**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**CIVIL APPEAL NO. 42 OF 2020**

*(Originated from Civil Case No. 26 of 2017 of the Resident Magistrate's Court of Mwanza at Mwanza)*

**LETSHEGO BANK (T) LIMITED.....1st APPELLANT**

**MASHOKA AUCTIO MART (T) LTD ..... 2nd APPELANT**

**VERSUS**

**JAMES SIMON KITAJO.....RESPONDENT**

## JUDGMENT

*Date of last Order: 22.07.2021*

*Date of Judgment: 23.08.2021*

**M. MNYUKWA, J**

The appellant appealed against the Judgment of the Resident Magistrate's Court of Mwanza in Civil Case No. 26 of 2017, which was decided in favour of the respondent. The background to this appeal is briefly that, on 23rd August 2016, the respondent obtained a loan worth Tshs. 30, 175,894.85 from the first appellant. The respondent paid the monthly payment as per their payment schedule. Sometimes on 09/01/2017 the first appellant issued the first Defaulter's Notice, the second Defaulter's Notice was issued on 16/01/2017 and the third

Defaulter's Notice was issued on 23/1/2017. The respondent paid the defaulted amount on 23/01/2017 after being served with those Notices. The appellant continued to default the payment of monthly instalment as per their loan agreement. This resulted the first appellant to employ the services of the second appellant to attach the properties pleaded as security for the loan. The respondent was aggrieved with the process and filed a Civil Case No. 26 of 2017 on 18/5/2017 at a Resident Magistrate's Court of Mwanza. While the Civil Case No 26 of 2017 was still pending, the respondent filed a Misc. Civil Application in the same Court objecting the sale of the mortgaged properties secured as collateral for the loan and he successfully managed to get a stop order that was received by the first appellant on 25/05/2017. It was alleged that on 26/05/2017 the first appellant sold the brick moulding machine which was one among the security furnished by the respondent for the loan. Upon the full hearing of the Civil Case No 26 of 2017, the court decided in favour of the respondent and declared among other things that the sale of the brick moulding machine was illegal. The first appellant aggrieved by that decision and filed the instant appeal to this court on the following grounds.

1. *That the trial court grossly erred in law and fact to hold that the respondent proved his case on the balance of probability while he did not.*

2. *That the trial court grossly erred in law and fact in assessing and awarding general damages of Tsh 25,000,000/= to the 1st respondent which was underserved and punitive to the appellant.*
3. *That the trial court grossly erred in law and in fact to raise and determine issues without according parties with an opportunity to address on the same.*
4. *That the trial court erred in law and in fact to order the first respondent to continue with the loan repayment while it had no jurisdiction whatsoever to make such order.*
5. *That the trial court grossly erred in law and in fact to hold that the appellant did not adhere with the procedure in attachment and sale of the brick moulding machine.*
6. *That the trial court grossly erred in law and fact to entertain the suit whose subject matter value was not disclosed to confer it with the jurisdiction to try it.*

In prosecuting this appeal, the learned counsel Innocent Michael represented the Appellant and the Respondent afforded the services of Mr. Mwita Emanuel learned Advocate. Pursuant to the court order of this court on 12.07.2021, the appeal was heard by way of written submissions. I thank both parties to comply with the order of the Court. The appellant's submission in chief was filed on 14.07.2021, the respondent reply was filed on 16.07.2021 and the rejoinder was duly filed on 19.07.2021.

Before hearing the appeal, the appellant was granted his prayer to amend parties of the case so as the second respondent to be identified as

second appellant. Going through the appellant's submission in chief, the learned counsel opted to drop the third ground of appeal. Therefore, he argued on the remained five grounds of appeal.

