

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

HC CIVIL APPEAL NO. 28 NO. 2021

*(Originating from the Decision of the District Court of Ilemela at Mwanza in
Civil Case No. 1 of 2019)*

ACCESS BANK TANZANIA LIMITED APPELLANT

VERSUS

NYACHERI JOSEPH MWANGWA RESPONDENT

RULING

12/08/2021 & 10/09/2021

W. R. MASHAURI, J;

This appeal was filed by the Appellant Access Bank Tanzania Limited against the decision of the District court of Ilemela at Mwanza in Civil Case No. 1 of 2020.

When the matter was called in court on 17/8/2021. Mr. Patrick Suluba learned counsel appeared for the appellant and Mr. Bahati Kessy learned counsel appeared for the respondent. At the time was called upon by this court to address it in support of the appeal, Mr. Bahati Kessy counsel for the

appellant, for the purpose of saving the time of the court as he said, he conceded to the 2nd ground of appeal that, the trial magistrate had no jurisdiction to award the respondent the sum of Shs. 5,000,000/= being general damages without assigning reasons for reaching such an award. He therefore prayed the court to withdraw the appeal without costs. Mr. Patrick Suluba counsel for the respondent had no objection to the prayer for withdrawing the appeal but he contested on the prayer to withdraw the appeal without costs. He said should be awarded with costs. He did not however assign any reason in support of the award of costs.


Since the learned counsel for the appellant did not give reasons to support his prayer to withdraw the appeal without costs equally to the respondent who wants to be awarded costs this court cannot suo motto give costs and/or deny costs to the parties without hearing their respective reasons in support of their respective need. The prayers for awarding costs or not are hereby both dismissed, and the prayer to withdraw the appeal is allowed. Each party to shoulder own costs.

And since the appellant is conceding to the PO raises by respondent that the trial court had no jurisdiction to award the respondent damages to

the tune of Tshs. 5,000,000/= the proceedings of the trial court on this regard are hereby declared a nullity.

Consequently, this appeal which is emanating from a nuly and void proceedings is also dismissed. No order as to costs is made.




W. R. MASHAURI
JUDGE
10/09/2021

Date: 10/09/2021

Coram: Hon. W. R. Mashauri, J

Appellant: Mr. Patrick Suluba Advocate


Respondent: Mr. Bahati Kessy Advocate

B/c: Elizabeth

Court: Ruling delivered in court in presence of Mr. Patrick Suluba Advocate for the appellant and Mr. Bahati Kessy Advocate this 10/9/2021.

Right of appeal explained.




W. R. MASHAURI
JUDGE
10/09/2021