

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

**AT MUSOMA**

**CIVIL APPEAL NO. 32 OF 2020**

(From the Decision of the Resident Magistrate's Court of Musoma  
at Musoma in Civil Case No. 18 of 2019)

**OYATA ODUDO ..... APPELLANT**

**VERSUS**

**MAULID KOROGO .....1<sup>ST</sup> RESPONDENT**

**SAM NIRA MORO .....2<sup>ND</sup> RESPONDENT**

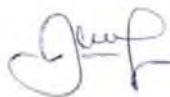
**RULING**

**14/7/2021 & 29/7/2021**

**MKASIMONGWA, J**

In the Resident Magistrate's Court of Musoma, Maulid Korogo and Sam Nira Moro (Respondents) sued Oyata Odudo (Appellant) claiming for payment of Tshs. 16,515,400/= being specific damages and Tshs. 400,000,000/= being general damages suffered/incurred from the Criminal charges instituted against them.

The suit was disputed by the Appellant and after a full hearing of the matter the same was found in favour of the Respondents who were each awarded with Tshs. 100,000,000/= general damages and Tshs. 2,138,000/= to the first Respondent being specific damage.



The Appellant is aggrieved by the Judgment and Decree of the trial Court hence on 29<sup>th</sup> September, 2020, through Mr. Ostack Mligo (Advocate), he came to this Court armed with a Memorandum of Appeal and instituted this Appeal challenging both of them. As it ought to be under the law, the Memorandum of Appeal is accompanied by a copy the challenged Decree and Judgment. The Respondents objected to the appeal and to that effect, they filed a Reply to the Memorandum of Appeal.

On the date the Appeal came for hearing before me, Mr. Ostack Mligo and Mr. Linus Amri, learned advocates appeared on behalf of the Appellant and Respondents, respectively.

After hearing submissions advanced to the Court by both learned advocates, the Court posed a question and the learned advocates were asked to address the Court on whether the Judgment challenged was properly dated. When took a floor Mr. Linus (Adv), contended after going through the judgment challenged in this appeal he is satisfied that the same does not show if it was dated. What it bears is the date the same was signed by the trial Magistrate. He submitted that the defect is however curable by virtue of Sections 3A and 3B of the Civil Procedure Code [Cap 33 R.E. 2019] which provide for the overriding objective of the Code which



is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes and duty of the Court to uphold the objective. As such Mr. Linus invited the Court that based on objective it finds the defect curable and proceed with the matter with the necessary orders.

On the other hand Mr. Mligo referred the Court to the provisions of Order XX Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] and submitted that the judgment of the Court must, among other requirements, be dated. Going by the judgment against which this appeal is brought the same was not dated the fact which rendered it not a judgment at all. As such the same should be nullified.

I have considered the submissions made by the respectful learned counsels for the parties. As it has been rightly so stated by Mr. Mligo, as to how should a judgment of the Court under the Civil Procedure Code [Cap 33 R.E 2019] be, Order XX Rule 3 of the Code provides for an answer. The Rule reads as follows: -

*"3. 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*

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*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."*

It is clear from the Rule that a judgment must be:

1. Written by or reduced to writing under the personal direction and superintendence of the presiding judge or Magistrate
2. Written in the language of the Court
3. Dated
4. Signed by the presiding Judge of Magistrate

There is consensus among the parties that the judgment under discussion was not dated which fact faulted the mandatory requirement of Order XX Rule 3 of the Civil Procedure Code, above quoted. Mr. Linus was of the view that the defect is curable in terms of Section 3A and 3B of the Code. Section 3A (1) of the Code provides for the Overriding Objective of the Code which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Code. Subrule (2) of the Rule imposes duty on the Court to give effect to the Overriding Objective of the Code in the exercise of its powers under the Code or in the

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interpretation of any of its provisions. Mr. Mligo on the other hand was of the view that, since the judgment was not dated the same is null and void hence it has to be nullified from the record. I am satisfied that the judgment at issue was not dated. This was an error which in my view did not go to the roots of justice in the matter. As such it is curable. In terms of Order XX Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] once a judgment is signed shall not afterwards be altered or added to save as provided for under Section 96 of the Code or on review. Section 96 of the code is couched in the following words:

*"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Court either of its own motion or on the application of any of the parties".*

Although the defect in the judgment at issue is curable, under the law it has remained that this Appeal was brought against the undated judgment. Here I am minded of the decision in the case of **Patrick Boniface v. R:** Criminal Appeal No. 2 of 2017, CAT (unreported) where the Court discussed on the similar provision to Order XX Rule 3 of the Civil Procedure Code and held that: -

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*"... 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".*

Flowing from the above, it is clear that before this Court there is no judgment against which an appeal could be brought. In event this Appeal is struck out. No order as to costs is made as the issue resulted into this end of the matter was raised *suo motto* by the Court.

**DATED at MUSOMA** this 29<sup>th</sup> day of **JULY, 2021**



  
E. J. Mkasimongwa

**JUDGE**

**29/7/2021**