Submitting on the first ground of appeal, that the trial court grossly erred in law and fact to hold that the respondent proved his case on the balance of probability while he did not, the counsel referring to the issues developed by the trial court. He argued that, the act of the appellant to sale the bricks moulding machine was justifiable as he was exercising the contractual terms under paragraph 5.5.3 of the loan agreement. He insisted that the appellant has the right of taking possession of the items pleaded as security, and to sell it in order to recover the unpaid debt.

Referring to paragraph 5 of page 3 of the trial court typed judgment, he avers that the trial magistrate accepted that the appellant has a right to attach the properties however disputed the manner that the appellant exercised her rights to recover the unpaid debts. He insisted that the appellant was right following the loan agreement entered between the parties and the procedures were fully complied with. Maintaining his position, he refer this Court to the case of **Miller vs Minister of Pension [1937] 2 ALL E.R 372** That the court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden

until he arrives at such a conclusion, he cannot proceed on the basis of weakness of the other party. He, therefore, prays this ground of appeal to be allowed.

On the second ground of appeal, he claimed that the trial court grossly erred in law and fact in assessing and awarding general damages of Tsh 25,000,000/= to the respondent which was underserved and punitive to the appellant. He avers that the trial magistrate awarded that amount without applying any principle of law. He insisted that, the award was not proper since the appellant was exercising her contractual rights to recover the outstanding debt. He referrers this Court to the cases of **Tanzania Sanyi Corporation vs African Marble Company Ltd** (2004) TLR 155 and, **Mobisol UK Ltd vs Venge Ngika Masala,** Civil Appeal No. 59 of 2020 (unreported). He insisted that, the respondent was not entitled to any relief for he was the one that breached the terms of the agreement and the appellant was exercising her contractual rights to recover the loan.

On the fourth ground of appeal, he submitted that the trial court erred in law and in fact to order the respondent to continue with the loan repayment while it had no jurisdiction whatsoever to make such order. He avers that the trial magistrate erred to order the respondent to pay the

loan where he ended while he has no jurisdiction because he was not in the position to alter terms of the contract. Insisting his point, he cited the case of **First National bank (T) Limited vs Miles Solution Co. Ltd and 2 others,** Commercial Case No. 108 of 2017 (unreported) and the case of **Abualy Alibhai Aziz vs Bhatia Brothers** (2000) TLR 288.

On the fifth ground of appeal, the appellant claims that, the trial court erred in law and in fact to hold that the appellant did not adhere to the procedure in attachment and sale of the brick moulding machine. He avers that the parties were bound by the loan agreement and the commitment was expressed under the loan agreement under part 5;5;3 that upon the default by the borrower, the bank will have the right to take possession, to attach and sell the properties pleaded as security. He insisted that the appellant duly exercised his rights and was justified under the loan agreement. Disputing what was decided by the trial court that the appellant failed to issue 14 days' notice and filing to the court the report of the public auction, he claims that the requirement by the trial magistrate has no legal basis and what bound parties were the loan agreement. He insisted by referred to the case of **Alibhai Aziz** (supra) that parties are bound by their agreements.

He went on to submit that, whether the respondent was served with the notice of default is irrelevant. He cemented his position by citing the case of **First National Bank of Tanzania vs Wasward Wilson Mapande,** Commercial case No. 75 of 2014, and the case of **Thomas Chubwa Kapera vs Nkaya Company Ltd and Another** Civil Case No. 01/2019 (All unreported).

He went on to submit that the trial magistrate erred in holding that the appellant disobeyed the court order issued on 25.05.2017 as there was no court order issued specifically for the brick molding machine.

On the sixth ground of appeal, he claims that the trial court erred in law and in fact to entertain the suit whose subject matter value was not disclosed to confer jurisdiction to try it. He avers that the respondent initiated the case by way of a plaint which did not disclose the value of the subject matter as required for under Order VII Rule 1(e)(f) and (i) of the Civil Procedure Code, Cap 33 [R.E 2019]. He went on that this failure rendered the plaint defective and make the court incompetent to try the matter for the want of jurisdiction. Referring to Exhibit D1 he claims that the subject matter was valued at 17,500,000/= which is relatively low compared to the jurisdiction of the resident magistrate court.

