IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: MKUYE, J.A., MGEYEKWA, J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 291 OF 2021

ANATOLIA J. MGENI ..... APPELLANT

VERSUS

NJOCOBA ..... 1ST RESPONDENT

BRUNO SANGA ..... 2ND RESPONDENT

DAMSON SANGA ..... 3RD RESPONDENT

ISAYA MYAMBA ..... 4TH RESPONDENT

(Appeal from Judgment and Decree of the High Court of Tanzania, at Iringa

(Shangali, J.)

dated the 30th day of October, 2018

in

Land Case No. 04 of 2015

JUDGMENT OF THE COURT

6th & 15th December, 2023

MKUYE, J.A.:

In this appeal the appellant Anatolia J. Mgeni is appealing against the judgement and decree of the High Court of Tanzania (Iringa Registry) dated 30/10/2018 in Land Case No. 04 of 2015.

According to the record of appeal, the appellant, who was a business woman engaged in timber business, in 2011 approached NJOCOBA (the 1st respondent), a money lending institution, with a request for a loan to the tune of TZS 17,000,000.00. The respondent, being trustful of her *bonafide*

customer, approved her requested loan for which she offered her residential house built on Plot No. "K" (suit property) located at Makambako Urban area as security. Among others, the terms and conditions for the loan was that it would fetch interest amounting to twenty two percent repayable within a period of twelve months and the appellant would remit a monthly instalment of TZS 1,728,333.00. However, it would appear that the appellant defaulted in repaying the loan as scheduled having only serviced two instalments to the tune of TZS 500,000.00 each attributing such failure to the loss of her timber consignment through a fire accident engulfed in Malawi.

According to the appellant, in 2014 she fell sick and was admitted at St. Consolata Ikonda Hospital for a period of six months whereby upon her discharge she returned to her home village for care leaving behind her mortgaged house to a caretaker.

Upon her return, and to her astonishment, she found that the house was occupied by the so-called Bruno Sanga (2nd respondent) who claimed that the same had been sold to him by Samson Sanga and Isaya Myamba (the 3rd and 4th respondents).

In her efforts to recover her house, the appellant instituted Civil proceedings in the High Court against the four respondents namely, NJOCOBA, Bruno Sanga, Samson Sanga and Isaya Myamba (the 1st, 2nd, 3rd and 4th respondents herein) seeking a declaration that the sale of the suit

property was unlawful and illegal and for the eviction order against the 2nd respondent. The appellant further sought for payment of general and specific damages to the tune of TZS 20,000,000.00 and TZS 120,021,500.00, respectively.

The trial court having heard all parties, observed that the appellant had failed to prove that the sale of the suit property was flawed. It also observed that the 3rd and 4th respondents were not involved in its sale. Hence, the suit was dismissed.

Aggrieved with the High Court decision, the appellant has now appealed to this Court fronting three grounds of appeal which for reason to be apparent shortly, we do not intend to reproduce them.

Nevertheless, ahead of the hearing of the appeal, the 1st respondent lodged a notice of preliminary objection on point of law to the effect that the appeal is incompetent and incurably defective for failure to comply with the mandatory provision of Rules 84 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) in that the notice of appeal was not served on the respondent.

When the appeal was called on for hearing, Mr. Moses Ambindwile, learned advocate appeared representing the appellant; whereas the 1st respondent had the services of Messrs. Hangi Matekeleza Chang'a, learned

Principal State Attorney, Ansila George Makyao, learned Senior State Attorney, Ayoub Gervas Sanga and Ibrahim Ramadhani, both learned State Attorneys; and the 3rd respondent appeared in person without any representation. The 2nd respondent was reported dead and since no legal representative had shown up to join in the case for more than 12 months, we, in terms of Rule 105 (2) of the Rules, opted to proceed in his absence; and in relation to the 4th respondent who was absent although the notice of hearing showed that he was duly served, we proceeded in his absence in terms of Rule 112 (2) of the Rules.

At the outset Mr. Sanga intimated to the Court that, the 1st respondent is under liquidation by the Bank of Tanzania under section 58 (2) (f) of the Banking and Financial Institutions Act, Cap 342 R.E. 2002. He contended that under sections 36, 37 and 41 (1) (a) of the same Act it is required to appoint the Depositors Insurance Board (DIB) to be a liquidator who will be responsible even to appear in the case. On that basis, he prayed for leave and leave was granted under Rule 111 of the Rules (Tanzania Court of Appeal Rules, 2009) to amend the name of NJOCOBA to Depositors Insurance Board.

