

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUSSA, J.A., WAMBALI, J.A., And LEVIRA, J.A.)

CIVIL APPEAL NO. 82 OF 2016

FELICIAN MUHANDIKI APPELLANT

VERSUS

MANAGING DIRECTOR

BARCLAYS BANK TANZANIA LIMITED RESPONDENT

**(Appeal from the judgment and decree of the High Court of Tanzania
at Dar es Salaam)**

(Mkasimongwa, J.)

Dated the 29th day of April, 2015

in

Civil Appeal No.157 of 2013

RULING OF THE COURT

19th August & 20th September, 2019

WAMBALI, J.A.:

When the appeal was called on for hearing on 19th August, 2019, after a brief discussion between the Court and the learned counsel for the parties, Dr. Onesmo Michael who appeared for the respondent, prayed to withdraw a notice of preliminary objection, which was lodged in Court on 24th August, 2016 concerning the propriety of certificate of delay issued by the Registrar of the High Court to the appellant.

Mr. Francis Mgare, learned counsel who appeared for the appellant had no objection. We therefore, marked the said notice of preliminary objection withdrawn with no order as to costs.

Nevertheless, Dr. Michael sought leave of the Court to bring to our attention what he termed as irregularities in the judgment and decree of the trial District Court of Ilala that was issued in favour of the appellant. After a brief discussion with counsel for the parties, we granted him the requisite leave.

In his submission, Dr. Michael argued that firstly, the judgment of the District Court of Ilala in Civil Case No. 36 of 2011 which led to an appeal in Civil Appeal No. 157 of 2013 before the High Court and the present appeal before this Court is invalid. In this regard, he contended that the said judgment does not comply with the requirement of Order XX Rules (4) and (5) of the Civil Procedure Code Cap. 33 R.E. 2002 (the CPC). He elaborated that the said provisions concern the contents of the judgment and the requirement for the trial court to decide each and every framed issue in the suit before reaching the conclusion with regard to the rights of the parties. He explained that, though the trial court deliberated and decided the first,

second and third issues, it did not decide the fourth issue which involves the reliefs which parties are entitled. In his view, failure by the trial court to decide on the reliefs of the parties offends the requirement of Order XX Rule 5 of the CPC and as a result the entire judgment is rendered null and void. To support his contention in respect of this matter, he strongly urged us to seek inspiration from the decision of this Court in **Mantrac Tanzania Limited v. Raymond Coster**, Civil Appeal No, 74 of 2014 (unreported) and declare that the trial court's judgment is invalid to the extent of being revised, quashed and set aside.

Secondly, the learned counsel for the respondent contended that as the judgment is invalid, the extracted decree is also invalid. He maintained that the trial court's decree does not reflect or specify the reliefs granted to the parties, which makes it inconsistent with the requirement of Order XX Rule 6 (1) of the Code. He thus firmly submitted that the trial court was bound to state the reliefs granted to the parties.

In the circumstances, relying on the decisions of the Court in **Mantrac Tanzania Limited** (supra) and **Katinda Kimaro v. Antony Ngoo and Davis Antony Ngoo**, Civil Application No. 67 of 2014 (unreported), Dr.

Michael implored us to invoke the provisions of Section 4 (2) of the Appellate Jurisdiction Act, Cap 141 RE 2002 (the AJA) to revise, nullify and quash the proceedings and set aside the judgment and decree of the trial court for being invalid. Moreover, he urged us upon arriving at that stance, to also nullify, quash and set aside the proceedings and judgment of the High Court in Civil Appeal No. 157 of 2013 as the same emanated from invalid proceedings, judgment and decree of the trial court.

Finally, he submitted and prayed that the present appeal also be struck out with costs to the respondent for being incompetent.

On his part, Mr. Francis Mgare, learned counsel for the appellant, strongly resisted the submission of the learned counsel for the respondent. He spiritedly submitted that both the judgment and decree of the trial court reflect what was decided by that court and complies fully with the requirement of the provisions of the CPC referred above by Dr. Michael.

Mr. Mgare, who was seemingly surprised by the argument of the learned counsel for the respondent wondered if at all the judgment and decree are invalid, how did the respondent appeal to the High Court against the same on the merits without challenging their validity at that stage. In

his view, a thorough reading of the judgment and decree of the trial court leaves no one in doubt that they are not tainted with the alleged defects or irregularities.

Mr. Mgare therefore, defended the correctness of the trial court's judgment and decree and contended further that, the same are consistent with the requirement of Order XX Rules (4) (5) and (6) of the CPC concerning the necessary ingredients provided by the law. He submitted further that the decree in the record of appeal indicates that the appellant was granted the reliefs he had prayed for after the suit was allowed and judgment entered in his favour.

In his view, as both the judgment and decree of the trial court are valid, the decisions of the Court in **Mantrac Tanzania Limited and Katinda Kimaro** (supra), relied upon by Dr. Michael to support his submission are distinguishable and not applicable in the circumstances of this appeal. He thus implored us to decline the invitation by Dr. Michael to us to invoke the provisions of Section 4(2) of the AJA to revise nullify, quash and set aside the proceedings and judgment of the two courts below. His stance is that since there is nothing to nullify and the Court has not heard

the appeal like in the referred decisions where the said irregularity was raised among the grounds of appeal, the said provisions cannot apply.

