

Mr. Mutyabule the learned counsel for the appellant advanced 3 grounds of this appeal. The three grounds are as follows:-

1. That the RCII court did not properly exercise its jurisdiction as an appellate court.
2. That the RCIII court when hearing the appeal was not properly constituted in that the sub-county chief sat as a member of the court when he was not permitted by the relevant statute so to sit.
3. That the decision of the learned chief magistrate occasioned miscarriage of justice.

I will deal with the 3 grounds of appeal separately and in the order the learned counsel for the appellant argued them. When dealing with the first ground Mr. Mutyabule argued that the learned chief magistrate did not take into account a number of irregularities which were occasioned at the RCII court. Among the irregularities were that the court (RCII) conducted the appeal as if it was a trial when parties were required to cross-examine each other and that RCII court did not adhere to the proper procedure which governs magistrates' courts. On his part Mr. Kania for the respondent contended that RC courts are not governed by magistrates' courts procedure and that the purpose of Resistance Committees (Judicial Powers) Statute 1988 was intended to do away with such procedure so as to ease the procedure for those courts.

With all due respect to Mr. Kania I must say I agree with him in his line of reasoning, section 28 of the Statute gives wide discretionary powers to RC courts when exercising their appellate jurisdictions among the powers is the right to call any witness whom they feel is important for disposal of the case, they can also hear the case de novo. It is not correct to suggest that the procedure followed in magistrates' courts is also applied in RC courts, section 33(d) of the Resistance Committees (Judicial Powers)

Statute 1988 provides that the Minister may make rules to be followed by those courts in addition to the procedure already contained in the statute, so far I am not aware of any such rules having been made. There is nowhere in the statute where it is said that the magistrates courts Act will apply to these courts which were intended to conduct their proceedings in as simple manner as possible. The first ground of appeal is without merit and it must fail.

The second ground of appeal which was strongly argued by Mr. Mutyabule the learned counsel for the appellant was simply that the RCIII court was improperly constituted as a sub-county chief of Bukooma sat in that court and that offended the provisions of section 2 of the statute.

It is correct to state that that section does not permit a sub-county chief to be a member of RCIII court of his area, it is also true that the list of the people who attended the RCIII court on 20/9/90 at Bukooma sub-county headquarters included the name of the sub-county chief one Stephen Ziraba. Mr. Kania argued that the mere inclusion of the chief's name on the list did not mean that he was a member of the court at that time. According to the records of RCIII court the sub-county chief did not contribute to the proceedings nor did he sign the decision of that court which was signed by the members of the court on 8/11/90. Judging from the available records it is only reasonable to conclude that the sub-county chief's presence at the RCIII court hearing did not affect the decision of that RCIII court. It could be that he was there just as any ordinary member of the public but because of his position somebody might have felt it necessary to have his name on record. I see nothing improper in a chief quietly sitting where an RC court is sitting unless his presence is objected to, but in this case the appellant objected to the presence of a number of people but not that of the chief. The second ground of appeal fails.

Before I take leave of these two grounds of appeal and proceed to deal with the third ground of appeal I would like to point out that these grounds were never raised before the chief magistrate's court therefore they should not normally have been raised in this court on the authority of the case of: Parhubhai Morarji v Jagabhai Morarji (1958) BA 277 at pages 282 to 283. I felt it necessary to entertain the two grounds to some extent, this has been so because RC courts have just been established and as a result a number of legal issues are beginning to come out of the decisions made by these new courts. This court has a duty to offer some useful guidelines to those involved in handling cases originating from those; (at times politically motivated), local courts. In doing so this court may at times have to concern itself with matters which in the normal course of things may appear irrelevant.

I must at this juncture turn to the 3rd and last ground of this appeal. The learned counsel for the appellant Mr. Mutyabule quite strongly opined that there had been miscarriage of justice occasioned as a result of the decision of the learned chief magistrate. Substantial miscarriage of justice ^{is} ~~is~~ to occur where there has been misdirection by the trial court on matters of fact relating to the evidence given or where there has been unfairness in the conduct of the trial, (See Halsbury's Laws of England, 3rd Edition, Volume 10 at pages 538 - 539 paragraph 988).

Although this description of substantial miscarriage of justice relates mainly to criminal proceedings it applies to civil matters with equal force.

In the instant case it has not been sufficiently shown by the appellant in this court that there was any misdirection by the chief magistrate on the evidence, on the contrary the learned chief magistrate exhaustively dealt with the details of the evidence as adduced in the lower courts after having decided that her's was a first appellate court and she came to her own decision which I feel was a correct one.

I have not been able to discover any element of miscarriage of justice substantial or otherwise in this appeal. This third ground of appeal must, like the other two, fail.

In all these circumstances this appeal cannot be sustained, it is accordingly dismissed with costs of this appeal and the court below to the respondent.

W.S.
C.M. KATO

J U D G E

9/7/93.