Having done so, Mr. Ambindwile rose and readily conceded to the preliminary objection, the notice of which was lodged by the 1st respondent to the effect that the appeal was incompetent and incurably defective for

failure to comply with the mandatory provisions of Rule 84 (1) of the Rules, in that the notice of appeal appearing at pages 127 and 128 of the record of appeal was not served on the 1st respondent. He contended that, although both the notice of appeal and the letter requesting for copies of proceedings, judgment and decree were sent to the 1st respondent, only the letter was signed, but the notice of appeal was not signed. Nevertheless, he argued that, although the remedy for such anomaly would have been to strike out the appeal, he sought for the indulgence of the Court not to do so in the interest of justice due to ailments including the variance in the name of the 2nd respondent in the proceedings and judgment of the High Court which need to be sorted out or rectified.

Mr. Ambindwile, argued further that, even if the appeal is struck out and the appellant required to restart a fresh by making an application for extension of time, it would not serve the interest of justice. He, thus, while relying on the case of **Exim Bank (T) Limited v. National Furnishers Limited,** Civil Appeal No. 100 of 2020 (unreported), prayed to the Court not to strike out the appeal but should consider to nullify the proceedings and judgment of the High Court under section 4 (2) of the Appellate Jurisdiction Act (the AJA). He, also, prayed to be spared from costs.

On his part, Mr. Sanga welcomed the concession made by Mr. Ambindwile on the point of objection. However, he prayed to be awarded

costs since they had lodged the preliminary objection and prepared for hearing. Apart from that, they had travelled from Dar es salaam, he contended.

On the way forward, Mr. Sanga was also in agreement with Mr. Ambindwile that despite the fact that the remedy would have been to strike out the appeal, he invited the Court to be inspired with the principle stated in the case of **Exim Bank (T) Limited** (supra) and go a step further due to the irregularities marred in the matter at hand.

Elaborating on the said anomalies, Mr. Sanga submitted that, in the plaint, one, Bruno Sanga was sued as a 2nd defendant (the 2nd respondent herein). The written statement of defence for the 2nd defendant, was pleaded by Bruno Sanga. However, during the trial, it unveiled that the purchaser of the suit property as per the Sale Agreement (Exh. D1) is Clarence Bruno Sanga and the one who testified as DW1 is Clarence Bruno Sanga, as opposed to Bruno Sanga who was sued as the 2nd defendant and the purported purchaser of the suit property. In his view, these were two different persons.

Mr. Sanga went on to submit that, according to the Sale Agreement (Exh. D1), the disputed property was mortaged to two different financial institutions which are NJOCOBA and Makambako SACCOS whereby the former was issued with a letter of offer of a certificate of title and the later

was given the certificate of title. It was argued that, in order to realize the asset, the suit property was sold co-jointly by both NJOCOBA and Makambako SACCOS but the latter was not joined in the suit as a necessary party, when the suit was instituted. It was the learned State Attorney's further argument that, in case the Court issues an order that affects the said Makambako SACCOS, she would be condemned unheard or denied a right to be heard under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, Cap 2 R.E. 2002. To fortify his argument, he referred us to the case of **M.B. Business Limited v. Amos David Kasanda and 2 Others,** Civil Application No. 429/17 of 2019 (unreported) on the right to be heard.

The other anomaly that was raised by Mr. Sanga is that, although the 3rd and 4th respondents were sued for having been involved in the auction, PW2, the ten-cell leader, Clearance Bruno Sanga (DW1), DW3 and DW4 testified that the said sale or auction was conducted by Comrade Auction Mart. He argued, this was seen by the High Court and discharged the 3rd and 4th respondents since the sale was done by the said Comrade Auction Mart. He was of the view that, the High Court ought to have joined her under Order I rule 10 (2) of the Civil Procedure Code [Cap 33 R.E. 2019] (the CPC). It was contended further that failure to join the said auctioneer was tantamount to denying her right to be heard.

In this regard, he implored to the Court that the proceedings be nullified and the appellant be directed as to the way forward.

On his part, Damson Sanga (3rd respondent) insisted that he was not involved in selling the property. In any case, he left the matter in the hands of the Court to determine.

Mr. Ambindwile rejoined on the issue of costs insisting that it be waived arguing that the matter had been adjourned on several occasions in order to ascertain the issue of Bruno Sanga and not that they contributed to the adjournments.

