

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

**(CORAM: LUBUVA, J.A., KAJI, J.A., And KIMARO, J.A.)**

**CIVIL APPEAL NO. 76 OF 2001**

**RASHIDI JUMA MUNGI @ CHAKE  
MASELLA & 170 OTHERS ..... APPELLANTS  
VERSUS  
NBC HOLDING CORPORATION ..... RESPONDENT**

**(Appeal from the Ruling and Order of the High  
Court of Tanzania at Dar es Salaam)**

**(Bubeshi, J.)**

dated the 16<sup>th</sup> day of June, 2000  
in

**Miscellaneous Civil Application No. 149 of 1999**

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**REASONS FOR THE JUDGMENT OF THE COURT**

30 & 12<sup>th</sup> August, 2006

**KAJI, J.A.:**

On 30.8.2006, we quashed the proceedings and judgment of the trial court and the High Court on first appeal. Reasons were reserved which we now give.

The appellants, Rashidi Juma Mungi and Chake Masela, on behalf of 170 others were plaintiffs in Civil Case No. 251 of 1995 in the Court of the Resident Magistrate of Dar-es-Salaam at Kivukoni, and the then National Bank of

Commerce were the respondents. They were praying for a declaration that they were wrongly retrenched, and that they should be reinstated in their former positions. They were also claiming for various amounts of money as terminal benefits. They were partly successful but still they were dissatisfied. They unsuccessfully appealed to the High Court. The High Court on first appeal (Bubeshi, J. as she then was) observed that, during the pendance of the appeal the appellants had signed disclaimers disclaiming some claims. In that respect, she was of the view that, the appellants were barred by principles of estoppel. The appellants were dissatisfied; hence this second appeal.

When the matter was called on for hearing it became clear to us that the proceedings and decision of the trial court were null and void for the following reasons: As observed earlier on, the case was filed in the Court of Resident Magistrate. Unfortunately it was tried and decided by a District Magistrate. We had to decide whether the

learned District Magistrate as such had jurisdiction to sit in the Court of Resident Magistrate to try the case. Mr. J. Kalolo Bundala, learned counsel for the appellants, and Mrs. Kashonda assisted by Mr. Madege, learned counsel for the respondent, NBC Holding Corporation, the successor of National Bank of Commerce, were of the unanimous view that the learned District Magistrate had no jurisdiction to sit in the Court of Resident Magistrate to try the case.

On our part, we think, we do not have to spend much time on this issue. It has been canvassed by the Court in numerous cases. The guiding point is the provision of Section 6 (1) (c) of the Magistrates' Courts Act, 1984 which prescribes the constitution of Magistrates' Courts. The relevant provision reads:-

6 (1) ----- a Magistrate's Court shall be  
duly constituted when held by a  
single Magistrate, being -

(a) -----

(b) -----

(c) in the case of a court of a  
resident magistrate, a  
resident magistrate.

This being the position of the law, it is clear to us that a resident magistrate's court is properly constituted only when it is presided over by a resident magistrate. This position of the law has been reiterated by the Court in numerous cases such as **William Rajabu Mallya and 2 Others v. R** (1991) TLR 83; **Thomas Elias and 2 Others v. R** (1993) TLR 263; **Jaffer Mohamed Dada v. R** – Criminal Appeal No. 12 of 2002 (unreported); more recently see the case of **Kweyambah Richard Quaker v. R** – Criminal Appeal No. 19 of 2002 (unreported).

In the instant case, since the learned trial District Magistrate had no jurisdiction to sit and preside over the case in the Resident Magistrate's Court, the Court was not properly constituted, and the whole trial, proceedings and judgment, were a nullity. Admittedly a resident magistrate who is also a "district magistrate" by virtue of the definition

of a "district magistrate" in Section 2 of the Magistrates' Courts Act, 1984 can sit in the district court. But a district magistrate as such cannot sit and preside over a case instituted in the court of resident magistrate because this is contrary to section 6 (1) (c) of the above Act.

It was for these reasons that we quashed the proceedings and decisions of the trial court and the High Court on first appeal and ordered costs to the appellants.

DATED at DAR ES SALAAM this 10<sup>th</sup> day of October,  
2006

D.Z. LUBUVA  
**JUSTICE OF APPEAL**

S.N. KAJI  
**JUSTICE OF APPEAL**

N.P. KIMARO  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



( S.M. RUMANYIKA )  
**DEPUTY REGISTRAR**