

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**CIVIL APPEAL NO. 6 OF 2018**

*(originated from Civil Case No. 83 of 2017 in the Resident Magistrate's Court  
of Arusha)*

**MADELEKA ADVOCATES .....PLAINTIFF**

**VERSUS**

**LARS TONNY HANSSON.....1<sup>ST</sup>RESPONDENT**

**SYLVIA ROMAN HANSSON.....2<sup>ND</sup>RESPONDENT**

**MAIGE, J.**

**JUDGMENT**

This appeal is against the decision of the Resident Magistrate Court of Arusha in Civil Case No. 83 of 2017. Conversely, the ruling of the **trial court** attached to the memorandum of appeal is entitled "In the District Court of Arusha". Therefore, in his first ground of appeal, the appellant has faulted the **trial court** in delivering a ruling which was not before it. There were other six issues raised in the memorandum of appeal and another one by the Court on

its own motion which should have, but for the reasons which shall be apparent henceforward, be addressed.

In his written submissions in support of the first ground, Mr. Peter Madeleka, learned advocate submitted that; since the suit was filed at the Resident Magistrate Court, it was not proper for the District Court to deliver the same. He has thus urged the Court to allow the appeal on that account, among others.

In her written submissions in refutation, Miss Mariam Nitume was of the humble contention that the insertion of the words “the District Court” instead of “the Resident Magistrate Court” was a mere typographical error by the **trial court** which cannot be a ground for appeal. It follows therefore that, the issue which I have first to determine, is whether the ruling under discussion was delivered by the District Court as alleged in the submissions for the appellant.

I have taken time to study the ruling and proceedings of the **trial court**. I have also duly considered the counsel's submissions. While in the typed ruling, it is suggestive that the author thereof is the District Court of Arusha, the record brought to me is that of the Resident Magistrate Court of Arusha. Equally so for the typed proceedings and the drawn order attached in the memorandum of appeal. In my opinion therefore, the decision of the **trial court** though entitled in the District Court of Arusha, was delivered by the Resident Magistrate Court of Arusha. The insertion of the title "District Court" in the ruling, I agree with Miss Mariam, was a mere typographical error which cannot in itself be a ground of appeal. It would have been addressed under sections 95 and 96 of CPC by way of correction of judgment/ ruling. The appellant was expected so to do before filing his appeal.

In so far as the appeal may be concerned, the legal implication of the error is to render the ruling defective in form and thus incapable of moving the Court for an appeal. On top of that, for the reason of the drawn order being entitled in the resident magistrate court, there is variance between the

ruling and drawn order which will also render the instant appeal incompetently before the Court.

For those reasons therefore, the instant appeal is hereby struck out for being incompetently before the Court. The appellant shall pay the costs therefor.

It is so ordered.

Right to appeal is duly explained.

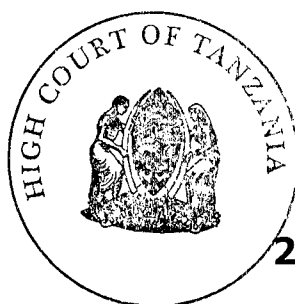


**I. MAIGE**

**JUDGE**

**22/11/2018**

Judgment delivered this 22<sup>nd</sup> day of November 2018 in the presence of Mr. Peter Madeleka for the plaintiff and Miss. Mariam Nitume for the respondents.



**I. MAIGE**

**JUDGE**

**22/11/2018**