Responding to the appellant submissions in chief on the first ground of appeal, Mwita Emanuel, the learned counsel for the respondent averred that the brick molding machine was not among the list of properties pleaded as security to the loan secured and the act of the appellant entering into the respondent's premises and attach the brick molding machine was illegal. He went on that, there was no public auction or notice that was issued. He insisted that, the court issued an order and received by the first appellant on 25 05.2017 restricting the appellant from selling the machine but the appellant ignored the notice and went on selling the same. He insisted that, the appellant had a legal right to recover the loan but the same rights were to be exercised following the due legal procedures. He, therefore, prays this court to find that the issues framed by the trial court were properly framed and reasoned.

On the second ground of appeal, he responded that the court was right given the mischief undertaken by the appellant. He insisted that the law is settled that the award of general damages and its quantum is the courts' discretion. He, therefore, avers that the trial court rightly awarded the general damage to the respondent.

Regarding the fourth ground of appeal, he avers that the court duly interpreted the agreement on performing its primary duty and did not vary any term of the agreement.

Responding to the fifth ground of appeal, he avers that the appellant wrongly and unprocedural attached the bricks molding machine without issuing notice. He went on to state that, the appellant went on selling the same despite the court order restraining her from doing the same. He insisted that the sale, and its subsequent documents were forged and contravening the lawful court order.

Responding to the last ground of appeal, while agreeing with the importance of jurisdiction and the importance of cited Order VII Rule 1 of the Civil Procedure Code Cap 33 [RE:2019], he insisted that the plaint indicates that the trial court has jurisdiction to try the matter. He submitted that, the plaint indicates the value of the disputed properties and the destruction caused were within the jurisdiction of the trial court. He insisted that the trial court was well vested with jurisdiction to try the matter.

He finally prays this court to uphold the decision of the trial court and dismiss the appeal with cost.

Rejoining, the appellant learned counsel reiterates his submission in chief. On the first ground of appeal, he added that, the records are clear that the brick molding machine was pleaded as security as reflected in paragraphs 4 and 5 of the Plaint and WSD and he maintains that the trial court did not apply logic and reasoning in answering the framed issues.

On the second ground, he maintained that the appellant was right as she was exercising her contractual obligation for loan recovery as stipulated in the loan agreement.

On the fourth ground of appeal, he maintains that the trial court varied the terms of the agreement by ordering the respondent to proceed to repay the loan while the agreement stipulated what was to be done in case of default.

On the fifth ground of appeal, he maintains that the appellant complied with the procedure for the loan recovery and no court order was issued regarding the brick molding machine rather than the mortgaged property.

Finally, on the last ground of appeal, he maintained that the trial court was not vested with jurisdiction to try the matter for failure to

comply with the mandatory legal requirement of Order VII Rule 1(e) of the CPC Cap. 33 [RE:2019]

After the rival submissions by the learned counsels of both parties which I admit that were well presented and therefore informative, I now stand the position of determining the matter before me as to whether the matter before the trial court was well presented and proved in the balance of the probability against the appellants and in favor of the respondent.

In answering this appeal, this court being the first appellate court, can step into the shoes of the trial court and evaluate the evidence as it deems fit and come up with its findings for the interest of justice. (See the case of **Jumanne Salum Pazi** v R [1981] TLR 246

In respect to the first ground of appeal, it is crystalized into one question as to whether the respondent proved his case on the balance of probabilities. The contention of the appellant is that the case was not proved and the appellant was exercising her right to recover the loan from the respondent and procedures were duly followed. Cementing on his argument, he cited the case of **Miller** *(Supra)*. The respondent maintains that the trial court was right to decide on his favor. Unlike the appellant, the respondent contended that the case at a trial court was proved and

the appellant though has a right to recover her loan, did exercised her rights unprocedural.

