

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(PC) CIVIL APPEAL NO. 55 OF 1990

(From the decision of the District Court of Kinondoni at Kinondoni in Civil Appeal No. 14 of 1990 and Original Civil Case No. 1 of 1990 of Magomeni Primary Court).

SELEMANT BAKARI.....APPELLANT

VERSUS

FELISTA HELMANT.....RESPONDENT

R U L I N G

KALEGEYA, J.

The Respondent, Selemani Bakari, who was the plaintiff in Magomeni Primary Court Civil Case No. 1 of 1990 successfully sued the present Applicant, Felista Herman (he was the defendant). Felista appealed to the District Court which awarded him partial success by declaring her the owner of the piece of land she was occupying which formed part of the land, the subject matter of the controversy. This time the present Respondent, Selemani, could not stomach this outcome hence his appeal to this court. This court held that the District Court erred in interfering with the sound judgement of the primary court, which judgement was restored. Felista is now again at the door of this court praying for leave to appeal to the court of Appeal to assail that finding.

When the matter came up for hearing neither party appeared. However, having carefully gone through the record and discovering in the process, one glaring error committed by the primary court. I found it proper to proceed with the application in order to save time and costs of the parties (S. 35 of the Magistrates Court Act, No. 2 of 1984) hence the present ruling.

Under GN No. 2 of 1988 (The Magistrate's Court (Primary Courts) Judgement of Court) Rules, 1987, Rule, 3, states,

"3(1) where in any proceedings the court has heard all the evidence or matters pertaining to the issue to be determined by the court, the Magistrate shall proceed to consult with the assessor present, with the view of reaching a decision of the Court.

(2) If all the members of the court agree on one decision, the magistrate shall proceed to record the decision or judgement of the court which shall be signed by all the members.

(3) For the avoidance of doubt a Magistrate shall not, in lieu of or in addition to the consultations referred to in sub-rule (1) of this rule, be entitled to sum up to the other members of the court." (emphasis mine).

In the present case, the primary court record shows that the above rule was violated. The Defendant closed her case on 22\2\90 when the matter was adjourned for judgement on 10\4\90. On 10\4\90 the court proceedings (in part) run as under,

"Hukumu"

Daawa: la Kishamba

(there follows a summary of the evidence as given by various witnesses of both sides and a call upon Assessors to give unbiased opinion. What follows immediately thereafter is as under).

Maoni ya Washauri

Ali.....

Mohamedi:.....

Hakimu: Maoni ya Washauri nimeyaunga mkono kwani ushahidi wa mdai ni mzito kuliko wa mdaiwa.  
Hivyo daawa limethibitisha mdai ameshindwa madai yake.

Sgn: M. Gumbo - Hakimu  
10\4\90

Amri: Gharama zote za dai hili alipe mdaiwa. Rufaa siku 30 kuanzia leo.....

Sgn: .....Hakimu".

From the above I am of the considered opinion that there are two points of law which should be certified to the Court of Appeal for consideration, and these are as follows:-

(a) whether the violation of Rule 3 of GN No. 2 of 1988 by summing up to the assessors and recording their opinions do not render all the proceedings and ensuing judgement a nullity, which if answered in the positive would affect both proceedings and judgements of the District Court and this Court.

(b) whether in the present case, the two sentences entitled "Hukumu" can legally benefit the title, "judgement of the court...". This is so because there is no evaluation of the evidence and points of determination let alone the fact that the "two lines" Hukumu was signed only by the Magistrate.

In the premises the two points are certified accordingly.

(L. B. Kalegeya)

JUDGE

6\11\98