**Mbarouk v Soud**

**Division:** Court of Appeal of Tanzania at Zanzibar

**Date of ruling:** 14 November 2003

**Case Number:** 55/99

**Before:** Mroso, Munuo and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Transfer of property – Joint ownership – Party buying half share of dwelling house – Whether party*

*could gain joint possession of house where he is not a member of family of co-owner – Section 41(2) –*

*Transfer of Property Decree (Chapter 150).*

*[2] Transfer of property – Late registration – Double fees and fines – Whether failure to pay double fees*

*and fines on late registration of sale deed renders document invalid – Sections 14, 15 and 16 –*

*Registration of Documents Decree.*

**Editor’s Summary**

The Appellant and her grandson owned a house together. After a misunderstanding between them, the grandson decided to sell his share in the house to the Respondent for TShs 15 000. The Respondent was married to a daughter of the Appellant and lived with her in the house. The Respondent and his wife also had a misunderstanding and divorced. The Respondent left to live elsewhere. The Respondent sued the Appellant in the district court at Vuga, Zanzibar seeking a declaration that he was a lawful owner of part of the house; that the Appellant should refund to him TShs 60 000 which he had spent on repairing and renovating the house; and costs of the case. The District Court gave judgment in favour of the Respondent holding that he was entitled to two rooms in the house but the repair and renovation were not awarded. The Appellant appealed to the Regional Court which quashed the District Court decision but ordered that the Respondent be refunded TShs 60 000 which he claimed he incurred in renovating the house. The Respondent in turn appealed to the High Court which set aside the decision of the Regional Court and restored that of the District Court. The Appellant appealed to the Court of Appeal on grounds *inter alia* that the High Court Judge erred in holding that a husband was a blood member of his wife’s family and that the Judge erred in holding that a sale deed which had been registered late and without fulfilment of a condition precedent (namely payment of a fine), was valid.

**Held** – Under section 41(2) of the Transfer of Property Decree, the Respondent, through a transferee of Said Majid’s share in the dwelling house, could not enjoy joint possession of the house with the Appellant because he was not a member of the family of the Appellant. Late registration which was not accompanied by double fees and fines, as provided under sections 15 and 16 of the Registration of Document Decree, did not render the sale deed invalid but merely created a liability and a duty for the Respondent to pay up. The liability and duty subsisted until the fees and fines were paid. The Respondent was entitled to a refund of the purchase price since he was not entitled to joint possession of the house. As the appeal had been partly successful, each party was ordered to bear his costs.

**No cases referred to in judgment**

**Judgment**