

TANZANIA / JUDGMENT

19800516 TZHC Mwanza1

COURT
TZHCDECIDED
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IN THE IrII(H COURT OF "P N'N7i (nc) CiVIL iPPL NO. 73 OF 1979 (Fro'n the decision of' the Dsri 3 Court of' Pikob aPukobé in c vi.lppeal No 76 A -I978 PefGre J.S. Mwami, sq riDr sto1o)

- - • -... •. • LA1Jfli'N9TJ •.. CIAPPLIJNT versus •.. ••.. SUPJ!C:Shamha. JUD' NT i(J I KTITI, Laureliaia Mathayo herein enjoying th status Qf the appellan, sued the respoth1Ent - rnest Kkwez, - In 1dw'.riJo T rnry Court, o-laiming from h'm a shamba, that, the latter claimed tohave bought 'rcm Corrnan. The action was successful. The rrsoldsrit succe ssf ul ly apalled to the D3.strict Court and hence, this piilil by thc ap 'llant. HaJiig gone into the reod studiously, I find myself barred from going into the issues involved, by the trial Ma'strstes inability to follow the letter and the spirit of tht law - aistrates Court Act Cap. 537ofth€.Laws. th trial Mistnt, having heard both parties, id the sd prties having clos2d the - r respective' the said Magistrate made - the following order:- Ma.hakam. 'tUshahidi wa pande zote abili kat.ka shaui hill. umefungwa, na shniri linaha"Iridhwt hadj txha I2/I/I78 kwa kutca hukumu'. Indeed, the juc1gert 14as. bbsequently deliverd, on 1/3/1978, and not on 12/1fl978. Pt it aprarCnt on the r ,tcordj that, riO sumi.ng up was dohe by the trial Magistrate, nor were ('\$inlond by the assessors ouht andjvexi. It is as though the asscsors were madc to be passive observers jn the aseS T doktot the read the rlévant statute - Magistrate C&rt9 AeCeip 4 5Y, that it 49 the poliCy f U2 law, ncr the intention of th.e Llature, to have „ass.ve assessc'r obs e rv e r s accom-aily4np the tr1a3 Magistrate. This does not mean, that the assessor is bO.ind b y lato ask uestlons, even if he does not have any, but when it cornea, tte final vrdict on the case s he or she had to express his or her c134nion. It is perhaps worth ioing tc the relavant - The 1Tagistrates Courts (amendment) Abt 1969 - Cap. 37. Section 8 (i) and 8 (2) read as folows:- Sec. 8 (i) "In every procedding in a Primary Court, the Cot shall sit with two assessors (cr such gracter number as an apprcepi 4 i.ate Judicial authcrity may direct). 8(2) All matters before a Primary Court shal], in the event of difference of cpinion between a cgistrate and his assessors, or any of them he decided y the votes of a majority of the Magjtrate end the assessors prsant, and in the event of an equality of votes, the "lagistrate shall have a casting vote, in addition to his seli'br - :te vcte. -2-- -i If we raad the aove prvi.scis pr r.L n:t entail the impression, tha± EC cxa. :ieant ta hve tha assessors sit with iistrates ike ttus T -r rtc r ir t'aairistration of Justice s contemplated hr il saci n+(2. :f.. cct - :r. 8, that requires - that all i.attcrs in a nrinrry C3uit,, a cci 'rth ti Taistrate and assessors, the c2 cf tna Caurt . 4 by the majority, ofvOteSts the decision shui 1 th c;n -t]aa

has been carried into the majority, by the casting of votes, in which is in the ratio of 4 to 3 in favour of the majority. This means, therefore, that a majority of the Court is arrived in each of the three ways first where the Privy Council had been unanimous, secondly, where there had been a majority of 2 to 1 or 3 to 1, and thirdly, where a casting vote, in addition to a majority of 2 to 1, had been cast. But whichever is the case, the result must show such developments, so that, the Court of Appeal, satisfied itself as to the correctness of procedure and outcome, and so that, justice could be seen to have been done. In the present case, it is clear that the assessor were not given an opportunity to give their opinions, and the trial judge was having sat alone, which amounted to a contravention of the provisions of the Constitution. To allow such transgressions is to amount in effect to a total failure of the administration of the law, flouting the policy of the law, and the wishes of the people, that the High Court should therefore, that is to say, proceed to annul the decision. It is ordered that a case be started on this, and the law followed. ~ J I - - 'jZt . K'TITI 16TH 9AY, 1986 L J . .

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