

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 199 OF 1999

MOHAMED BARE SHILL

SHAMSA HAJI ALI SIGARA APPELLANTS

VERSUS

ABDIKADIR HAJI DAHIR DEFENDANT

(Appeal against the judgment of the Honourable Senior Resident Magistrate Kiarie W. Kiarie dated 28th April, 1999 in the Senior Resident Magistrate's Court at Garissa)

JUDGMENT

From what has been brought to my attention during the hearing of this appeal, I find that the trial of this case in the Senior Resident Magistrate's court at Garissa was conducted poorly not only by the learned Senior Resident Magistrate Mr. Kiarie W. Kiarie, but also by the Plaintiff and the Defendants. As a result the evidence has serious gaps and leaves important questions unanswered and it is even difficult for this court, as an Appellate Court, to come out with one clear and consistent story upon which to base a lawful decision.

That being the position the judgment dated 28th April 1999 appealed from be and is hereby set aside and the case ordered sent back to the court at Garissa for re-trial before another competent Magistrate.

Each party in this appeal to bear its own costs of this appeal.

Dated this 20th Day of May 2003.

J.M. KHAMONI

JUDGE

Further Order:

Upon request by Mr. Ombati, leave to appeal granted.

Copy of the proceedings and judgment may be obtained from the Registry.

J.M. KHAMONI

JUDGE