Having summarized the arguments from either side, we wish to begin with the preliminary objection that was raised to the effect that the appeal is time barred for failure to serve the copy of notice of appeal to the 1st respondent.

According to Rule 84 (1) of the Rules, the appellant is required within 14 days after the notice of appeal has been lodged, to serve the copies thereof on all persons who seem to him to be directly affected by the appeal, unless the Court directs upon *ex-parte* application that a service need not be effected on any person who took no part in the proceedings. This means that the appellant was obliged to serve a copy of the notice of appeal on the

respondent within 14 days after lodging it in Court. Luckily enough, the counsel for the appellant has readily conceded to the anomaly.

In this matter, it is clear from pages 127 and 128 of the record that the appellant lodged her notice of appeal on 29/11/2018 intending to appeal against the decision in Land Case No. 04 of 2015 that was handed down on 30/10/2018. However, the said notice was not served on the 1st respondent. This contravened the provisions of Rule 84 (1) of the Rules which, as alluded earlier on, requires the same to be served on the respondent and all interested parties within fourteen days of the notice of appeal being lodged. It is, therefore, crystal clear that the notice of appeal herein is invalid and of no effect. In effect this renders the appeal to be incompetent and incurably defective and therefore liable to be struck out. – See: **Williamson Diamonds Limited v. Salvatory Syridion and Another,** Civil Application No. 15 of 2015 (unreported).

Ordinarily, the remedy for an appeal which is preceded by a defective notice of appeal would have been to strike out of appeal as was correctly submitted by both learned counsel. However, in the interest of justice we find that, it might not be the right option to take. Luckily enough, this is not the first time for this Court to take that route. The Court, in the case of **Exim Bank Tanzania Limited** (supra), when faced with almost a similar situation stated that:

"Ordinarily, having ruled out that the appeal is incompetent, it would automatically follow that the appeal before us is to be struck out. However, we feel constrained not to strike out this appeal for the reasons to be assigned shortly. We have done so in order to remain seized with the High Court record and so be able to intervene and remedy the situation. The path we have opted to sail is not novel as we have exercised these powers in the past in a number of occasions. See for instance the case of ***Chama Cha Walimu Tanzania v. The Attorney General,*** *Civil Application No. 151 of 2008;* ***Mathias Eusebi Soka v. The Registered Trustees of Mama Clementina Foundation and 2 Others,*** *Civil Appeal No. 40 of 2001; and* ***Tryphone Elias @ Ryphone Elias v. Majaliwa Daudi Mayaya,*** *Civil Appeal No. 186 of 2017 (all unreported)".*

Basically, in all above cited cases, despite the fact that the Court found them to be incompetent, they were not struck out instead the Court exercised its revisional jurisdiction to rectify the anomalies which were encountered in the incompetent proceedings and decisions of the High Court. We subscribe to that position of the law and, therefore, we proceed with examining the raised anomalies.

With regard to the issue of the name of the purported purchaser of the suit property, Bruno Sanga, it is crystal clear that as was submitted by

both counsel that Bruno Sanga was sued as a 2nd defendant. In the title of the suit, plaint and the written statement of defence filed by the 1st respondent indicate the same arrangement. He also filed his written statement of defence and signed it in that name as shown at pages 37 to 38 of the record of appeal. Yet, throughout the proceedings of the High Court, the 2nd defendant was referred to as such.

However, we note that the 1st respondent annexed the Sale Agreement of the suit property between NJOCOBA and Makambako SACCOS Ltd as vendors and Clarence Bruno Sanga who signed it as a purchaser (see pages 16 to 18 of the record of appeal). Yet, in his written statement of defence, the purported purchaser, Bruno Sanga as shown at pages 37 to 38 pleaded in para 2 and 5 to have purchased the suit property being sold by NJOCOBA and Makambako SACCOS as shown in the Sale Agreement attached as DHI and the same was admitted and marked as Exh. D1. It is noteworthy that, although the 2nd respondent, Bruno Sanga pleaded to have bought the said disputed property, the Sale Agreement (Exh. D1) shows the purchaser to be Clarence Bruno Sanga and not Bruno Sanga.

Surprisingly, during trial, Simon Ndimbo (PW2) who was a ten-cell leader testified that he witnessed the sale of the suit property in which Bruno Sanga was the buyer. Sophia Shongela (PW3) also testified about the sale of the suit property and that it was occupied by Bruno Sanga.

