

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL REVISION NO. 52 OF 2004**

**BUILDING HARDWARE AND ELECTRICAL SUPPLIES CO.**

**LTD.....PLAINTIFF**

**VS**

**1. THE HEADTEACHER, KURASINI PRIM. SCHOOL**

**2. MADOSHI MANONI..... DEFENDANTS**

**REVISIONAL ORDER**

**A. Shangwa, J**

This reference originates from the proceedings in RM Civil Case No. 81 of 2000 at Kisutu. It has been brought by the senior Resident Magistrate in-charge under S. 77 and O.XLI of the Civil Procedure Code 1996. Strictly speaking, this matter has neither been referred to this court on a case stated by the Court of the Resident Magistrate for the opinion of this court nor has it been referred to it by the said court with its opinion on any point of law for the decision of this court after entertaining doubt on it.

The record shows that it was referred to this court by the Senior Resident Magistrate In-Charge at Kisumu who was not presiding over the court. The one who was presiding over it is Mr. Mbuga, RM who referred it to him on 8.3.2004 for examining and satisfying himself as to the validity or legality of the order for ex parte proof of the case and the ex parte judgment made in the case by the Senior District Magistrate Mr. M. T. Mwanjenja on 20.10.2000 so that he may take action under S. 30 (2) of the Magistrates' Courts Act, 1984. In taking action, the Senior Resident Magistrate In Charge decided to bring the matter to the attention of this court by way of reference.

I wish to state here that as this matter was not referred to this court on a case stated by the presiding Magistrate for the opinion of this court or for this Court's decision on any doubtful question of law, it was wrong to bring it as a reference under S. 77 and O.XLI of the Civil Procedure Code, 1966.

In the circumstances of this case, the record containing the ex parte order and the ex parte judgment made by the Senior District

Magistrate was supposed to be brought by the Senior Resident Magistrate in-Charge with a report to this court under S.30 (2) (a) of the Magistrates' courts Act, 1984 so that it may consider whether or not to exercise its powers of revision.

Notwithstanding this anomaly, it would be of no practical importance to return the reference to the Senior Resident Magistrate in-charge for its amendment. I will therefore proceed to examine the record of proceedings in RM Civil Case No. 81 of 2000 which was dispatched by him to this court for revision of the Senior District Magistrate's order for *exparte* proof and the *exparte* judgment.

The record shows that Civil Case No. 81 of 2000 was filed by the plaintiff in the Court of the Resident Magistrate at Kisumu on 24.3.2000. On the same date, the then Principal Resident Magistrate in-Charge incidentally assigned it to Mr. Mwakenja, SDM for trial. On 1.9.2000, the said magistrate ordered for *exparte* proof of the suit by affidavit as the defendant failed to appear. The plaintiff complied with the said order and *exparte* judgment was entered by

the said magistrate in his favour on 20.10.2000. The defendant was required to pay the plaintiff shs.4,989,365 plus interest and costs.

Due to the fact that the magistrate who made an order for exparte proof and entered exparte judgment against the defendant in this case which was filed in the Court of the Resident Magistrate was not a Resident Magistrate but a District Magistrate, I find that the said court was not duly constituted, and that the said order and exparte judgment were made without jurisdiction. As such, both the said order and exparte judgment are null and void. I hereby quash them and set aside the decree which was passed following the said exparte judgment.

Consequently, I order that the case file should be dispatched to the Senior Resident Magistrate In-Charge at Kisumu for trial of the suit between the parties by the Resident Magistrate.



**A. Shangwa, J**

**10.5.2004**

Delivered in chambers at Dar es Salaam this 10<sup>th</sup> day of May, 2004.



**A. Shangwa, J.**

**10.5.2004**