

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**CIVIL APPEAL NO. 06 OF 2020**

*(Originating from Civil Case No. 03 of 2019 of Korogwe District Court at Korogwe, Hon. Ngilu – RM)*

**1. MOTEL BLUE PARROT.....1<sup>ST</sup> APPELLANT**

**2. JOSIA MBOWE.....2<sup>ND</sup> APPELLANT**

***-VERSUS-***

**AYUB PONDA.....RESPONDENT**

**RULING**

*Date of last order: 14/07/2021*

*Date of ruling: 15/7/2021*

**AGATHO, J.:**

The appellants and the respondent had a suit, Civil Case No. 03 of 2019 before the Korogwe District Court. The respondent who was then a plaintiff instituted the suit against the appellants seeking court's intervention to order the latter to pay the unclaimed amount of TSHS. 34, 165, 000/= as specific damages for the supply of beef to the 1<sup>st</sup> appellant between August 2016 to July 2017. The respondent also claimed general damages as will be determined by the court and any other reliefs that the trial court would find fit to grant. The trial court entered judgment in favour of the respondent. The appellants were aggrieved by that decision. Hence, they preferred an appeal before this court.

On the date set for hearing of the appeal learned counsel representing the parties (Switbert Rwegasira and Yona Lucas) orally moved the court under the provisions of section 44(1) the Magistrates' Courts Act [CAP 11 R.E. 2019] that the court be pleased to revise the proceedings of the trial court and order trial de novo or give any other appropriate orders after discovering that there is serious error as to the names of the first appellant (1<sup>st</sup> defendant in the trial court). That the first appellant Motel Blue Parrot is a non-existent entity. It was the counsel's view that this affects the whole trial court's proceedings, judgment, and decree. They submitted that the first appellant's name Motel Blue Parrot is non-existing entity, the proper name is Blue Parrot Motel Ltd which does not appear in any of court records.

It was at this point that the court ordered the parties to argue their application by way of written submissions to enable it to make appropriate orders. The appellants were ordered to file their submission on 15/7/2021 at 10:00AM and the respondent to file the reply to the written submissions on the same date at 2:00 PM and the ruling was set to be delivered on the same day at 3:00 PM.

On the date set for filling the submissions the parties did as they were ordered. Though from the outset the parties did not change the title of the application made and hence it read as Civil Appeal No. 06 of 2020, that does not vitiate the gist of the application and submissions as they were as per the court order issued on 14/7/2021.

Turning to the submissions before the court, it is apparent that the parties were of the view that the court be pleased to nullify the proceedings of the lower court including the judgment entered. It was

also the submissions of the parties that the respondent sued a wrong party right from the beginning. They supported their argument with the case of **Protea Polymers Ltd East Africa v Teckpack Tanzania Limited and another, Civil Case No. 173 of 2013 (unreported)**. The court in that case upheld the preliminary objection raised that a wrong party was sued and struck out the case. Both the counsel for the appellants and counsel for the respondent cited the cases of **Christina Mrimi v Coca Cola Kwanza Bottlers Ltd, Civil Appeal No. 112 of 2008**, and **Peter Sao v Nassim Auction Mart and Court Brokers and another, Misc. Land Application No. 589 of 2016 (unreported)**, where in both cases applicants mistakenly referred to a wrong party which was rejected by the court and consequently the cases were struck out. The counsel for the respondent also added in his submissions the case of **the Registered Trustees of Umoja wa Wazazi v J. Ngala and Umoja wa Wazazi, Revision, No. 23 of 2009, Labour Court (unreported)** where the court held that since the applicant sued a wrong party the whole claim right from the beginning is invalid. This court appreciates the learned counsel meticulous efforts and research done.

Having examined the submissions by the learned counsel and considering the history of the case at hand, it is apparent that that the 1<sup>st</sup> appellant did not raise the objection in its Written Statement of Defence that the plaintiff sued a wrong party because Motel Blue Parrot is not the name of the 1<sup>st</sup> defendant (1<sup>st</sup> appellant). Instead, the 1<sup>st</sup> appellant went on defending the suit which was decided in favour of the respondent.



The attention of this court was also drawn to the striking similarity of names, Motel Blue Parrot and Blue Parrot Motel Ltd. It is probably for this reason that the 1<sup>st</sup> appellant did not claim a wrong party was sued in the suit before the trial court.

Moreover, the fact that the parties have done business together before can hardly be disputed. The records show that the case at hand emanated from a contract between the parties. It is on the allegation of breach of contract between the parties. That is, non-payment of beef supply price. Thus, the parties seem not to be strangers. They know each other well.

That the name of the 2<sup>nd</sup> appellant Josia Mbowe who was the 2<sup>nd</sup> defendant was correctly spelt. That he, being the Managing Director and owner of the 1<sup>st</sup> appellant hotel/company brings in presumption that the respondent really intended to sue Blue Parrot Motel Ltd and not a non-existent entity named Motel Blue Parrot. Since the 2<sup>nd</sup> appellant never protested the incorrectness of the 1<sup>st</sup> appellant name right from the trial up to the present appeal, it shows that the parties (appellants) are the ones that were intended to be sued.

Given the great deal of efforts put into the case at hand justice would surely smile if the order of correction of names is entered to enable the parties to correct their pleadings and the appeal be substantively determined in substance. It will be a failure of justice and wastage of court's precious time if a mere error on the names of the appellant leads to the nullification of the entire proceedings and decision of the trial court. I think the irregularity has not occasioned failure of justice.

It would also be in the spirit of the overriding objective principle as enshrined in Article 107A (2)(b) and (e) of the Constitution of the United Republic of Tanzania, 1977 as amended, that the substantive justice be achieved by the preserving the trial court proceedings instead of nullifying them due to the observed oversight. The names correction order was granted by the Court of Appeal of Tanzania in the review of its own decision in the case of **Christina Mrimi v Coca Cola Kwanza Bottlers Ltd, Civil Application No. 113 of 2011, the Court of Appeal of Tanzania (Unreported)**. The Court of Appeal of Tanzania held that the name Coca Cola Kwanza Bottlers Ltd, should be corrected to read Coca Cola Kwanza Ltd.

From the holding of the Court of Appeal of Tanzania in **Christina Mrimi's case [supra]** I am of the firm view that justice will be achieved if the name Motel Blue Parrot is corrected in the petition of appeal before this court and reply thereto to read as Blue Parrot Motel Ltd. For avoidance of doubt all references in the records of trial court shall read as Blue Parrot Motel Ltd as the 1<sup>st</sup> defendant who is the 1<sup>st</sup> appellant. Since both parties conceded the irregularity, I make no order for costs.

It is so ordered.



**DATED at TANGA this 15<sup>th</sup> Day of July, 2021.**

  
**U. J. AGATHO**

**JUDGE**

**15/07/2021**

**Date: 15/07/2021**

Coram: Hon. Agatho, J

Appellants: Advocate Switbert Rwegasira for the appellants

Respondent: Advocate Yona Lucas for the respondent

B/C: Alex

**Court:** Ruling delivered on this 15<sup>th</sup> day of July, 2021 in the presence of the Appellant's advocate and Respondent's advocate.



  
**U.J. AGATHO**

**JUDGE**

**15/07/2021**