Mr. Mgare finally, requested us to disregard the attention drawn to us by Dr. Michael on the alleged irregularities and order the appeal to be heard on merit.

At this juncture, the issue to be determined is whether the judgment and decree of the trial District Court are invalid.

Admittedly, although it is the respondent who firstly appealed to the High Court against the decision of the trial District Court, the issue of the said irregularities of the judgment and decree was not raised at all as one of the grounds of appeal. However, this being a matter of law, though it was raised for the first time before the Court, we granted leave to the respondent to submit on the same as intimated above.

Basically, we think, there is no need to overemphasize, as it is the requirement of the law that, judgment and decree of the court must contain the relevant matters pertaining to the dispute between the parties and how the framed and agreed issues pertaining to the said dispute have been resolved. Thus, while the judgment of the court determines the rights and

liabilities of the parties, it is followed by an extracted decree as its operating part. Indeed, the decree plays an important role to define the scope and limitation of the rights and liabilities of the parties.

It is in this regard that in composing a judgment, a magistrate or a judge must bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of facts of the case about which the parties are not agreed. Certainly, in the said process each issue must be carefully reviewed, considered and decided upon as required by law.

Applying the above observation to the impugned judgment and decree of the trial court in the present appeal, we are of the considered opinion that the same meet the requirement of the law. Our careful scrutiny of the trial court's judgment leaves us with no doubt that the same complies with the requirements of Order XX Rules (4) and (5) of the CPC. We have no hesitation to state that based on the record of appeal before us, the learned trial Magistrate sufficiently described and deliberated on the facts on the position of the parties presented before him and resolved the four issues that were framed and agreed upon before he came to his conclusion with regard to the rights and the liabilities of the parties. We think we do not

need to over-emphasize that the record of appeal indicates that the learned trial Magistrate dealt with all four issues substantially as evident from the judgment.

We are however alive to the complaint of Dr. Michael that the learned trial Magistrate did not resolve the fourth issue with regard to the reliefs of the parties. On our part, we think the complaint is unfounded as at the end of page 21 up to page 22, the learned trial magistrate concluded by dealing with the fourth issue where he found that based on his evaluation and determination of the three issues, the appellant had proved the case on the balance of probability as required by law. Thereafter, he entered judgment for the appellant based on the prayer in the plaint that had been set out at page 2 of the judgment.

In the event, we are settled that the trial court's judgment contains essential ingredients, namely a concise statement of the case, the points for determination, the decision thereon and the reasons for the decision as required under Order XX Rule (4) of the CPC. We are further satisfied that the judgment contains the finding and decision on each issue which was

farmed together with the reason thereof as required under Order XX Rule 5 of the CPC.

On the other hand, in the present appeal, we are satisfied that a decree being a subset of the entire parts of the judgment in which the crucial decision of the court on the rights and liabilities of the parties are deliberated and decided, reflect the correct position of the reliefs that were granted to the parties. We are also settled that the decree of the trial court included in the record of appeal from pages 267 to 268 reflects at the very beginning the reliefs that were prayed for by the appellant and ends with the decision of the trial court to the effect that **"judgment is entered in favour of the plaintiff as prayed"**. The said order leaves no one in doubt that the appellant was granted all the prayers outlined in the plaint as reflected at the beginning of the decree and that the respondent was condemned to satisfy all the said prayers. We are thus of the considered opinion that the decree agrees with the judgment as required by the law.

It is no wonder that based on the said judgment and decree that the respondent appealed to the High Court in Civil Appeal No. 157 of 2013 against the whole of the said judgment and decree of the trial court and

strongly assailed the findings in a lengthy memorandum of appeal as reflected in the record of appeal.

Therefore, based on our deliberation and observation above, we think, with respect, we cannot safely conclude that the trial court's judgement and decree are invalid as strongly contended by the respondent's counsel.

In this regard, we agree with the learned counsel for the appellant that the decisions of this Court in **Mantrac Tanzania Limited and Katinda Kimaro** (supra) relied upon by Dr. Michael to support his submission on the alleged irregularities in the judgment and decree and the consequences that follow, are distinguishable and not applicable in the circumstances of the present appeal.

In the circumstances, we respectfully decline the invitation of Dr. Michael to us to invoke the provisions of Section 4(2) of the AJA to revise, nullify and quash the proceedings and set aside the judgment and decree of the trial court and those of the High Court on appeal as the present appeal is properly before the Court.

In the event, on the bases of the reasons stated above, we disregard the attention drawn to us by Dr. Michael on the alleged irregularities in the

judgment and decree of the trial court. We accordingly order that the appeal be fixed for hearing on the date to be determined by the Registrar. We do not make any order as to costs.


DATED at **DAR ES SALAAM** this 9th day of September, 2019.

K. M. MUSSA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The judgment delivered this 20th day of September, 2019 in the presence of Mr. Oscar Kahyoza holding brief for Mr. Mgare Mulebya and Dr. Onesmo Michael assisted by Mr. Makarios Kairo counsels for Appellant and respondent respectively, is hereby certified as a true copy of the original.


S.J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL