thirty (30) years in jail. No order for corporal punishment or compensation. It is so ordered.

WAKF AND TRUST COMMISSIONER (AS ADMINSTRATOR OF THE ESTATE OF THE LATE ZAWADI BINT SAID) v. ABBASS FADHILI ABBASS AND ANOTHER

COURT OF APPEAL OF TANZANIA AT ZANZIBAR

(Makame, Ramadhani and Mroso, JJ.A.)

CIVIL APPEAL No. 11 OF 2001

(From the judgment of the High Court of Zanzibar at Vuga, Ummar Sadiq, J. dated 13 March 1990 in Civil Appeal No. 30 of 2000)

Civil Practice and Procedure – Jurisdiction – When the issue of jurisdiction may be raised – Whether the issue of jurisdiction may be raised at the stage of appeal .

Civil Practice and Procedure – Originating Summons – Matter preferred in Regional Magistrate's Court by Originating Summons – Whether the Regional Magistrate's Court has jurisdiction to hear matter preferred by Originating Summons.

The appellant, the late Zawadi bint Said, later on substituted by the Wakf and Trust Commissioner, sued Fadhili Abbass and the Registrar of Documents in the Regional Magistrate's Court for ownership of house number 4/33 at Gulioni, claiming that the first respondent, who was her grandchild, had played a trick and successfully registered it in his name. The Regional Magistrate Court decided in favour of the appellant. The first respondent appealed to the High Court which decided in favour of the respondents on the ground that the Regional Magistrate had no jurisdiction to deal with the matter

A before him, which was brought by originating summons. The appellant appealed to this Court.

Held: (i) The issue of jurisdiction is fundamental and it can be raised at any time in the proceedings;

B

(ii) Matters preferred by way of Originating Summons are heard by a Judge and so the Regional Magistrate had no jurisdiction to hear such matter: Order X Rules 6 and 13 of the Civil Procedure Decree Chapter 8.

C ***Appeal allowed in part***

Statutory provision referred to:

(1) Civil Procedure Decree Chapter 8, Order X, rules 6, 9 and 13

D *Mr Patel,* for the Appellant

Mr Mbwezeleni Mr Mnkonje, for the Respondents

JUDGMENT

E

(Dated 24 October 2001)

Ramadhani, J.A.: Zawadi binti Said sued Abbas Fadhil Abbas and F the Registrar of Documents in the Regional Court, Civil Case Number 52 of 1997. She claimed that she was the owner of House number 4/33 at Gulioni. She claimed further that Abbas, whom she had brought up as her own grandchild, played a trick on her, went to the Registrar G of Documents and caused the house to be registered in his name as having been given to him as a gift from her. The Regional Court decided in favour of Zawadi. Abbas appealed.

Before the learned judge, there was a Memorandum of Appeal H containing six grounds which, at the hearing, were consolidated into two. The first ground of appeal was that the learned Regional Magistrate had no jurisdiction to deal with the matter before him according to Order X, rules 6 and 9 of the Civil Procedure Decree (Chapter 8). I The second ground was on the burden of proof.

The learned judge disposed the appeal on the first ground and held that the learned Regional Court Magistrate had no jurisdiction according to Order X, rule 6 and declared the proceedings null and void.

Mr *Patel,* learned advocate for the appellant, the late Zawadi substituted by the Wakf and Trust Commissioner, had two grounds: one, the learned first appellate judge erred in finding that the learned regional magistrate had no jurisdiction. Two, the learned judge erred in not considering the issue before him of whether or not the deed of gift produced by the respondent was obtained by fraud.

Resisting the appeal were Mr Mbwezeleni and Mr Mnkonje, learned counsel for the respondent.

We think that we have to deal with the issue of jurisdiction first and it is simply this: could the matter that was before the Regional Magistrate have been dealt with by way of originating summons?

We do not agree with Mr Patel that since jurisdiction was never an issue before the Regional Magistrate, the learned judge should not have entertained it when raised for the first time at the appellate stage. The issue of jurisdiction is fundamental and it can be raised at any time in proceedings.

However, we are at one with Mr Patel that matters by way of Originating Summons are heard by a Judge in chambers and so, cannot be heard by a Regional Magistrate who was not even exercising Extended Jurisdiction.

We are also in agreement with Mr Patel that the dispute before the Regional Magistrate was not one to be disposed of by way of originating summons. We say so because Order X, Rule 13 clearly shows that only matters in which the relief sought could be "disposed of in a summary manner" are dealt with by way of originating summons. The matter before the learned Regional Magistrate was not such as could have been disposed of summarily.

Therefore, we find that the learned regional magistrate had jurisdiction and, therefore, we quash the decision of the learned Judge and restore that of the Regional Court. As the learned Judge did not consider the other grounds of appeal dealing with merits we do not see how we could accept the invitation of Mr Patel and step into the shoes of the High Court. Therefore, we order that the matter be remitted to the High Court for the appeal to proceed on merit.

This appeal is allowed with costs.

GK ISHENGOMA t/a TANZANIA INSURANCE AGENCY *v.* NATIONAL INSURANCE CORPORATION LTD

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(Kisanga, Ramadhani and Lubuva, JJ.A.)

CIVIL APPEAL No. 73 OF 1999

(From the decision of the High Court of Tanzania at Dar es Salaam, Mapigano, J. dated 16 February 1999 in Civil Appeal No. 26 of 1998)

Agency – Suspension of agent – Agent transacts business during suspension – Whether agent entitled to commission.

Agency – Agent suspended – Agent transacts business partly using facilities of the principal – Whether agent entitled to same amount of commission.

Agency – Agent's right to remuneration – General rule and exceptions to the general Rule – Calculation of agent's commission.

The appellant, trading as Tanzania Insurance Agency was an agent of the respondent, up to 30 January 1991, when he was suspended. He complained about the suspension and, as the matter was being investigated the agency was terminated on 3 September