IN THE HIGH COURT OF THE UNITED REPUBLI OF TANZANIA

(MOSHI DISTRICT REGISTRY)

AT MOSHI

PC. CIVIL APPEAL NO. 15 OF 2021

(c/f Civil Revision No. 10/2020 in the District Court of Moshi, Original Civil Case No. 101 of 2020 at Moshi Urban Primary Court)

ALLY YUSUPH KAMAL.....APPELLANT

VERSUS

HASSAN BILLALI PANGA.....RESPONDENT

JUDGMENT

01/07/2021 & 23/09/2021

MWENEMPAZI, J:

In this appeal the Appellant Ally Yusuph Kamal is appealing against the decision of the District Court in Civil Revision No. 10 of 2020 which was delivered by Honourable Maziku – PRM on 26/11/2020. In its decision the District Court declared the proceedings and the two separate judgments written in Civil Case No. 101/2020 in the Primary Court of Moshi Urban null

and void and proceeded to quash the two judgements dated 24/9/2020 and 09/10/2020. The District Court then ordered a retrial before another competent magistrate. Aggrieved by the decision the Appellant appealed to this court based on two grounds;

1. That the District Court Magistrate erred both in fact and in law by quashing the decisions of the trial primary court without conferring the parties their right to be heard.

2. That the District Court Magistrate erred both in fact and law by quashing both decisions of the trial primary court, that is the first judgement delivered on the 24/9/2020 and the later delivered on the 9/10/2010 and its proceedings and order trial denovo without considering the fact that the judgment dated 24/9/2020 and its proceedings were proper and correct in law.

Before discussing the issues before me, I find it necessary to look into the background leading to this appeal. The dispute originated in the Primary Court of Moshi Urban where the Appellant had sued the Respondent for the recovery of Tshs. 3,000,000/= being an amount paid by the appellant to Tanzania Revenue Authority (TRA) as fine for failure to issue receipts after

sale. In the suit the Appellant claimed to be refunded by the Respondent the amount he paid to TRA as fine contending that being the shopkeeper his negligence is what caused the Appellant to incur the cost he paid as penalty to TRA.

After hearing of the matter, the trial court on 24/9/2020 gave a judgment in favour of the appellant. The records show that on 25/9/2020 both the Appellant and the Respondent appeared before the trial court. This time around the Appellant informed the court that a new issue had arisen where the Respondent was claiming ownership of the items that were inside the shop. The appellant prayed for the court to give them a letter to be addressed to their religious leader where they rented the shop directing him to determine the dispute. The Respondent did not object to the prayer; in fact, he agreed that their religious leader would be in the best position to determine the dispute. Thus, the honourable magistrate agreed to the prayer and granted parties with the requested letter. On 09/10/2020 parties appeared before the court and a letter was read to them which came from their religious leader stating therein that the Respondent was the owner of the items that were in the shop. After that the Appellant prayed for the court to amend the date in its judgement so as to incorporate the element of

ownership of the things in the shop as stated in the letter from their religious leader. The trial magistrate agreed to the prayer and ordered the parties to return copies of judgment which were supplied to them earlier, which they did on 18/10/2020 and then they were issued with new copy of judgment dated 09/10/2020.

Upon a routine inspection conducted by the honourable Resident Magistrate in charge, she came across the file and decided to do a revision where she declared the proceedings and the two separate judgments null and void. The case was then ordered to be tried afresh before another magistrate. Now before this court is an appeal against the revisionary order.

Before hearing of the appeal, the appellant appeared and informed the court that he was unable to find the respondent. Upon the appellant's prayer, this court ordered for service to be made through publication in a local newspaper. Thereafter, the respondent did not appear so the appellant prayed to file a written submission in support of his appeal. This court granted the prayer and ordered the appellant to file his written submission on 22/6/2021, an order which was complied with.

In his brief submission the appellant began by giving a brief background of the matter and explained that what caused the two judgments was that after a full trial a judgment was delivered on 24/9/2020 in his favour. Nevertheless, the respondent went back to the same court claiming for orders as to the ownership of the properties inside the disputed shop. He further submitted that since there were no such orders in the already delivered judgment, the trial magistrate decided to write another judgment dated 09/10/2020 so as to include an order as to the ownership of the properties inside the shop.

The applicant submitted further that the district court reached its decision without hearing the parties as a result the decision was unjust. He argued that the law under section 22(2) of the Magistrates Courts Act requires the trial magistrate when exercising the revisional jurisdiction to call parties to the case and give them a right to be heard before reaching its final conclusion.

