

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

CIVIL APPEAL NO. 25 OF 2020

AIRO MASUDI APPELLANT

VERSUS

JARED NGUKA AREGO RESPONDENT

(Arising from judgment of the District Court of Tarime in Civil Case No. 3 of 2019)

RULING

4th and 4th June, 2021

KISANYA, J.:

At the District Court of Tarime, the appellant, Airo Masudi was sued on a claim for malicious prosecution. After a full trial, the case was decided in favour of the respondent, Jared Nguka Arego. The appellant was condemned to pay general damages to the tune of TZS. 20,000,000 and TZS 5,000,000 as special damages. Dissatisfied, he lodged the present appeal against the judgement and decree.

This Court noted that the copy of judgment was not signed by the trial magistrate. It was further noted that the trial magistrate did not append her signature after recording evidence of witnesses. Therefore, when this matter

came up for hearing today, I implored the parties to address the Court on competence of this appeal.

The appellant appeared in person, unrepresented. On the hand, the respondent defaulted to appear without notice. Therefore, I ordered the appeal to be heard *ex-parte* under Order XXXIX, Rule 17(2) of the Civil Procedure Code [Cap. 33, R.E. 2019] (the CPC).

Being a lay person, the appellant had nothing to submit on the issue raised by the Court, *suo motu*. He urged me to allow the appeal and dismiss the respondent's claim filed before the trial court.

Having heard the appellant, I will now proceed to determine whether the appeal is competent. I have alluded earlier that, this appeal stems from the District Court of Tarime. Pursuant to Order XXXIX, Rule 1 (1) of the Civil Procedure Code [Cap. 33, R.E. 2019] (the CPC), an appeal is accompanied by a copy of the impugned decree and judgment. The law requires the trial judge or magistrate to sign the judgment as of the date of pronouncement. This is provided for under Order XX, Rule 3 of the CPC which states:-

*The judgment shall be written by, or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court **and shall be dated and signed by such presiding judge or magistrate as of the***

date on which it is pronounced in open court and, when once signed, shall not afterwards be altered or added to, save as provided by section 96 or on review. (Emphasize is added)

The above cited provision is couched in imperative manner. It must be complied with. Unsigned judgment cannot be considered as judgment. Therefore, appeal cannot originate from the judgment that was not duly signed by the trial judge or magistrate. See **Patrick Boniface vs R**, Criminal Appeal No. 2 of 2017 (unreported) where the Court of Appeal held as follows:-

...since the judgment of the trial court was not signed and dated by the magistrate who conducted the trial, there was no judgment to be appealed against before the High Court."

It is on record that, the matter before the trial court was heard by Hon. Kubyo- RM. Upon hearing the parties' final submissions, she ordered that judgement could be delivered on 29.05.2020. The record is silent on what transpired on 29.05.2020. The copy of judgment appended to petition of suggests that judgment was delivered on 04.06.2020 before Hon. V.L Mugendi- RM. However, the trial magistrate did not date or sign the purported judgment. Further to that, although Hon. V.L Mugendi certified the said judgment as a true copy of the original, the original copy is missing in the case file. What is on

record is a typed copy which was not signed by Hon. Kubyo-RM who heard the matter. For that reason, I am satisfied that there is no judgment for the present appeal to stand.

There is another irregularity in the trial court's proceedings. The trial magistrate did not append her signature after recording evidence of witnesses thereby contravening Order XVIII, Rule 5 of the CPC which provides:-

*"The evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the judge or magistrate, not ordinarily in the form of question and answer, but in that of a narrative **and the judge or magistrate shall sign the same.**"*

The law is settled that the omission by the trial judge or magistrate to append his or her signature after recording evidence vitiates the proceedings. See **Yohana Musa Makubi and Another vs R**, Criminal Appeal No 556 of 2015 (unreported) when it was held as follows:-

"We are thus, satisfied that, failure by the judge to append his/her signature after taking down the evidence of every witness is an incurable irregularity in the proper administration of criminal justice in this country. The rationale for the rule is fairly apparent as it is geared to ensure that the trial proceedings are authentic and not

tainted. "

In the light of the above quoted decision, the proceedings of the trial court are not authentic because the trial magistrate failed to append her signature after recording evidence of witnesses called by the defendant (DW1, DW2 and DW3) and PW1's evidence in cross-examination and examination in chief. The omission vitiated the proceedings of the trial court. As a result, there are no proceedings in determination of this appeal for want of authenticity.

In view of the above irregularities, the appeal cannot be entertained. I nullify the judgment and proceedings of the trial court from when the parties gave their evidence. I hereby order that the case filed be remitted to the District Court of Tarime for retrial starting from 10.03.2020 before another magistrate. Each party shall bear its own costs because the anomaly were triggered by the trial court.

It is so ordered.

DATED at MUSOMA this 4th day of June, 2021.





E. S. Kisanya
JUDGE

COURT: Ruling delivered this 4th day of June, 2021 in the presence of the appellant and in the absence of the respondent. Bench Clerk Mr. Simoni Lubili present.

Right of further appeal explained.




E. S. Kisanya
JUDGE
04/06/2021