In tackling this issue, it is trite that section 110,111 and 115 of the Law of Evidence Act, Cap. 6 [RE:2019] provides that, in respect to the civil cases, the standard of proof is on the balance of probabilities. I agree with the cited case by the appellant, the case of **Miller** *(supra)* which was quoted with authority in the case of **Paulina Samson Ndawaya v. Theresia Thomas Madaha** Civil Appeal No. 45 of 2017 (Unreported). It was provided that: -

> *"if at the end of the case the evidence turns the scale definitely one way or another, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to determinate conclusion in one way or another, then the man must be given the benefit of doubt. This means that the case must be decided in favor of the man unless the evidence against him reaches of the same degree of cogency as a required to discharge a burden in civil case. That degree is well settled. It must carry reasonable degree of probability, but not so high required in criminal case. If the evidence is such that tribunal can say- we think it is more probable than that, the burden is discharged, but, if the probabilities are equal, it is not...."*

Coming to this instant appeal, it is crystal clear and with no dispute that the respondent on 23.08.2016 secured a loan of Tshs. 20,000,000/=

from the first appellant vide a loan agreement tendered as exhibit D1 and pleaded as security among others, a brick molding machine admitted as exhibit D3 whereby its sale is one of the substance to this appeal. It is undisputed that the loan agreement requires payment to be done on a monthly basis for the period of 18 months. The respondent managed to pay some and defaulted to make payment as per payment schedule resulted the unpaid principal loan with interest at a balance of Tsh 18, 771,839/=.

Following several reminders through Defaulter's Notice, the first appellant employed the services of the second appellant as her agent to attach and sell the properties pleaded as security for loan. The first appellant claims that, the appellant and her agent followed a proper procedure in realizing the right to recover the loan, that fact was disputed by the respondent learned counsel who averrers that the procedure were abused for several reasons to include, attachment of brick molding machine which was not pleaded as security, lack of notice for public auction and sell, disobedience of the court order and presenting forged certificates to the court.

On answering this ground, first of all, I agree with the first appellant's learned counsel that the records are clear as against the

submissions by the respondent over the brick molding machine. Revisiting the records, exhibits D3 shows that the brick molding machine was pleaded as security and therefore was liable for attachment and sale as per the term of loan agreement.

It has to be noted that the rationale for submitting security for loan purposes by the customer to a bank is to make sure that the advances made to a customer are repaid, and in case of default. The bank shall have the right to realize the security on the terms and conditions agreed as per the loan agreement.

In our case at hand, the appellant issued the last Defaulter's Notice on 01/03/2017 which was admitted as Exhibit D4 demanding the respondent to make payment of the whole unpaid debt within seven days failure of which the first appellant may take necessary action according to the loan agreement. The respondent claimed that, the first appellant though has a right to recover her loan, she fails to issue notice for auction and sell. He went on that the first appellant sold the brick molding machine unprocedural.

Going to the records, the first appellant contended that the manner in which the attachment and sell of the mortgaged properly particularly the

brick molding machine complied with the requirement of the loan agreement as against the claim of the respondent.

Before determining this issue, I had time to go through the loan agreement (Exhibit D1). Clause 5 of the said agreement which provides that;