Moreover, the appellant submitted that there was no procedural irregularity in the trial court proceedings which could nullify the whole proceeding. He argued that the only procedural irregularity was the proceedings following

the judgment of 23/9/2020. It was the appellant's view that the decision to quash all the proceedings and judgments was improper in law. He submitted that the district court ought to have quashed the judgment of 09/10/2020 and the proceedings following the judgment of 24/09/2020 as it was improper in law. For that reason, the appellant prayed for this court to quash the decision of the district court.

As indicated herein the applicant has moved this court to quash the decision of the district court for the reason that the same was unjust as it was arrived at without parties being given the right to be heard. So, the issue for determination is whether the appeal has merit.

In determining this issue, I will examine the proceedings and the revision order of the district court in order to find out if there was violation of law as suggested by the appellant which has occasioned miscarriage of justice to parties.

The record shows that the revision done was preferred by the district court *suo moto* in accordance with the provision of section 22 of the **Magistrates Courts Act [Cap 11 R.E. 2019]**. The appellant argues that the honourable magistrate erred by deciding without hearing the parties. He contended that

the decision/revision order was unlawful as it was contrary to the provision of **section 22(2) of the Magistrates Courts Act [Cap 11 R.E. 2019]**. Subsection two of this section provides:

> ***22.****(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction including the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of paragraph (b) of subsection (1) of section 21 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.*

The appellant's ground of appeal was based on the issue that the parties were not given a right to be heard before the revision order was given. Relying on the above quoted provision of the law the appellant argued that it was unjust for the district court to arrive at a decision without hearing the parties on the mater.

Looking at the provision of section 22(2) cited above, I do not find such requirement mandating the magistrate conducting revision to hear the parties. On the contrary, the law provides for this requirement of hearing the parties only in the circumstances where the district court order increases any sum awarded or alters the rights of any party to his detriment. This is provided for under section 22(3) which reads;

> *(3) In addition to the provisions of subsection (2) of this section, no order shall be made in the exercise of the court's revisional jurisdiction in any proceeding of a civil nature* ***increasing any sum awarded****, or* ***altering the rights of any party to his detriment*** *(other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary to make it conform thereto) unless such party has been given an opportunity of being heard.(emphasis is mine)*

Based on the above provision the first ground of appeal does not stand. The district magistrate in her revision order did not alter rights of any party to his detriment because she only ordered for the matter to be heard afresh.

This order does not in any way prejudice any of the parties to the case that is why there was no need of hearing parties before making such order.

Moving on to the second ground of appeal, the appellant argued that the District Magistrate erred by quashing both decisions of the primary court just because the judgment dated 24/09/2020 and its proceedings were proper. First of all, it is a known legal principle that once a decision is pronounced the judge or magistrate for that matter becomes *functus officio* that means he is precluded from reopening it for any purpose whatsoever except for purposes of correcting clerical errors or accidental slips or omissions which do not go to the root of the matter as to change the decision already passed. Now the question is when does the court become *functus officio.* This was well elaborated by the Court of Appeal for Eastern Africa in the case of **KAMUNDI V R (1973) EA 540**. In this case the court of appeal when answering this query observed as follows;

> *A further question arises, when does a magistrate's court become functus officio and we agree with the reasoning in the Manchester City Recorder case that this case only be when the court disposes of a case by a verdict of not guilty or by-passing*

sentence ***or making some orders finally disposing of the case*** *(emphasis added).*

Similarly, the court of Appeal of Tanzania clarified the position in the case of **Malik Hassan Suleiman vs. S.M.Z. [2005] T.L.R. 236**. It was held that:

> *"A court becomes functus officio when it disposes off a case by a verdict of guilt or by passing a sentence or making orders finally disposing of the case, the learned judge became functus officio when he passed the judgment on 19th February 1998 and he was not clothed with the necessary jurisdiction to review his own decision subsequently"*

Coming back to the present case, the position of the law is very clear as discussed in the two cited cases above. The trial magistrate became *functus officio* the moment he delivered his judgment on 24/09/2020. Therefore, it was absolutely unlawful for him to reopen the matter and come up with another judgment as he did. That in my view tainted the whole proceedings in the case the magistrate purported to invalidate the earlier Judgment. For that reason, the district magistrate was right to quash all the proceedings and the two judgments so as to set the record proper.

I completely agree with the revision order given by the honourable resident magistrate as it was given in accordance with the law. Consequently, I find the appeal lacking in merit and proceed to uphold the district courts' decision in the revision order given on 26/11/2020.

The appeal is hereby dismissed in its entirety.

DATED and DELIVERED at Moshi this 23rd day of September, 2021.

T.M. MWENEMPAZI

JUDGE

Judgement delivered in court in the presence of the appellant this 23rd day of September, 2021

T.M. MWENEMPAZI

JUDGE