

TANZANIA / JUDGMENT

19990805 TZHC Dar es Salaam

COURT
TZHCDECIDED
5 August 1999

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,. . IN THE HIGH COURT OF TANZANIA > AT DAR ES'SALAAM (PC) CIVIL APPEAL NO. 43 OF 1993
[From Kilosa District Court Civil Appeal No. 68\92, original Kidodi Primary Court Civil Case No.
25\92] ADNANI OMARY KIONDO APPELLANT VERSUS KANUTE
SAMATO RESPONDENT

JUDGEMENT

C .. KALEGEYA, J. The Appellant was the Defendant before the Kidodi - Ngwira Primary Court. Before that Court the Respondent partly succeeded in his claim. He was claiming for vacant possession of a piece of land estimated at 7.3 acres. The lower court awarded a decree for just 3.3 acres. This could not be accepted by Respondent "who believed that the whole piece of land was his. He . . . successfully appealed to the District Court which declared the whole area his. The Appellant was aggrieved by this new development. He is now before this court protesting the District Court verdict. ~- -2- It is very unfortunate that this matter cannot be decided on merits. The trial court's record does not have what can legally be called 'judgement of the Court' because the said court violated GN. 2\88 - The Magistrate's Courts (Primary Courts) (Judgement of Court) Rules, 1987. Rule 3 of the said rules, Sub-rule 2 thereof provides: "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". In here, only the Magistrate signed the so called "UAMUZI". This cannot be said to be the judgement of the Court. Legally there is no judgement of the Court. As this defect goes to the roots of the matter it is an incurable irregularity. In the upshot all the proceedings, the so called judgement or UAMUZI and so are those of the District Court are hereby declared a nullity. The case to be heard afresh before another Magistrate and another set of assessors. As the defects were occasioned by the Court no order is made as to costs. L. B. Kalegeya TIJDGE Delivered in the presence of parties. L.B. Kalegeya TIJDGE 5\8\1999

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Prepared on 14 October 2026 · Esheria