In defence, Clarence Bruno Sanga (DW1) testified as the 2nd defendant although the name of the 2nd defendant in the plaint and his written statement of defence was Bruno Sanga. It should be noted that for the first time the name of Clarence Bruno Sanga surfaced when he testified in court and then in the Sale Agreement that was tendered by DW1 and admitted as Exh. D1 - (see page 87). The said Sale Agreement was between Njombe Community Bank (NJOCOBA) and Makambako SACCOS Limited and Clarence Bruno Sanga.

As hinted earlier on, in the title of the Judgment it refers Bruno Sanga as the 2nd defendant and throughout the judgment it refers him as the 2nd defendant. However, the 2nd defendant who allegedly purchased the suit property was referred to as Clarence Bruno Sanga who as well testified as Clarence Bruno Sanga in court although in the judgment, the 2nd respondent continued to appear as Bruno Sanga. This anomaly led to the use of the same reference which referred to the improper party in the succeeding documents such as the decree which referred him as Bruno Sanga meaning he is a decree holder being the purchaser of the suit property. The same applies in the notice of appeal and the certificate of delay as shown at pages 127 and 131 of the record of appeal.

It would appear that things might have moved smoothly had the said Bruno Sanga not passed away. This featured when the appeal was called on

for hearing before this Court on 24/9/2021, when it transpired that the said Bruno Sanga had passed away which led to the adjournment of the hearing to another session to enable the appointment of the legal representative of the 2nd respondent for being joined in the appeal.

However, since then, it would appear that nothing happened because when the matter was placed for hearing on 2/11/2022, certain Patrisia Erasto Sanga who purportedly appeared as a legal representative of the 2nd respondent presented the letters of administrator issued by the Primary Court of Makambako appointing her as the administration of the estate of the late Erasmo Timsi Sanga, who was a different person from Bruno Sanga (the 2nd respondent).

Upon observing that the name of the deceased in the letters of administration is not of the 2nd respondent herein but of Erasmo Timsi Sanga, the matter was again adjourned in order for the legal representative of the 2nd respondent to apply and be joined in place of the deceased which did not materialize.

As it is, it transpired that the so-called 2nd respondent had been using more than one name interchangeably.

Unfortunately, it appears that the variance in names in the suit and in Exh. P1 escaped unnoticed as, we think, this where the provisions of Order I rule 10 (2) of the CPC would have come into play. The said provision states:

> *"**The court may, at any stage of the proceedings either upon or without the application of either party** and on such terms as may appear to the court to be just, **order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and the name of any person who ought to have been joined, whether as plaintiff or defendant,** or whose presence before the court may be necessary in order to enable the court effectively and competently to adjudicate upon and settle all the questions involved in the suit, be added."* [Emphasis added]

It is important to emphasize that although the name of Bruno Sanga seems to dominate in the proceedings, judgment, decree, notice of appeal, and certificate of delay and even in the memorandum of appeal subject of this appeal, the truth is that, the purchaser of the suit property as per Exh. D1 is not the same person as the 2nd respondent herein. Apart from that, the purported 2nd respondent who is reported to have passed away is not the same person as the 2nd respondent herein which makes things to be

even more complicated as one cannot say with certainty as to who was the purchaser of the suit property.

In the case of **Inter-consult Limited v. Mrs Nora Kassanga and Another**, Civil Appeal No. 79 of 2015 (unreported), the Court was confronted with a scenario where the party's name was changed from International Engineering Consultancy Services Ltd to Inter-consult Limited without an order of the Court. In its deliberation, the Court found that such change of the party's name without an order of the court was an irregularity which was fatal. It stated that:

> *"Be it as it may, we agree with Mr. Vadasto that substitution of the appellants name from International Engineering Consultancy Services Ltd to Inter Consult Ltd without any specific order of the trial court was an irregularity which is fatal."*

The Court went further to find out that it was an irregularity, which cannot be cured by the provisions of section 96 of the CPC.

In the matter at hand, we think, the situation is even worse due to a total confusion depicted as it is not certain as to who was the purchaser of the suit property in the eyes of law. We are, therefore, settled in our mind that this irregularity is fatal which is incurable.

In relation to failure to join Makambako SACCOS in the suit, it is common ground that the suit property was disposed of co-jointly by

NJOCOBA (1st respondent) and Makambako SACCOS to recover the loaned amounts as it was evident that the appellant had mortgaged her house to two entities. What she did according to DW4, was to hand over the certificate of title to Makambako SACCOS and a letter of offer of a certificate of title to the 1st respondent. This is confirmed by the Sale Agreement (Exh. D1) which clearly bears out that it was between NJOCOBA and Makambako SACCOS as vendors and Clarence Bruno Sanga as the purchaser. However, as was correctly submitted by Mr. Sanga, Makambako SACCOS was not impleaded in the suit which amounts to non-joinder of parties which, we think, will be dealt with in due course.

With regard to the issue that the 3rd and 4th respondents were not involved in selling the suit property, we note that it is true that the trial court cleared them. The testimony from PW2, DW2, DW3 and DW4 was to the effect that 3rd and 4th respondent were not involved. For instance, at page 122 of the record of appeal, the trial judge cleared them as hereunder:

> *"In my considered opinion the 3rd and 4th defendants were wrongly sued by the plaintiff. There is no cause of action against them. The auctioneers, Comrade Auction Mart was not a party to this suit. They are correct, people to be challenged on the manner of sale. The plaintiff should have sued the Comrade Auction Mart instead of the 3rd and 4th defendants because both the plaintiff and PW2 denied knowing*

them as auctioneers. Indeed, they were not even sued as registered auctioneers."

The trial judge was of the view that, Comrade Auction Mart was a person who ought to have been sued instead of the 3rd and 4th defendants who were wrongly sued. At this juncture, we now wish to canvass on the issue of non-joinder of the parties.

According to the record of appeal, it is common ground that the suit property was sold co-jointly by the 1st respondent and Makambako SACCOS to the 2nd respondent as per Exh. D1 for realization of their assets. However, Makambako SACCOS was not sued.

Yet according to 1st and 3rd respondents, the auction for sale of the suit property was conducted by Comrade Auction Mart and not by them. It means that by suing the 3rd and 4th respondents while leaving the Comrade Auction Mart there was a mis-joinder of parties. But again, failure to implead Makambako SACCOS and Comrade Auction Mart amounted to non- joinder of parties since they seem to have been proper or necessary parties in the matter.

As to what entails mis-joinder and non-joinder of parties it is not clearly stated in the CPC. However, this was lucidly articulated in the case of **Abdullatif Mohamed Hamis v. Mehboob Yusufu Osman and Another**, Civil Revision No. 6 of 2017 (unreported) that:

> *"The CPC does not specifically define what constitutes a "mis-joinder" or "non-joinder but, we should suppose, if two or more persons are joined as plaintiffs or defendants in one suit in contravention of Order I rule 1 and 3, respectively, and they are neither necessary nor proper parties, it is a case of mis-joinder of parties. Conversely, where a person, who is necessary or proper party to a suit has not been joined as a party to the suit, it is a case of non-joinder. Speaking of a necessary party, a non-joinder may involve an omission to join some person as a party to a suit, whether as plaintiff or as defendant, who, as a matter of necessity, ought to have been joined".*

In this case, as alluded to earlier on, much as Makambako SACCOS featured and was involved in the sale of the suit property to the 2nd respondent, she was not joined as a necessary party in the suit. Neither was Comrade Auction Mart, who was ruled out by the High Court to have been involved in the sale of the suit property to the 2nd respondent was joined in the suit as a necessary party.

Unfortunately, this issue was not raised and dealt with at the High Court except for the issue that Comrade Auction Mart that was revealed in evidence as the one who conducted the auction. As it was argued by the learned State Attorney, had the High Court been keen during the trial it

could have ordered that Comrade Auction Mart be added as a necessary party as per Order I rule 10 (2) of the CPC so as to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. That was not done.

While mindful of Order I rule 9 of the CPC that the suit shall not be affected by reason of mis-joinder or non-joinder of parties, we are of the view that, each case is to be determined in accordance with its prevailing circumstances because there are non-joinders which can render a suit unmaintainable and those which do not affect the substance of the matter and are mere inconsequential. See: **Stanslaus Kalokola v. Tanzania Building Agency and Another,** Civil Appeal No. 45 of 2018 (unreported). Moreover, it is important to emphasize that there is a distinction between non-joinder of a person who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency – See: a commentary from **Mulla Code of Civil Procedure 13th Editlon Volume 1** page 620.

