

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL APPEAL NO. 4 OF 2018

*(Arising from Muleba District Court Civil Case No. 38/2017 original
Nshamba Primary Court Civil Case No. 23/2017)*

CROSPERY KYABONA APPELLANT

VERSUS

DEUS NDYAMUKAMA RESPONDENT

JUDGEMENT

23/2/ -6/3/2020

Bahati, J.

This is a second appeal. It traces its origin in the Nshambya Primary Court Civil Case No. 23/2017 whereby the respondent successfully sued the appellant, for TZS. 7,950,000/=. Aggrieved by the decision of the Primary Court, the appellant herein appealed to the District Court of Muleba at Muleba whereby he lost again. The appellant after being

aggrieved by the judgment of the two lower courts now appeals to this Court on the grounds that:

- 1) *The trial court Magistrate erred in law and fact when he failed to note that the said agreement was forged one as it was made at Muleba without any witnesses on the side of the appellant and the agreement was to be fulfilled in future.*
- 2) *The trial court magistrate failed to note that the respondent set a condition of giving the money to the appellant to be signing a contract before giving him an ATM Card and due to the need the appellant signed without receiving the said money.*
- 3) *The trial court Magistrate erred in law when failed to note that the agreement signed was tempered since it was signed at Muleba without any witnesses.*
- 4) *The trial Court erred in law as there was no any reason stated leading to the judgment pronounced by the District Court.*
- 5) *The trial court magistrate erred in law when did not consider the evidence on the side of the appellant since there was no any*

money deposited in NMB Bank Muleba branch in the account of the appellant making the contract incomplete.

6) The trial court Magistrate erred in law as he intentionally did not consider the evidence adduced by witnesses on the side of the appellant.

7) In totality the trial court Magistrate decided the case against the weight of evidence and reality.

As it may be gathered from the record of this appeal, the respondent, Deus Ndyamukama, instituted the suit to the Nshamba Primary Court the suit claiming TZS 7,950,000/= against the appellant, Mr. Crosbery Kyabona. It was on 17/3/2015 at 10 a.m in the morning at Nshamba village, within Muleba District in Kagera region. The respondent alleged that the appellant borrowed money for building his unfinished house and failed to pay back. On the other hand, the appellant, denied all allegations of being given TZS 7,950,000/= by the respondent. However, the appellant lost his appeal at the District Court and hence this appeal.

In this matter, the appellant was represented by *Jackline Mrema, learned counsel*, while the respondent, was unrepresented. Before

hearing the appeal, the appellant requested for leave of the court to abandon ground number three (3) and add one ground which if not granted will vitiate the substantive justice. The Court granted the said request after inquiring the other party who had no objection. The additional ground is that, *the trial Court erred in law as there were no signatures of the primary court assessors in the pronounced judgment.*

In her submission, the counsel for the appellant consolidated grounds number 1 and 2 that, *the trial magistrate erred in law by not regarding that the agreement which was presented to the court as exhibit in the primary court was in doubt.* She submitted that the agreement had only one witness, that is, the respondent. Thus the agreement had no witness on the part of the appellant. Hence, she submitted that there was uncertainty. In her view, the said agreement would not have been received and admitted by the court in evidence as it was improper and tempered since it was signed at Muleba without any witnesses.

On ground number 4 of appeal, the counsel for the appellant submitted that *the trial Court erred in law as there was no any reason stated leading to the judgment pronounced by the District Court.* The judgement which was delivered by the first appellate court had no reasons or justification of its conclusion. To support her argument, she

referred the Court to the case of **Tanga Cement Co. LTD V Christopher Son Co. LTD. [2005] TLR 190** where the court held that,

“The word “judgment” as defined under section 3 of the Civil Procedure Code ,Cap. 33 means a statement given by the judge or the magistrates of the grounds of a decree or order”,

This, according to the appellant’s advocate, was not taken into account by the resident magistrate when delivering the judgement.

The learned counsel for the appellant further consolidated ground number 5 and 6 that, *the court erred in law by not considering the evidence adduced by the appellant because the reasons which were adduced that the money was supposed to go through the bank account and also the court did not address the issue as to why the Bank card was with the respondent.*

To wind up her submission, on ground number 7 the learned counsel submitted that the trial Primary Court judgment was not signed by the assessors who sat and heard the suit. She submitted that, for cases which commence at the Primary Court, it is a must for the court to sit with assessors who must give opinion in the case for consideration in making the final judgement of the court. To fortify her argument she referred the court to the case of **Mohamed Bishoge V Mwatatu**

Bishoge, HC Bukoba, (PC) Civil Appeal No.1 of 1992 (unreported) where it was held that;

“Rule 3 (1) GN 2/1988 that demands the signing of the court’s judgement by all the members of the court.”

Also in **Catherine Hamisi V Harith Heme(PC) Civil Appeal No. 133 of 1991** (unreported)in which it was held that ,

“the trial magistrate erred in noting the judgement signed by the assessors and the proceedings were void and a nullity.”

