

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

**AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 84 OF 2020**

*(Arising from Kinondoni District Court Civil Appeal No. 74 of 2018 Originating from  
Kinondoni Primary Civil Case No. 74 of 2018)*

**TAUSI MTEI..... APPELLANT**

**VERSUS**

**FIDELIS LYARUU ..... RESPONDENT**

**JUDGMENT**

2<sup>nd</sup> & 24<sup>th</sup> November, 2020

**BANZI, J.:**

Before Kinondoni Primary Court, the Appellant, Tausi Mtei unsuccessfully sued the Respondent, Fidelis Lyaruu on a matter involving bill of costs. Being aggrieved with the decision of Primary Court, she appealed to the District Court of Kinondoni which on 18<sup>th</sup> February, 2020 dismissed the appeal for want of merit. Still aggrieved, the Appellant preferred this appeal on one ground as hereunder;

- 1. That, the District Court erred in law and facts for failing to order the Respondent to pay the Appellant*

*Tshs.1,875,000/= being an amount for bill of costs incurred in the Primary Court.*

Before determining the merit of appeal, I find it necessary to give, albeit briefly, the background facts leading to the appeal at hand. Sometimes in April, 2011, Tausi Mtei filed a suit on a claim of tort against Fidelis Lyaruu before Kinondoni Primary Court vide Civil Case No. 21 of 2011. After hearing the evidence from both sides, on 6<sup>th</sup> November, 2013, the Primary Court delivered its judgment in favour of Tausi Mtei whereby she was awarded Tshs.1,600,000/= as compensation and Tshs.2,000/= as cost of filing a case. In addition, each party was ordered to bear its own cost. Fidelis Lyaruu dissatisfied with the said decision and appealed to the District Court but his appeal was dismissed with costs for want of prosecution. In a quest to pursue his rights, Fidelis Lyaruu unsuccessfully applied for extension of time to file his appeal before the High Court. His application was struck out with costs.

Thereafter, Tausi Mtei went back to the Primary Court for execution of decree in respect of Civil Case No. 21 of 2011. On 26<sup>th</sup> February, 2018, Fidelis Lyaruu was ordered by the Magistrate in-charge to pay Tausi Mtei Tshs.1,600,000/= being the decreed amount and Tshs.64,300/= being costs

of the case. On 19<sup>th</sup> March, 2018, Fidelis Lyaruu paid Tausi Mtei the sum of Tshs.1,665,000/= before the Magistrate in-charge. Surprisingly, on 12<sup>th</sup> April 2018 Tausi Mtei filed a fresh suit before Kinondoni Primary Court claiming Tshs.1,875,000/= being the costs incurred in Civil Case No 21 of 2011. The suit was accordingly dismissed on a ground of res judicata. The Appellant, Tausi Mtei appealed to the District Court of Kinondoni whereby her appeal was dismissed for want of merit. Still aggrieved, she filed this appeal.

At the hearing of the appeal, both parties appeared in person and unrepresented. The appeal was argued orally.

It was the contention of the Appellant that, after the High Court struck out the application with costs which was filed by the Respondent, she went back to the Primary Court and lodged the bill of costs claiming Tshs.1,875,000/=. She added that, her application was supported by the documents and receipts for the costs incurred but she was awarded Tshs.64,000/= only. According to her, the awarded amount was for costs incurred in the course of defending the application filed by the Respondent at the High Court. In that regard, it was an error for the District Court to hold that she was already paid the costs to cover the expenses she incurred in the Primary Court. Thus, she prayed for the appeal to be allowed.

On the other hand, the Respondent insisted that, he has already paid what he was ordered to pay including the costs incurred by the Appellant in prosecuting her case before the Primary Court. After receiving the whole amount, the Appellant signed before the Magistrate in-charge and admitted not to have more claim. In that regard, she is not entitled to the claimed amount. Therefore, he prayed for the appeal to be dismissed.

In her brief rejoinder, the Appellant insisted that, Tshs.65,000/= paid by the Respondent was for costs to cover the expenses she incurred during the proceedings before the High Court and not for the costs at the Primary Court or District Court. Therefore, she reiterated her prayer for the appeal to be allowed.

After careful consideration of parties' arguments and ground of appeal in the light of evidence on record, the issue for determination here is whether *the Appellant is entitled to be paid Tshs.1,875,000/= for the costs she incurred before the Primary Court.*

It is apparent from the record that, the Appellant's claim was dismissed by the two courts below on the same ground of res judicata as the Appellant had already been paid her due to cover her costs for the case before the

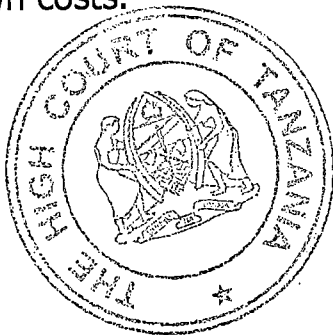
Primary Court. I had the opportunity of perusing the record of Civil Case No. 21 of 2011. At end of the judgment, the trial ruled as follows and I quote;

*"Hivyo mdai amethibitisha sehemu ya madai yake apewe fidia ya jumla Tsh milioni moja na laki sita (1,600,000/=) pamoja na gharama za kufungua shauri hili Tshilingi elfu mbili (2,000/=) kama ilivyo kwenye risiti. **Na kila mdaawa abebe gharama zake za kuendesha shauri hili.**"* (Emphasis is mine).

It is evident from the extract above that, from the first instance, the Appellant was not awarded costs. Nevertheless, in the course of execution of the decreed amount, the Appellant was paid Tshs.65,000/= for costs she incurred during the hearing of the case. Obviously, she was not entitled to be paid the said amount because there was no such order from the beginning. What she received was just a favour. Despite such favour, she went back and opened a fresh suit for non-existing costs. In that regard, it was improper for the Appellant to file a fresh case for the bill of costs as it was held in the case of **Hassani Kilala v. Juma Said** [1994] TLR 87. Apart from being improper, she shouldn't have filed the same because the trial court did not issue such order from the first instance. If she was awarded costs by any Court be the District Court or the High Court, she was supposed

to file the bill of costs before the competent Taxing Master of the respective Court because, the Taxing Master of the Primary Court has no jurisdiction to entertain the matter concerning costs awarded before the District Court or the High Court. Thus, I find hard to believe the assertion by the Appellant that, the paid amount of Tshs.65,000/= before the Magistrate in-charge of the Primary Court was referred to the costs awarded by the High Court.

That being said, I find no reason to fault the judgments of the two Courts below. Thus, I find no speck of merit in this appeal and the same is accordingly dismissed. Owing to nature of the matter, each part shall bear its own costs.



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**I. K. BANZI  
JUDGE  
24/11/2020**

Delivered this 24<sup>th</sup> November, 2020 in the presence of the Appellant and the Respondent in person.



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**I. K. BANZI  
JUDGE  
24/11/2020**