (1) Subject to the provisions of Section 7, a magistrate's court
+ **shall** be duly constituted when held by a ~~3~~ Single Magistrate, being –

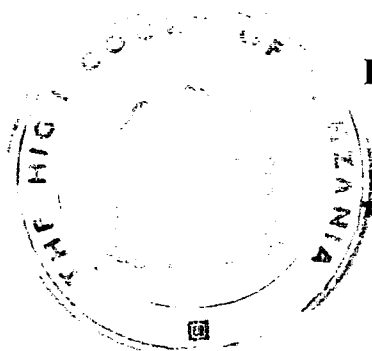
- (a) in the case of a primary court, a primary court magistrate;
- (b) in the case of a district court, a district or a resident magistrate;
- (c) in the case of a court of a resident magistrate, a resident magistrate”. [underlining provided]

The employment cause was filed in a court of a resident magistrate and ought to have been presided over by a resident magistrate. It was an error for Kisseto, who was a district magistrate, to try the case in a court of a resident magistrate. As correctly decided by the learned Mbilinyi, RM, that was in contravention of the clear, mandatory provisions of Section 6(1), Magistrates Courts Act. The trial and the attendant judgment and orders by Kisseto, SDM, are a nullity.

In the exercise of the revisional powers conferred on this court under SECTION 44(1)(b), Magistrates Courts Act, I hereby ~~quash~~ quash the proceedings and set aside the judgment and orders in Employment Cause No.362 of 1999.

The ^mMatter is remitted back to the court of the resident magistrate at Kisumu with directions that the case be tried de novo before a competent magistrate.

It is so ordered.



K.K. ORIYO

JUDGE

1/7/2004

30/6/2004