

**IN THE HIGH COURT OF
TANZANIA AT DAR ES SALAAM
CIVIL APPEAL NO. 232 OF 2003**

JOHN RWIZA.....APPELLANT

ABDUL SHOMARI.....2nd APPELLANT

VERSUS

NASIBU RAJABU.....RESPONDENT

JUMA MWAMKALA.....2nd RESPONDENT

Date of last order : 08/2/2007

Date of Judgment : 30/4/2007

JUDGMENT

ORIYO, J.

In the District Court of Morogoro at Morogoro, the respondents sued the appellants over a house No. MSC 130 situated at Kata va Mwembesongo, Mfungua Kinywa Street Morogoro. The trial court (Mzonge, SDM) delivered judgment on 28/8/03 in favour of the respondents. The appellants were dissatisfied and filed 3 grounds of appeal. The first ground of appeal was:-

(1) That the trial magistrate erred on a point of law when he decided a matter involving unsurveyed land without the respondents obtaining leave of this court.

In order to appreciate ground 1 of appeal; it has to be

noted that Civil Case No. 10 of 2003 was commenced at the District Court by filing a plaint on 6/5/2003. The appellants' arguments on this ground is that before coming into force of The Land Disputes Courts ACT, [Cap 216 R.E. 2002]; The Land Act, [Cap 113 R. E. 2002] and the Village Land Act, [Cap 114 R. E. 2002]; the jurisdiction of courts over unsurveyed land was vested in Primary Courts. In terms of SECTION 63 of The Magistrates' Courts Act, [Cap 11, R. E. 2002]; jurisdiction to other courts was vested only by the leave of the High Court.

The respondents opposed the appellants argument and contended that the latter are estopped from raising that complaint now because they had also submitted themselves to the District Court jurisdiction. Their further contention is that even if the trial court had no jurisdiction; Section 95 of the Civil Procedure Act, [Cap 33 R. E. 2002] cured any defect caused in the proceedings.

SECTION 63 of the Magistrates Court's Act as it was provided-

(1) Subject to the provisions of any law for the time being in force, where jurisdiction in respect of the same proceedings is conferred on different courts, each court shall have concurrent jurisdiction thereon:

*Provided that no civil **proceedings in respect of immovable property,** other than proceedings relating to land held on a Government lease or a right of occupancy granted under the Land Act. **shall be commenced in any court other than a primary court** if the Republic is a party thereto or **unless the High Court gives leave for such Proceedings to be commenced in some other court.**" (underlining supplied)*

The respondents, state in paragraph 5 of the Plaint as follows:-

That the building in question is situated in 3 surveyed area but the Plots have not yet been measured (sic) "

The respondents admit that the disputed house was not on a land held on a Government lease or a Right of Occupancy granted under the Land Act; therefore within the exclusive jurisdiction of the Primary Court in terms of Section 63 (1) of the Magistrate's Court's Act. Further, the respondents admitted that they did not obtain leave of the High Court to commence the suit in the District Court. Therefore, in determining the dispute, the District Court was in breach of the law as it had no automatic jurisdiction over unsurveyed land. Since the suit was incompetently before the trial court, the proceedings and the judgment were rendered a nullity.

In the result, the first ground of appeal has merit and is allowed. Accordingly the proceedings in Civil Case No. 10 of 2003 are nullified and the judgment set aside. The other grounds of appeal are rendered obsolete.

Under the prevailing circumstances, I make no order for costs.

Subject to the provisions of the Law of Limitation Act, [Cap 89, R- E. 2002]; the respondents are at liberty to commence proceedings afresh in the appropriate Land Tribunal.

K. K. Oriyo

JUDGE

30/4/07

COURT: Right of Appeal Explained.

K. K. Oriyo

JUDGE

30/4/07

30/4/2007:

Coram :Oriyo, J.

For the 1st Appellant - Absent

For the 2nd Appellant : In person

For the 1st Respondent : In person

For the 2nd Respondent : In person

CC: Emmy

COURT: Judgment delivered in the presence of parties.

K. K. Oriyo

JUDGE

30/4/07

Right of Appeal Explained.

K. K. Oriyo

JUDGE

30/4/2007