

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**CIVIL APPEAL NO.66 OF 2020**

*(Arising from the Resident Magistrates Courts of Mwanza at Mwanza in Civil Case No. 34 of 2020)*

**JUMANNE KAGORO ..... APPELLANT**

**VERSUS**

**JOHN SHIJA ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 17.05.2021*

*Date of Judgment: 17.05.2021*

**A.Z.MGEYEKWA, J**

The appellant, Jumanne Kagoro has filed an appeal against the decision of the Resident Magistrate's Court of Mwanza in Civil Case No. 34 of 2020. The material background to the dispute is not difficult to comprehend. I find it fitting to narrate them. They go thus: the appellant sued the respondent claiming for compensation of Tshs. 50,000,000/= for malicious prosecution. As per the plaint, on 30<sup>th</sup> July, 2019 at 11:00 am the respondent was alleged to have assaulted the appellant as a result he ruined the appellant's reputation. The appellant reported the matter to the

Police station thus the respondent was arrested, charged, and prosecuted in Criminal Case No. 319 of 2019. The trial court found the appellant innocent thus he was acquitted.

After his acquittal, the appellant decided to file a case at before the Resident Magistrate Court at Mwanza Civil Case No. 32 of 2020 claiming for malicious prosecution. The Resident Magistrate Court at Mwanza decided in favour of the respondent and dismissed the suit. The appellant did not see justice hence this appeal to this court. The appellant filed three grounds of appeal as follows:-

- 1. That, the trial court erred in law and in facts by holding that, the appellant was not prosecuted by the respondent in the criminal case.*
- 2. That the trial court erred in law and in fact by holding that, the appellant did not prove on the balance of probabilities that the case against was not actuated by malice.*
- 3. That, the trial court erred in law and in facts by holding that the appellant failed to give details as to the extent of damages and how he suffered the same.*

In prosecuting this appeal, Mr. Mshongi, learned counsel, and Mr. Bomani, learned counsel appeared for the appellant and respondent respectively.

It was Mr. Mshongi, learned counsel for the appellant who started to kick the ball rolling. He urged this court to allow him to add one ground of



appeal on point of law. He stated that after perusing the trial court proceedings he noted that the final pre-conference was not conducted and issues for determination were not framed.

In his reply, Mr. Bomani conceded with the appellant's grounds of appeal. He went on to submit that the trial Magistrate went into an error to compose a judgment while the court and parties did not frame any issues. He urged this court to examine the original trial court proceedings to find out if the same were missing. He further stated that in case this court will find that the omission is valid then he prayed for this court to remit the file to the trial court to proceed where it ended.

I have given due consideration to the submissions of both learned counsels. Their submissions are based on the additional ground of appeal that the final pre-trial conference was not conducted and issues for determination were not framed. Mr. Bomani, learned counsel for the respondent has conceded that the trial Magistrate entered into an error by proceeding with hearing the parties' cases without conducting the final pre-trial conference and framing the issues for determination.

In the light of the learned counsels' submissions, I had to peruse the trial court original proceedings and noted that the trial Magistrate proceeded with hearing the plaintiff and defence case without conducting the final pre-trial conference, and issues for determination were not

framed as required by the law. The pre-trial conference was important since the court and parties were required to plan the trial, to discuss which matters should be presented to the court, to review proposed evidence and witnesses, and to set a trial schedule. Order XIV Rule 1 (5) of the Civil Procedure Code, Cap. 33 [R.E 2019] provides that:-

*" (5) At the first hearing of the suit the court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material proposition of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend."*

Applying the above provision of law, the trial court was required to frame and record the issues for determination. In the instant case the trial court did not frame issues for determination instead it proceeded with hearing the plaintiff and defence case. In the cases of **Zalkha Bint Mohamed v Juma Mazige** (1970) HCD 132 and the Court of Appeal of Tanzania observed that non-framing of issues by the trial court led to the parties not knowing what exactly was for the trial and decision.

I am in accord with both learned counsels that failure for the trial court to frame issues rendered the trial court to determine the case on the matter which were not pleaded by parties. In the case of **Stanslaus**



**Rugaba Kasusura v The Attorney General and Phares Kabuye (1982)**

TLR 338, the Court of Appeal of Tanzania nullified the judgment and proceedings of the High Court for failure to frame issues for determination.

Consequently, I find it prudent to remit the case file in Civil Case No. 34 of 2020 to the Resident Magistrate Court to proceed with conducting a pre-final trial conference, frame issues for determination and compose a new judgment. I shall not consider the remaining grounds of appeal. The appeal is therefore allowed without costs.

Order accordingly.

DATED at Mwanza this 17<sup>th</sup> May, 2021.



  
A.Z MGEYEKWA

**JUDGE**

17.05.2021

Judgment delivered on 17<sup>th</sup> May, 2021 via audio teleconference whereas Mr. Mshongi, learned counsel, and Mr. Bomani, learned counsel for the appellant and respondent respectively were remotely present.

  
A.Z MGEYEKWA

**JUDGE**

17.05.2021