

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 117 OF 2005

*(Originating from Resident Magistrate of
Kisutu in C.C. 82 of 2003)*

**DOMINA KYARUZI.....APPELLANT
VERSUS
SAID TETE.....RESPONDENT**

***Date of Last Order 7/2/2007
Date of Judgment 16/4/2007***

JUDGEMENT

ORIYO, J

In civil Case No. 82 of 2003 in the Resident Magistrates Court at Kisutu, the respondent sued the appellant, the CRDB and the Registrar of Titles for several reliefs.

He prayed for judgment and decree against them jointly and severally as follows:-

1. A Declaration that the respondent is lawful owner of right of occupancy over Plot No. 302 Block 47 Kijitonyama Dar es Salaam.
2. That CRDB be ordered to surrender the Certificate of Title to the Registrar for cancellation and rectification of the Land Register

3. An order that Registrar of Title rectifies the Register so as to enable the registration of Respondents Certificate of title.
4. Costs
5. Other reliefs

By leave of the court of appellant was served through publication in on issue of the MAJIRA daily newspaper. The appellant and the other defendants defaulted appearance and the respondent was granted. Exparte Judgment as prayed on 5/11/2003. The appellant applied to set aside the exparte judgment. Reasons advanced for her failure to appear when suit came up for hearing was that she was not aware of the case because she did not read the relevant MAJIRA Edition. On 25/5/2005, the trial court (learned Luguru, PRM) dismissed the application with costs.

The appellant was dissatisfied with the dismissal order and filed 4 grounds of appeal against it.

At the hearing the appellant was represented by Mr. Audax, learned counsel. For the respondent was Mr. Shungu, learned counsel.

Before delving into the merits of the appeal, I will first consider prayers 2 and 3 of the plaint which were granted exparte as presented. The court ordered the Registrar of Titles to rectify the Land Register.

Section 99 at the Land Registration Act, [Cap 334 R.E. 2002}, provides for the rectification of the Land Register. It states in part:-

"99 – (1) Subject to any express provisions of this Act the land register may be rectified pursuant to an order of the High Court.....".

It is obvious from section 99 above that the court vested with jurisdiction to order a rectification of the Land Register is the High Court. The trial court was incompetent to issue an order to rectify the land register as it did on 5/11/2003. The judgment was a nullity.

In the exercise of this courts Revisional powers, I hereby quash the proceedings in Civil Case No. 82 of 2003. Consequently, I set aside the judgment and any orders thereon.

In the result the appeal is allowed with costs but for reasons other than those contained in the Memorandum of Appeal.

Let a copy of the judgment be served on CRDB and the Registrar of Titles.

K.K. ORIYO

JUDGE

16/4/2007

16/4/2007

Coram: Oriyo, J

For the Appellant: Shungu / Audax Advocate

For the Respondent Shungu Advocate

C.C. Emmy

Court: Judgment delivered in the presence of parties.

Order:

1. Trial court had no jurisdiction to order the rectification of the land register.
2. Proceedings of trial court quashed and judgment and orders set aside.
3. Appeal allowed with costs for reasons other than those contained in the Memorandum of Appeal.
4. DR-DSM is directed to have a copy of the judgment served on Registrar of Titles and CRDB.

K.K. ORIYO

JUDGE

16/4/2007

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