> *"5.1 Kwamba fedha zilizochukuliwa kama mkopo kulingana na uamuzi wa Mkopeshaji zitadaiwa na kulipwa mara moja endapo mambo yafuatayo yatatokea ("Tukio la Kutotekeleza Maagano")*
> *5.1.1 Kushindwa kwa mkopaji kulipa awamu yoyote ya malipo ya deni kwa awamu iliyopangwa*
> *5.1.2 .....N/A*
> *5.2 Kwamba bila ya kuathiri haki nyingine zozote zilizokubaliwa kisheria na Mkopeshaji Mkopaji anakubali kulipa*
> *5.2.1 Ada ya adhabu ya asilimia 0,5 (0,5%) kwa siku kwenye awamu ya ulipaji (mtaji na riba) anayodaiwa kutoka siku ya kwanza ya kushindwa kutekeleza hadi tarehe ambayo awamu ya ulipaji deni itakapolipwa.*
> *5.2.2 .....N/A*
> *5.3 Kwamba baada ya kushindwa kutekeleza taratibu za mkopo kulikofanywa na Mkopaji,* ***Mkopeshaji atakuwa huru kwa mujibu wa sheria pasipo kutumia msaada wa mahakama ya kisheria kuchukua umiliki na mali iliyowekwa dhamana iliyooridheshwa kwenye Kiambatanisho 2*** *kwa ajili ya kuuza. Endapo Mkopeshaji ataamua kuuza mali, mkopeshaji atamlipa mkopaji salio lolote litakalotokana na*

*mapato ya uuzaji wa mali hiyo baada ya kutoa salio lililosalia la mkopo." (Emphasis is mine in the bolded words)*

Upon carefully going through the said clause in loan agreement, I find the first appellant had the right to sale the properties pledged as a security for recovery of the unpaid debts without any recourse to the court but in accordance with the law. In executing the loan agreement after default, the available record shows that, the agent of the first appellant that is the second appellant, Mashoka Auction Mart on 18/05/2017 issued exhibit P6 which was also tendered as exhibit LTB 6, that is a letter titled **"YAH: UKAMATAJI WA DHAMANA,"** Perhaps this is one among the procedure which the appellant alleged to have followed it. Among other things, the said letter listed the properties that were attached and part of its contents reads as follows: if the borrower failed to pay the whole debt after the expiration of seven days, the second appellant on behalf of the first appellant will have the right to sell the attached properties.

During that time the respondent filed Civil Cause No 26 of 2017 prays before the Resident Magistrate Court to restrain the appellant from selling away the mortgaged properties including the bricks moulding machine. That evidence is reflected at page 45 of the trial court's proceedings.

On records, the first appellant's sole witness, Mr. David Mapalala who was under oath during examination in chief as reflected on page 53 of the trial court's proceedings admitted that they have followed the procedure on sale of the bricks molding machine He also claims that they have received the court order on 25/05/2017 ordered them to stop the sale of the mortgaged properties though they have received the same when the sale was completed. When he was cross examined as it is reflected on page 54 of the trial's court proceedings, the same witness averred that they have received the stop order on 25/05/2017 and the purported sale was done on 26/05/2017. His evidence in cross examination joins hand with a certificate of sale which shows that the auction was conducted on 26.05.2017 and the sale was completed where the brick molding machine was sold at a price of 4,000,000/=.

Out of curiosity, I keep asking if at all the appellant followed the procedure as he claimed, does the procedure includes the notice issued by the second appellant? if so, why the first appellant contravened with that notice dated 18/05/2017 issued on his behalf by the second appellant? The notice shows that the sale of the mortgaged properties would be done after the expiration of seven days, that means the purported sale was expected to take place on 26/05/2017 as it is shown

on certificate of sale. In other words, the evidence of DW1 in examination in chief that the purported sale was conducted on 25/05/2017 cannot be relied on.

Since it is undisputed that the first appellant received the stop order from the court refraining the appellant from selling the mortgaged properties, as it is manifested on testimony of the first appellant's witness that the said notice was received on 25/0/.2017, it is clear that the appellant did contempt the order of the court.

It is a trite law that the order of any court should be respected. This is because a court is the entrusted machinery in this country which deals with the dispensation of justice. Once the court issued an order, that order should be obeyed without any excuse.

