

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MZIRAY, J.A., MWANDAMBO, J.A And KEREFU, J.A.,)

CIVIL APPLICATION NO. 281/17 OF 2017

AWADHI IDD KAJASS.....APPLICANT

VERSUS

MAYFAIR INVESTMENT LIMITEDRESPONDENT

(Application for revision of the decision and proceedings of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Nchimbi, J)

dated 29th day of December, 2015

in

Land Case No. 81 of 2009

RULING OF THE COURT

31st March & 9th April, 2020

MWANDAMBO, J.A.:

Awadhi Idd Kajass, the applicant herein, has moved the Court for revision from the proceedings and judgment of the High Court, Land Division in Land Case No. 81 of 2009. He has done so by way of notice of motion predicated under section 4(3) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2002] as amended (henceforth the AJA). His own affidavit annexed to the notice of motion supports the application.

The application has been prompted by facts which are not seriously disputed. It is common ground that the applicant was a plaintiff and the

respondent a defendant in the suit before the High Court. After the completion of the trial before Nchimbi, J, parties were ordered to file their written closing submissions and judgment was reserved to a date to be notified. However, no such notice was made to the parties as ordered by the trial Judge. After a long wait for the notice, the applicant's advocate came to learn that the long awaited judgment had been delivered in chambers on 29th December, 2015 by one Kabate, Deputy Registrar of the High Court (Land Division) at the time in the absence of the parties to the suit and/or their advocates.

Be it as it may, that judgment was against the applicant who, though aggrieved, could not challenge it because, according to him, there was no valid judgment from which he could have taken up an appeal. It is for the above reason, the applicant sought revision on the grounds set out in the notice of motion the host of which are not relevant and not worth our consideration for the purpose of this ruling. The only ground which is relevant is ground one which runs:

"1. The judgment of the court was never pronounced to the parties in terms of Order XX Rule 1 of the Civil Procedure Code, but was instead supplied to persons who were not parties to the suit on 26/01/2017".

The respondent, who is ably represented by Mr. Mafuru Mafuru, learned advocate filed an affidavit in reply in which he takes note of the averments in the founding affidavit as they relate to the non delivery of the judgment to the parties.

When the application was called for hearing, Mr. Mafuru rose to inform the Court that he was conceding to the application to the extent it relates to the validity of the impugned judgment. The learned advocate was in agreement that in so far as the provisions of Order XX rule 1 of the Civil Procedure Code, [Cap 33 R.E. 2002] (the CPC) were not complied with by the High Court, there is no valid judgment from which one can appeal. Going forward, the learned advocate invited the Court to exercise its revisional powers by directing the High Court to deliver the judgment to the parties in accordance with the law.

Mr. Sylvester Eusebi Shayo, learned advocate fending for the applicant subscribed to the submissions made by his colleague and prayed for an appropriate order.

From the founding affidavit and the oral address by Mr. Mafuru to which Mr. Shayo was in agreement, the crucial issue is the legal status of a judgment pronounced without notice and in the absence of the parties to

the suit contrary to the dictates of Order XX rule(1) of the CPC. Our research landed into the Court's previous decisions on the legal effect of a judgment delivered or signed contrary to Order XX rule 1 of the CPC. In **Dr. Maua Abeid Daftari v. Fatma Salmin Said**, Civil Appeal No. 88 of 2008 (unreported), a judgment was delivered by a Senior Deputy Registrar but bore a signature of the trial Judge who composed it. On appeal to the Court, a preliminary objection was taken challenging the validity of the judgment incorporated in the record of appeal. Several issues arose in the course of the hearing including; whether the judgment was pronounced in accordance with Order XX rule 1 of the CPC to which the Court had no difficulty in holding that it was not and thus there was in law no validly pronounced judgment. Having so held, the Court found the appeal incompetent and struck it out on account of want of a proper judgment in the record of appeal. The Court stated:-

" with the judgment being appealed against incompetently pronounced and dated, there is therefore no valid" statement given by a judge of the grounds for a decree" (see, section 3 Civil Procedure Code). What was intimated to the parties by the Senior Deputy

Registrar is inoperative in law as an effective and valid judgment.”[at page 10].

Unlike what transpired in **Dr. Maua Abeid Daftari’s** case (supra), the position in the instant matter is that a Deputy Registrar who was competent to deliver the judgment did so in the absence of the parties who had no notice of the date of its delivery. That notwithstanding, we think the affect appears to us to be similar that is to say; no operative, valid and effective judgment was delivered in the absence of the parties which had no notice of the date of its delivery. Order XX rule 1 of the CPC stipulates:

"The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates."

There is no dispute that the Deputy Registrar failed to comply with the above express provision. A more or less similar issue arose in **Robert Edward Hawkins & Another v. Patrice P. Mwaigomole**, Civil Appeal No. 48 of 2006 (unreported) in which the appellant’s Counsel took an issue regarding the validity of the judgment on account of it having been pronounced in chambers rather than in the open Court as mandated by Order XX rule 1 of the CPC. Although the Court did not agree that the

judgment was not delivered in open Court, it subscribed to a decision of the Court of Appeal for Eastern Africa in **Gillani's Modern Bakery v. F. J Kuntner** (1954) 21 EACA 123 on the effect of a judgment not delivered in accordance with the law, that is to say; no judgment came into existence which could be appealed against.

As rightly submitted by Mr. Mafuru supported by Mr. Shayo, an aggrieved party could not have validly challenged the purported judgment on appeal and hence the resort to the revisional jurisdiction of the Court under section 4(3) of the AJA in line with the applicant's averment in para 6 of his founding affidavit. In the upshot, we are inclined to agree with the learned advocates for both parties that the purported delivery of the judgment was inoperative with the net effect that no valid judgment and decree came into existence.

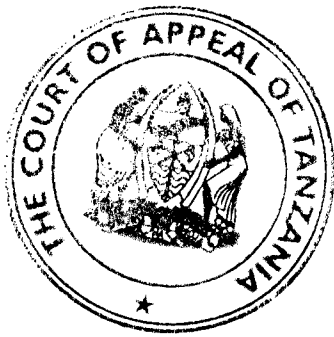
Having so found, we are satisfied that the circumstances of this application compel us to exercise the Court's power vested under section 4(3) of the AJA by revising the proceedings of the High Court for 29th November, 2015 by nullifying them as we hereby do. After nullifying the said proceedings, the position remaining will be that preceding the purported delivery of the impugned judgment. Arising from the foregoing,

we direct the High Court to pronounce the judgment reserved on notice by the order made on 9th November 2015 according to the dictates of Order XX rule 1 of the CPC.

In the event, the application is hereby sustained on the strength of ground one in the notice of motion. As the respondent waived her costs, we make no order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 6th day of April, 2020



R. E. S. MZIRAY
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 9th day of April, 2020 in the presence of the appellant in person and Mr. Mafuru Mafuru, counsel for the respondent is hereby certified as a true copy of the original.

A handwritten signature in black ink, appearing to read "E. G. Mrangu", is written over a horizontal line.

E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL