

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL 144 OF 2004

(Originating from Ilala District Court Civil Case No.50
of 2002, Asajile, DM)

1. COAST MILLERS LTD. }	
2. ISSA HAJI }APPELLANTS
3. JUBILEE INSURANCE CO. }	
OF TANZANIA LTD. }	

VERSUS

JOYCE JOSEPH	RESPONDENT
--------------------	------------

JUDGMENT

SHANGWA, J:

This is an appeal against the judgment and decree of the District Court of Ilala in Civil Case No.50 of 2002 dated 29th January, 2004. Four grounds of appeal were raised by the appellants in their memorandum of appeal. For the purposes of this appeal, I will not deal with all of them. I will only deal with the fourth ground which I think is sufficient to dispose of it. this ground reads as follows in quotation marks:

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL 147 OF 2004

(Originating from Ilala District Court Civil Case No.50
of 2002, Asajile, DM)

1. COAST MILLERS LTD.	}	
2. ISSA HAJI	}APPELLANTS
3. JUBILEE INSURANCE CO.	}	
OF TANZANIA LTD.	}	

VERSUS

JOYCE JOSEPHRESPONDENT

JUDGMENT

SHANGWA, J:

This is an appeal against the judgment and decree of the District Court of Ilala in Civil Case No.50 of 2002 dated 29th January, 2004. Four grounds of appeal were raised by the appellants in their memorandum of appeal. For the purposes of this appeal, I will not deal with all of them. I will only deal with the fourth ground which I think is sufficient to dispose of it. this ground reads as follows in quotation marks:

“The learned trial Magistrate erred in law in entering judgment without reasons for his decision and without stating his finding and the reasons therefor upon each issue as framed by the court at the beginning of hearing of the suit.”

At page two of their memorandum of appeal, learned Counsel for the appellants M/S Octavian and Company Advocates prays this court to set aside and nullify the judgment of the trial District Court for the reasons which are stated in the fourth ground as quoted above.

First and foremost, I wish to narrate the events as recorded by the trial District Court from the date of hearing to the date of judgment. These events are very important. It is through them that one can see how the trial District Court acted and how it arrived at its judgment which is the subject of this appeal. These events are as follows:

On 28.2.2003, the learned trial District Magistrate observed that pleadings were complete. After so observing, four issues were framed and recorded. There were two key issues. The first one is whether the second defendant was negligent in driving. The second one is whether the second defendant caused injury to the plaintiff as a result of negligent driving.

After framing the issues, the case was adjourned for hearing on 16.4.2003. On that date, the plaintiff PW.1 Joyce Joseph who is the respondent in this appeal gave her testimony on oath. Thereafter, the trial District Magistrate adjourned the case for further hearing on 21.5.2003. On that date, Mr. Kadago for the plaintiff and Mr. Kiulele for the defendants were absent. The trial District Magistrate was told by Mr. Maganga for Mr. Kadago for the plaintiff that Mr. Kadago who was prosecuting the case was indisposed and he prayed for adjournment. The case was adjourned to 17.6.2003. On that

date, the advocates for both Parties and the Parties themselves were absent. The case was adjourned for further hearing on 10.7.2003. The trial District Magistrate did not make any order for issuing of the summons to appear to the parties. So, they did not appear. On 10.7.2003, the case was adjourned to 18.8.2003. On that date, neither the Parties nor their advocates did appear. The case was adjourned to 25.9.2003. No order for notifying them of that date was issued. On 25.9.2003, the plaintiff appeared in person. It is not known as to how she learnt about this date. Neither the defendants nor their advocates did appear. The trial District Magistrate proceeded to record as follows and I quote:

*“Court: Matter is coming for hearing
court the defendant did not appear
before the court the plaintiff submits
hereunder that I am praying for
judgment. Court: Judgment on
20.10.2003.*

Sgd: Asajile, DM”

Judgment was not delivered on 20.10.2003 as fixed. It was delivered three months and nine days later on 29.1.2004

At page two of his typed judgment, the learned trial District Magistrate concluded as follows and I quote:

"From the court records both the defendants did not bother to attend the court although Summons was served to them. In this respect therefore this court enters the judgment for the plaintiff and all the prayers is granted by this court with costs. It is so ordered.

*Sgd: Asajile – DM
29.1.2004.*

Right of appeal explained.

*Sgd: Asajile – DM
29.1.2004."*

I took time to go through the trial District Court's record and I did not see any copies of the Summonses which were issued to the defendants to appear between 21.5.2003 when the trial District Court was notified by Mr. Maganga for Mr. Kadago for the plaintiff that Mr. Kadago was indisposed and 25.9.2003 when the said court ordered that judgment will be on 20.10.2003. That being the position, I find that the trial District Magistrate's remark quoted above that a Summons was served on the defendants who did not bother to attend court is totally unfounded. Moreover, the record shows that between the said dates, he did not bother to pass any order for the Summonses to be issued to the defendants.

Strictly speaking, the trial District Court should not have proceeded to order for ex-parte judgment while no summonses were duly issued and served on the defendants. This was contrary to both law and natural justice. I find therefore that

the trial District Magistrate's proceedings made on 25.9.2003 ordering for judgment on 20.10.2003 are a nullity.

After so finding, I now proceed to consider the question as to whether the trial District Court's judgment is worthy of being called a judgment. Learned Counsel for the appellants, Mr. Lyimo submitted that the trial District Magistrate's judgment do not comply with the mandatory requirements of rr.4 and 5 of O.xx of the Civil Procedure Code, 1966. He contended that non compliance with those provisions rendered the judgment and the decree drawn thereon, a nullity.

I have gone through the trial District Court's judgment which is complained of and as I will show later, I agree with learned Counsel for the appellants that it does not conform to the legal requirements stipulated in rr.4 and 5 of O.xx of the Civil Procedure Code, 1966.

In her plaint, the plaintiff was claiming for a total of shs.7,250,000 as damages for her sufferance as a result of a motor accident occasioned to her by the second defendant who was driving the motor vehicle which knocked her. Some of the damages claimed by her were general and others were specific. The trial District Court entered judgment in favour of the plaintiff for the whole claim. The reasons for its decision are not shown. What is shown are the particulars of the plaintiff's claim and what P.W1 Joyce Joseph told the trial District Court in her testimony. This was contrary to r.4 of O.xx of the Civil Procedure Code, 1966.

In addition to that, no finding on any of the issues which were framed by the District Court is stated in its judgment with the reason thereof. This was contrary to r.5 of O.xx of the Civil Procedure Code 1966.

I agree with Mr. Lyimo that non appearance of the defendants in a suit such as it was the case here does not relieve the trial Magistrate of writing a judgment which is in conformity with rr.4 and 5 of O.xx of the Civil Procedure Code, 1966. I agree with him also that the trial District Court's judgment is a nullity for non compliance with those provisions.

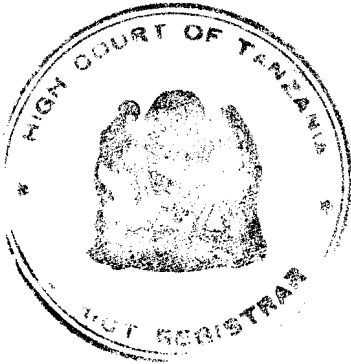
For the reasons I have given in this judgment, I hereby quash the trial District Court's proceedings and judgment. I allow this appeal and set aside its judgment and decree and order that the suit should be heard de novo by another Magistrate with competent jurisdiction. Each Party should bear its own Costs.


A. Shangwa

JUDGE

17.2.2005

Delivered in open Court at Dar es Salaam this 17th day of
February, 2005.



A. Shangwa
A. Shangwa

JUDGE

17.2.2005.