In another case of **Hamis Athuman V Jumanne Makambi and Others (Civil Appeal No. 23 of 1999) (unreported)** in this case, the judgement was not signed by the assessors, so it was declared null and void. For interest of justice, the counsel mentioned other cases with the same precedent namely; **Hemerinda Gabriel V Salvatorty Sadoti, Civ. Rev. No. 7/2004 HC Bukoba,(unreported)**, **Nelly Manase Foya v Damian Mlinga ; Civil Appeal 2005[TLR] at pg 167** and **Euphrazia Angelo V Burchand Rwabutondogolo, Civil Application No. 11 of 2007(unreported)**. All these cases discuss the requirement of the assessors as members of the primary court to participate in the decision making process and finally sign the judgment of the court.

Hence the learned counsel prayed to this court to order for a fresh hearing.

In reply, the respondent strongly objected that, he had nothing to add apart from the contents written as part of his submissions. However, on ground number 7 which was added, he submitted that he is aware that assessors in primary court gave opinion and signed the copy of judgement. Besides, the respondent requested the Court to consider him because the appellant borrowed money since 2015 which is quite a long time.

Having reviewed the record and judgement of the first appellate court and of the trial Primary Court, I proceed to determine this appeal. I have considered the contents of grounds 4 and 7 of the appeal together with submissions in support. It is worth noting that the grievance in this appeal hinges on two grounds which may be sufficient to dispose of the appeal.

The 1st ground is the Court erred in law as there was no any reason stated leading to the judgment pronounced by the District Court. The counsel for the appellant submitted that the trial Court erred in law as there was no any reason stated leading to the judgment pronounced by the District Court. The judgement which was delivered had no reasons

or justification to reach its conclusion. In the case of **Tanga Cement Co. LTD V Christopher Son Co. LTD, 2005 TLR 190** the Court held that,

“Order XX , Rule 4 of the Civil Procedure Code, 1966 provides that a judgement shall contain a concise statement of the case ,the points for determination ,the decision thereon and the reasons for such decision”.

I had an opportunity of going through the Judgement by the District Court. It is evident that the District Court Magistrate has only framed issues and transcribed his findings on each issue without going further and giving the reasons for his decision as stipulated by the law. Therefore, I am persuaded to say that, the decision of the District Court on 13/2/2018 does not contain a concise statement of the case, the points for determination and the reasons for the decision and is therefore not a judgement.

On the other issue which I think, I will deal with is of the Primary Court assessors who are alleged to have not signed the judgement. The learned counsel for appellant submitted that absence of signature renders the judgement being null and void. To substantiate her argument referred the court to the cases of **Mohamed Bishoge V Mwatatu Bishoge, Catherine Hamisi V Harith Heme and Hamis Athuman V Jumanne Makambi and others (supra)**. The holdings in all

such cases were to the importance of all members of the Primary Court to sign the judgement.


It is a cardinal principle of law that assessors are members of the Primary Court and are required to participate in both the decision making process and finally sign the judgment of the court. The case of **Neli Manase Foya v. Damian Mlinga [2005] TLR 167** supports this firm position too. I agree with the learned counsel for the appellant in her submissions that this requirement cannot be dispensed with without causing injustice. Hence, from the foregoing reasoning, I find these grounds to have merits.

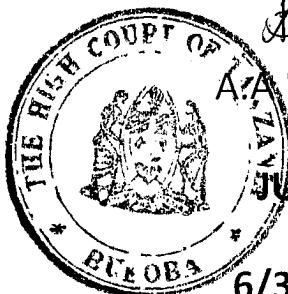
Therefore, in view of the above findings there is no need to consider the remaining grounds of the appeal as these grounds dispose of the matter. As the proceedings at the trial primary court were and are hereby declared being a nullity, the decision of the first appellate court and primary court are hereby quashed and the orders therein set aside.

I further order an expedited fresh hearing be conducted before a new magistrate and another pair of assessors, having in mind that this case is of a long time. In view of the circumstances of the case, each party to bear its own costs.

It is so ordered.

Rights as to appeal explained.


A.A. BAHATI
JUDGE
6/3/2020



The seal of the High Court of Tanzania is circular. It features the text "THE HIGH COURT OF TANZANIA" around the top and "HUEOBA" at the bottom. In the center is a coat of arms depicting two figures flanking a shield, with a sun or star above it.

Date: 06.03.2020

Coram: Hon. A. A. Bahati – J

Applicant: Crosperry Kyabona

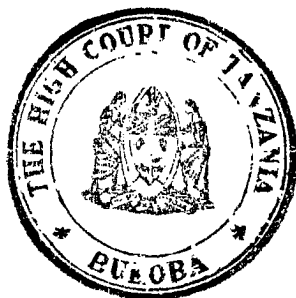
Respondent: Deus Ndyamukama (Jackline Mrema)

B/Clerk: A. Kithama

Respondent: The matter before is for Judgment. We are ready.

Appellant: I am ready.

Court: Judgment delivered.



A.A. Bahati
A.A BAHATI

JUDGE

6/3/2020