In addition to that, even though in his written submission the appellant contended that the stop order was vague because it ordered to stop sale of the mortgaged properties and not the brick moulding machine which is not mortgaged properties as per section 3 of the Land Act, Cap 113 [R.E 2019]. I find this argument is an afterthought because his sole witness who was under oath during examination in chief and cross examination admitted that they received a stop order directing them not sell the properties. The trial court's records are silent if the said order was vague

and therefore the appellant failed to grasp the purpose in which the order is going to serve.

Taking the purposive approach of statutory interpretation which seeks to look for the purposes intended on a particular situation before interpreting. I am convinced to hold that this court is required to apply the purposive approach to the loan agreement to give an interpretation in line with the purpose of the maker. Looking at the loan agreement it is clear that the parties are in *consensus ad idem* that the securities pledged are the properties that were mortgaged to secure loan in which the bricks moulding machine was one of them.

For the foregoing discussion, it is without doubt that the purported sale was tainted with fraud. I hereby find the first ground of appeal has no merit and therefore fails.

The second ground of appeal is on the trial court assessing and awarding of general damages on which to the appellant's learned advocate claimed that the damages awarded at the tune of Tshs.25,000,000/= to the respondent were underserved and punitive to the appellant. He justified his assertion citing the case of **Tanzania Sayi Corporation vs African Marble Company Ltd** (2004) TLR and the case of **Mobisol UK Limited vs Venge Masala Ngika** Civil Appeal No.

59 of 2020. The respondent learned counsel did not join hand with the assertion holding that the trial court was right as it is settled that the award of general damages and its quantum are court discretion.

Going to what is alleged for and against by the learned counsels, I have to revisit the **Black's law dictionary** (9th Edition) which defines general damages as:

> *"Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed or proved to have been sustained"*

In this ground, I agree with the respondent that the award of the general damages is purely discretional of the trial court when the case has been proved against the plaintiff. This has been a conditional precedent as per referred cases of **Tanzania Sayi Corporation** (supra) and **Mobisol UK Limited** (supra).

However, In the instant appeal the main controversy which resulted to the sale of the bricks molding machine occurred when the respondent defaulted payment of monthly instalment as per loan agreement. The trial court in its judgement ruled out that the respondent defaulted to pay the debts as per the payment schedule. The trial court's proceedings also through the evidence of the first appellant as well as the respondent show

that the respondent defaulted more than one time and he was issued with more than one notice reminded him to pay yet he is awarded general damages.

It is my considered view that being a defaulter, the respondent is not entitled to be awarded general damages. It is my opinion that, where a customer defaults under the term and conditions of the loan agreement, the bank is given various remedies including the right to sale. Even if the purported sale was not legally exercised, that cannot be a justification to award general damages to the respondent who is duty bound to honour the loan agreement. In this aspect, I think the bank should be protected to avoid the proportional rate of losing money through defaulters.

Thus, even if the sale was tainted with illegality, that cannot be a valid reason to award respondent general damages since we are appreciating the fact that the respondent was a defaulter and the appellant had a right to sale the mortgaged properties.

In this aspect, I also find that; the trial magistrate did not state reasons to justify his decision on awarding the general damages at the tune of Tshs.25,000,000/= which is found by the first appellant learned counsel to be a punitive to the first appellant. It was neither on the respondent evidence nor his witnesses at a trial court that avers the

extent of damage he suffered as a result of the act of sale done by the appellant. What is spotted on the last paragraph of page 6 of the trial court judgment, the magistrate stated that the quantum so awarded was as a result of damage arisen out of illegal taking and sale of the brick molding machine. It is my opinion that, that alone cannot justify the amount awarded as he ought to go further describing at what were the actually damage suffered by the respondent to qualify the quantum awarded. This was also emphasized in the case of **Anthony Ngoo & Another vs Kitinda Kimaro**, CAT- Civil Appeal no. 25 of 2014 (unreported), where it was held that: -

> *"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of general damages. However, the judge must assign a reason...."*

It is my considered view that the defaulters can not benefit from his own wrong. It was wrong for the trial court to award general damages to the respondent. I therefore find this ground has merit and consequently I allow it.

