

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 156/97

**(Originating from Civil Appeal No. 2 of 1997
of Kibaha District Court and Original Civil
Case No. 15/96 of Mkuza Primary Court)**

OMARY NASSORO MBOTTOAPPELLANT
VERSUS
ABDALLA SAID LIKUPILA..... RESPONDENT

JUDGEMENT

KALEGEYA, J.

The Appellant, Omari Nassoro Mbotto who sued the Respondent, Abdallah Saidi Likupila, lost in the Primary Court as well as in the District Court on Appeal. Still dissatisfied he has tried his luck with this Court. The claim was for recovery of a piece of land estimated at 30 acres.

Although the District Court upheld the judgement of the Primary Court it overlooked one glaring error on the record of the said Primary Court. At the conclusion of the trial the Magistrate called upon the Assessors to give their opinions which were duly recorded. The Magistrate then proceeded to write a judgement which was not signed by the gentlemen Assessors. Clearly this was a violation of GN No. 2 of 1988, Rule 3 which 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 assessors 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) ”.

For this reason I need not go into the merits of the appeal, for, the judgment which led to the two appeals is a nullity. However inconvenient it may be to the parties, faced with such defect, this Court can do nothing but to declare the lower Court's proceedings and judgements a nullity as I hereby do. Hearing to start de novo before another Magistrate. As the Court has a hand in this no filing fees should be paid afresh, and each party is to bear own costs.

L.B. KALEGEYA

JUDGE

Delivered on 21/8/98