

"IN THE HIGH COURT FOR ZANZIBAR
 HOLDEN AT ZANZIBAR
 CIVIL APPEAL NO. 35 OF 2005
 FROM ORIGINAL DECREE IN CASE
 NO. 31 OF 2004 FROM RENT RENT
 (sic) RESTRICTION BOARD

SHARIFF AHMED SALIM APPELLANT
 (ORG. PLAINTIFF)

VERSUS

KULATEEN ABDALLA KHAMIS RESPONDENT
 (ORG. DEFENDANT)"

Then followed the text of the judgment by "Yessaya Kayange, RM 1 with extended jurisdiction". So, there can be no doubt that the learned Regional Magistrate sat as the High Court where he had no jurisdiction.

I have not been able to find a case from Zanzibar relating to the court in which a Regional magistrate with extended jurisdiction should sit. On mainland Tanzania there are numerous decisions of the Court of Appeal which make it quite clear that a Resident

Magistrate with extended jurisdiction (the equivalent of the Regional Magistrate with extended jurisdiction in Zanzibar) when exercising those powers after the High Court has transferred a High Court case to him, be it a trial or an appeal, sits in his court when hearing such case. Unfortunately also, I have not been able to get any copies of such decisions here in Zanzibar.

The legal position regarding High Court of Zanzibar Civil Appeal No. 35 of 2005 would appear to be that although Mr. Y. Kayange, Regional Magistrate, had been duly conferred with extended Jurisdiction, the Chief Justice should first have transferred the case to the Court of Regional Magistrate. A case file would be opened in that court and would be given a case number of that court. The Chief Justice or other judicial authority designated in that behalf by the Chief Justice would then assign it to Mr. Kayange, Regional Magistrate with extended jurisdiction (or any other such magistrate), to hear it. In the event of an appeal from such decision it would not be from the High Court but from the Regional Magistrate's Court presided over by a Regional magistrate with extended jurisdiction.

The Court of Appeal of Tanzania would assume jurisdiction in such appeal under Section 4 (1) of the Appellate Jurisdiction Act, 1979, as amended by Act No. 17 of 1993, which reads as under:-

“4 (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction.”

This issue of jurisdiction was raised by the Court **suo motu**. As both parties to the application are laymen without legal assistance, it would have been futile to ask them to address me on it. It is permissible for the Court to raise the issue of jurisdiction **suo motu**. In **Baig and Butt Construction Ltd v. Hasmat Ali Baig**, (C.A) Civil Appeal No. 9 of 1992 (unreported) this Court raised **suo motu** the question whether a judge of the High Court had jurisdiction to hear a review case regarding an order made by the District Registrar. It said the Judge had no jurisdiction as only the District Registrar could have reviewed the order he had made earlier. So, the review proceedings by the Judge of the High Court were a

nullity for want of jurisdiction. This Court set aside the High Court order for being misconceived and incompetent.

In the matter now before me, since the learned Regional Magistrate heard the High Court Appeal as the High Court where he had no jurisdiction the proceedings and judgment he gave would be a nullity. There could not be an appeal against a judgment which was a nullity and, consequently, there would be no need for leave to appeal against that which was a nullity.

But a single judge of this Court has no power to nullify the proceedings and judgment purporting to be of the High Court. Only the full Court has such jurisdiction either in an appeal properly before it or in a revision. All I believe I can do in the circumstances is to strike out the application as incompetent. I so order. The parties may wish to take any appropriate steps, possibly by way of a revision application, to have the proceedings relating to High Court of Zanzibar Civil Appeal No. 35 of 2005 which were before Mr. Kayange, Regional Magistrate with Extended Jurisdiction and what purported to

be a High Court judgment expunged. Thereafter, the applicant might wish to prosecute his appeal to the High Court according to law.

Since the issue on jurisdiction was raised **suo motu** by the Court, each party to bear their own costs.

GIVEN at ZANZIBAR this 13th day of November, 2006.

J.A. MROSO
JUSTICE OF APPEAL

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