On the fourth ground of appeal, the appellant claims that the trial court erred in law and in fact to order the respondent to continue with

the loan repayment while it had no jurisdiction whatsoever to make such order. In this ground I agree with the appellant that parties are bound by their agreement, So long as there is loan agreement which was entered by the parties freely without any fraud, undue influence, coercion or whatsoever, that agreement should be enforceable. It was wrong for the trial court to impose his interpretation while the parties did not plead in their pleadings. Also, parties' agreement should be respected. It is my findings that, the terms of the loan agreement will resolve this issue. On that basis, this ground of appeal is allowed too.

On the fifth ground of appeal, the appellant claim that, the trial court erred in law and in fact to hold that the appellant did not adhere to the procedure in attachment and sale of the vibrant brick moulding machine. In this ground I reiterated my position as it was discussed and decided on the first ground of appeal.

On the sixth ground of appeal, the appellant claims that the trial court erred in law and fact to entertain the suit whose subject matter value was not disclosed to confer jurisdiction to try it. The issue of jurisdiction is a vital for it is what gives a court power to determine the matter. In the case of **Fanuel Mantiri Ng'unda v. Herman M**

**Ngunda**, Civil Appeal No. 8 of 1995, CAT (unreported), the court held that:

> *"The jurisdiction of any court is basic; it goes to the very root of the lauthority of the court to adjudicate upon cases of different nature.... the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case."*

Again, in the case of **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR70, the court held that:

> *"The issue of jurisdiction of the Court can be raised at any stage even before an appellate court. It is the substantive claim and not general damages which determine the pecuniary jurisdiction of the court."*

In our appeal at hand the appellant learned counsel argument was in reference to Order VII Rule 1(e) and (f) of the Civil Procedure Code Cap. 33 [RE:2002] claiming that the respondent filed an application before the trial court in contravention with the legal requirement as he did not disclose the value of the subject matter. The claims were denied by the

respondent learned counsel. Revisiting the law claimed to have been contravened as I find necessary to quote for easy referencing, the law reads:

Order VII Rule 1(e) and (f)

1. *The plaint shall contain the following particulars*

*(e) the facts constituting the cause of action and when it arose;*

*(f) the facts showing that the court has jurisdiction;*

*(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.*

Going to the trial court records, specifically on the plaint that initiate the whole proceedings. The value of the subject matter pleaded is Tsh 70.000.000/=, I see no match on the appellant's learned counsel claims for what have been violated by the respondent for the trial court to lack jurisdiction to entertain the matter. Again paragraph 03, 09 and 10 of the plaint verify that the trial court had jurisdiction. Therefore, this ground has no merit and thereby fails.

In the upshot, I have partly found merit on the appellant's appeal. I do hereby accordingly enter judgement and decree as here under:

1. *The respondent is accordingly declared the lawful owner of the bricks moulding machine pledged as a security of loan to the appellant.*

2. *The sale of the bricks moulding machine by the second appellant on behalf of the first appellant is declared null and void*
3. *The first appellant is ordered to receive the remaining part of loan from the respondent with interest as per loan agreement dated 23/08/2016 and thereafter to surrender the securities pledged as collateral on loan agreement.*
4. *The first appellant to return Tsh 4, 000,000/- with interest at court rate to the buyer of the bricks moulding machine, the sum it received from the buyer following the purported sale of the bricks moulding machine.*
5. *The general damages of Tsh 25,000,000/- is hereby set aside. The respondent is not entitled to be awarded general damages.*

Since appeal is partly allowed, I make no order as to costs. It is so ordered.

Right of appeal to parties is fully explained.

**M. MNYUKWA**
**JUDGE**
**23/08/2021**

Judgment delivered on 23/08/2021 via Audio Teleconference whereby all parties were remotely present.

**M. MNYUKWA**
**JUDGE**
**23/08/2021**