Also, in the case of **Tang Gas distributors Limited v. Mohamed Salim Said and 2 Others,** Civil Application for Revision No. 68 of 2011 (unreported), the Court discussed the situation in which a necessary party could be added or joined such as where his proprietary rights are directly affected by the proceeding, his joinder is necessary in order to bind him with

the decision of the court. Also, in the same case the Court observed that deciding a case in the absence of necessary party in suit is a material irregularity which is fatal.

In the matter at hand, in view of what we have discussed above, it is without question that given the prevailing circumstances, Makambako SACCOS and Comrade Auction Mart were necessary parties in the suit. This is so because, even if the court decided the matter, the decree thereof may not be effective in the absence of the said parties. On the other hand, it may affect their rights. And, this brings us to the issue of right to be heard.

It was the learned State Attorney's argument that, since the decree and decision that was handed down affects Makambako SACCOS and Comrade Auction Mart, it was tantamount to condemning them unheard. He pointed out that one of the complaints in the appeal before this Court is that the sale of the suit property was not properly conducted as it did not comply with the auction procedures and the appellant is praying that the sale be declared null and void and ultimately be nullified.

It is a cardinal principle of justice for a court of law, before giving a decision in any dispute, to accord the parties a right to be heard unless the law provides otherwise. This is a right, which is enshrined in the Constitution under Article 13 (6) (a) which provides that:

To ensure equality before the law, the state Authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) *When the rights and duties of any person are being determined by the Court or any other agency* ***that person shall be entitled to for hearing*** *and the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned..."*
[Emphasis added].

In the case of **MB Business Limited** (supra), when the Court was confronted with a similar scenario it cited with approval the famous case of **Mbeya – Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2002] TLR 251 where it was stated:

"In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law..."

See also: **Independent Power Tanzania Limited v. Standard Chartered Bank (Hong Kong) Limited,** Civil Revision No. 1 of 2009 (unreported) in which the Court emphasized the importance of observing the right to be heard before an adverse decision or order is made.

As to the effect of the decision which is made without observing the basic right to be heard is that, it would not be spared or left to stand even if the same position in the decision would have been taken had the party been heard – See: **The Director of Public Prosecutions v. Sabini Inyasi Tesha and Another** [1993] TLR 237. Also, a similar position was taken in the case of **Abbas Sherally and Another v. Abdul Sultan Haji Mohamed Fazalboy,** Civil Application No. 33 of 2002 (unreported in which the Court had this to say:

> *"The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice"*

In this case, as was submitted by the learned State Attorney, one of the complaints is that the sale of the suit property was marred with irregularities, as it did not comply with the auction procedures and it is prayed that the sale be declared null and void and, ultimately, be nullified. On the other hand, according to the evidence available, Makambako SACCOS and Comrade Auction Mart who participated in the contested sale

of the suit property were not parties to the decision subject to this appeal. This means that, should the Court agree with the appellant, it would amount to denying the right to be heard. Putting it the other way round, failure to implead Makambako SACCOS and Comrade Auction Mart, may prejudice their right on the disputed property. This would be against the dictate of Article 13 (6) (a) of the Constitution – See also: **Mbeya Rukwa Autoparts and Transport Ltd** (supra) and **NUTA Press Limited v. Mac Holdings and Another,** Civil Appeal No. 80 of 2016 (unreported).

Ultimately, guided by the above authorities, we agree with the learned State Attorney that indeed, this matter was marred with multiple irregularities such as impleading the 2nd respondent as the purchaser of the suit property while he was not; impleading the 3rd and 4th respondents as the sellers of the suit property while they were not as per the evidence of PW2, PW3 and DW4 and the finding of the High Court; failure to join Makambako SACCOS and Comrade Auction Mart since the former sold the suit property co-jointly with the 1st respondent and the latter conducted the auction for sale of the said suit property. All these anomalies rendered the proceedings and the judgment thereof a nullity which are liable to be nullified.

As a way forward, we invoke our revisional powers under section 4 (2) of the AJA and nullify the proceedings and judgment arising therefrom and

set aside the decree with an order that the then plaintiff may institute a fresh suit should she wish to do so. Nevertheless, given the nature of this matter, we make no order as to costs in respect of both the preliminary objection and the appeal.

It is so ordered.

DATED at **IRINGA** this 15th day of December, 2023.

R. K. MKUYE
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

The Judgment delivered this 15th day of December, 2023 in the presence of Ms. Neema Sarakikya, learned State Attorney for the 1st Respondent also holding brief for Mr. Moses Ambindwile, learned counsel for the Appellant, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL