IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)
AT DODOMA

DC CIVIL APPEAL NO. 24 OF 2019

(Original Civil Case No. 7 of 2017 in the Resident Magistrate Court of Dodoma at Dodoma)

MATUMAINI SACCOSS LTD..... APPELLANT

VERSUS

STANLEY EZELI ..... RESPONDENT

JUDGEMENT

16/09/2021 & 16/11/2021

KAGOMBA, J

A protracted repayment of tractor loan by STANLEY EZELI (the "respondent") to his savings and credit society trading by the name of Matumaini SACCOS Ltd (the "appellant") landed before the Resident Magistrate Court of Dodoma at Dodoma (the "trial Court") and was decided in favour of the respondent.

The respondent had filed a suit at the trial Court claiming that he has overpaid the appellant the required installment payable under the tractor loan agreement entered between the parties. He prayed for judgement and decree for the orders for payment of Tshs. 10,000,000/= being refund of a bond; Tshs 4,827,000/= being amount paid in excess, Tshs. 1,466,000/= being transportation, meals and accommodation costs incurred by the respondent in Dar es Salaam and Dodoma, an order requiring the appellant/defendant to surrender original Motor Vehicle Registration Card

of the Tractor to the respondent and an order for payment of general damages. The trial Court granted the respondent's prayers, a decision which aggrieved the appellant, hence this appeal.

By an amended Memorandum of Appeal filed pursuant to an order of this Court to amend the Memorandum of Appeal, made on 12/5/2020, the appellant has advanced the following seven grounds; -

1. That, the honourable trial Court erred in law and facts in delivering the judgment and decree of the suit when the suit had already overlived its life span in Court as per its assigned speed track without amending or rescheduling the speed track of the suit.
2. That, the honourable trial Court erred in law and fact in deciding the suit relying on new framed issued which were different from the issues framed at commencement of the trial of the suit without the participation of the appellant.
3. That, the honourable trial Court erred in facts in failing to properly evaluate the evidence on record in its judgment.
4. That, the honourable trial Court erred in law and in facts in completely failing to consider the defence case in its judgment.
5. That, the honourable trial Court erred in law and facts in relying on matters which were not proved at the required standard in its Judgement.
6. That, the honourable trial Court erred in law and facts in giving orders which were not supported by any evidence in the case.
7. That, the honourable trial Court erred in law and facts by admitting as evidence the purported Loan Agreement as Exhibit P1 while Stamp Duty was not paid for it as required by the law.

On the date set for hearing of the Appeal, Mr. Paul Nyangarika, learned Advocate appeared for the appellant, while Mr. Christopher Malinga, learned advocate appeared for the respondent.

Mr. Nyangarika preferred to argue the 3rd and 4th ground jointly as well as the 5th and 6th grounds. The 1st, 2nd and 7th grounds were argued separately. Submitting on the first ground of appeal, Mr. Nyangarika argued that the parties had agreed on a speed track II as captured in the trial Court proceedings of 26/10/2017. The same lapsed but the case proceeded up to 10/4/2019 when the Court issued its judgement and decree. He said the decree was extracted on 8/11/2019. He submitted that such continuation of the case beyond the ordered speed track was contrary to the law and its remedy is to expunge the proceedings of all what took place after the expiry of the speed track.

To support the above submission, Mr. Nyangarika referred this Court to its decision in the case of **YARA TANZANIA LTD VS DOMINIC RUBUYE & ANOTHER,** Commercial Case No. 29 of 2016. He submitted that the Court guided, in the cited case, that when a speed track is exceeded, the way out is to expunge all what took place after the life time had expired. He therefore prayed that all what transpired after the expiry of the speed track, which was on 25/10/2018, be expunged accordingly. He argued that if that happens, the record of the matter will have to go back to where the parties ended on the expiry date by returning to the trial Court where the error occurred.

Submitting on the 2nd ground of appeal, which Mr. Nyangarika said it was an alternative to the submission on the first ground, he argued that the Honorable trial Magistrate created new framed issues and proceeded with the case without considering the framed issues which were agreed by the parties. He argued that as it is evident on page 61 of the proceedings, the trial magistrate changed the issues without consulting of the parties. He referred to the case of **PEOPLE'S BANK OF ZANZIBAR V. SULEIMAN HAJI SULEIMAN [2000] TLR 347**, where the High Court of Zanzibar held that it is not right for the Court to frame new issues without involving both parties to the case. He submitted that the decision which was based on Court- framed issues was prejudicial to justice for both parties. He argued that the remedy is to order retrial. Mr. Nyangarika said the trial magistrate did not give the parties their right to be heard, as required by law, during the framing of issues.

Submitting on the 3rd and 4th grounds of appeal jointly, Mr. Nyangarika argued that the trial magistrate misdirected himself for failure to analyze evidence, and for not considering the defence evidence at all. He said such misdirection is found page 61 to 65 of the typed proceedings of the trial Court. To elaborate his point further, the learned advocate submitted that the Honourable trial Magistrate could not even count what was submitted by the parties. That, the trial Magistrate stated that the respondent paid more without showing how he arrived at that decision. Mr. Nyangarika added that the honorable trial Magistrate ordered refund without justifying by analysis how he arrived at that decision, and that the learned Magistrate was biased against the appellant, a reason the appellant prays for retrial.

Submitting on 5th and 6th grounds of appeal, Mr. Nyangarika said that the orders which were issued by the trial Court Magistrate had no basis from the evidence adduced, particularly the order for the appellant to pay the respondent Tshs 10,000,000/= and Tshs 4,827,000/=. He argued further that on page 64 of the typed proceedings of the trial Court, the trial Magistrate refers to travel costs to Dar es Salaam which is not mentioned anywhere in the evidence adduced.

Submitting on the 7th ground of appeal, Mr. Nyangarika argued that Exhibit P1 which was admitted as part of the evidence, being a Loan Agreement, was admitted wrongly because it has no stamp duty. He submitted that the Loan Agreement was the basis of the trial Court judgment. He argued that section 46 of the Stamp Duty Act [Cap 189 R.E 2019] prohibit admission in evidence of such loan agreement if the same is not stamped. He supported his argument with the decision in the case of **JOSEPHAT L. K. LUGAIMUKAMU VS. FATHER KANUTI J. MZIWANDA [1986] TLR 69.** He also referred this Court to the provision of item 6 (1) of the schedule to the Stamp Duty Act regarding the above position of the law.

Mr. Nyangarika wound up his submission in chief by praying the Court to allow the appeal. He submitted that if the Court would allow the appeal based on the first ground of appeal the appellant shall not claim costs, but he prayed for costs if the Court would allow the appeal based on the other grounds of appeal.

Mr. Christopher Malinga, the learned advocate for the respondent objected to all grounds of appeal.

Regarding the 1st ground of appeal, Mr. Malinga submitted that it is true the time set for the speed track was exceeded. However, he invited this this Court to find out if the breach of that legal requirement, to observe agreed speed track, has affected the proceedings of the case and whether it has rendered injustice to the parties and to what extent. He argued that, there is nowhere in the proceedings the non-observance of speed track has actually led to miscarriage of justice. He argued that, for this reason the Court could rectify the error that occurred by applying the principle of overriding objective as the error had not affected the foundations of the case anyhow.

To support his argument, Mr. Malinga referred this Court to the case of **NATIONAL BUREAU OF STATISTICS VS. NBC LTD & ANOTHER**, Civil Appeal No. 113 of 2018 where the Court of Appeal, Dar es Salaam, on page 13 of the typed judgment of the Court, cited the case of **ASHA RAMADHANI LASEKO VS RAMADHANI ALI LASEKO**, Civil Case No. 40 of 1996 where it was stated that the purpose of speed track is;

> *"To improve the quality of civil justice by making it speedier not to provide occasions for depriving justice to the parties without any fault attributable to them".*

Based on the above cited authority, the respondent's advocate prays the Court not to order retrial but to cure the error by applying the overriding objective principle.

Regarding the 2nd ground of appeal, Mr. Malinga conceded to the fact that the issues framed by the trial Court differed from those agreed by the parties before hearing of the case. He said the issues in the trial Court's judgment are new issues. He argued, however that re-hearing of the case merely because of such error wouldn't be right because this Court is not tied to re-evaluate the evidence adduced during trial. He therefore prayed this Court to re-evaluate the evidence based on the issues previously framed before trial. He further argued that both parties had adduced their evidence but the challenge is with the judgment written by the trial Court.

On the 3rd and 4th grounds of appeal, Mr. Malinga expressed his views that the trial Court made its decision based on the evidence adduced by both parties, which was duly considered. He opposed the argument that the trial Court made orders not supported by evidence. He said the orders granted were based on the evidence adduced by the plaintiff's witness PW1 and PW2. He argued that if the appellant's advocate is not yet satisfied, this Court has an opportunity to re-examine the evidence.

Regarding the 5th and 6th grounds of appeal, Mr. Malinga submitted that the respondent who was the plaintiff during trial had presented his claim well by showing why he demanded Tshs 10,000,000/= and Tshs 4,827,000/= which he was to be refunded. He said that all the claims were proved, a reason why the Court made orders that the same should be refunded.

On the 7th ground of appeal, Mr. Malinga submitted that it is the appellant who was responsible to draw the Loan Agreement and therefore carried the duty to ensure that the stamp duty is paid accordingly. He argued that it was

wrong for the appellant to raise this argument at this stage unless he maliciously intended to infringe the respondent's rights. Mr. Malinga with deep concerns, emphasized that the argument was wrong and should be dismissed as he did pray for the dismissal of the entire appeal with costs.

In his rejoinder, Mr. Nyangarika addressed the Court on few issues raised by Mr. Malinga. On the first ground of appeal, he submitted that the decision in the case of **TANZANIA BUREAU OF STANDARDS** (supra) is distinguishable. He argued that in the **TANZANIA BUREAU OF STANDARD** the lower Court had dismissed the case for exceeding speed track. The Court of Appeal said the case should not be dismissed but be re-heard and thus reiterated that there is no other remedy but retrial of the case.

On issues re-framed by the trial Court which Mr. Malinga conceded it was wrong to do so, Mr. Nyangarika submitted that the power of this Court to re-evaluate the evidence does not apply where the trial Court refused to follow the speed track. He argued that the Court erred by not involving the parties, an error which will not be cured by the first appellate Court's re-evaluation of evidence. Mr. Nyangarika argued further that the only remedy available is to involve the parties. He submitted that re-evaluation of evidence will not allow the parties to participate and such re-evaluation by the first appellate Court does not deal with irregularities committed by the lower Court.

On reply to 3rd and 4th ground of appeal, Mr. Nyangarika said that the advocate for the respondent did not show the Court how the trial Magistrate

considered the evidence of both parties. He argued that re-evaluation of evidence by this first appellate Court would not solve the issues raised in these grounds of appeal. He argued that the Magistrate was biased and thus chose what to write and what not to write.

On reply to the 5th and 6th ground of appeal. Mr. Nyangarika submitted that the Magistrate gave orders which were not supported by evidence rather he threw in those issues on payment of Tshs 10,000,000/= and Tshs 4.8 million and the costs for travel to Dar es salaam. He argued that the learned advocate for the respondent has not shown what type of evidence was used by the lower Court in this aspect.

Regarding the reply of the respondent's advocate on submission in chief with respect to the 7th ground of appeal, Mr. Nyangarika argued that the Sale Agreement which was admitted as Exhibit P1 was tendered by the respondent and as such it was respondent's exhibit. Mr. Nyangarika further argued that even if the exhibit was tendered by the appellant, since the respondent's advocate conceded that it was not stamped, the consequence would be the same. He therefore prayed the appeal be allowed with costs.

Having peeled off the contentious views of both parties, the main issue for determination by this Court is whether the appeal has merit. A lieutenanting issue is what reliefs are available to the parties.

From the submission of both parties, it is clear that the 1st ground of appeal has not been contested bipolarly. The advocates for both parties agree that the case had proceeded beyond the set life span; they both agree that it was

against the law. The learned advocates differed on the remedy to be appropriately applied in a situation like this.

It is Mr. Nyangarika's views and in fact, his submission and prayer, that the remedy is to expunge all that part of trial Court proceedings recorded beyond 15/10/2018 so that the matter will be returned to trial Court to proceed from where it ended according to the decision in **YARA TANZANIA LTD** (supra) Mr. Malinga presented a different view. According to him the litmus test is whether by proceedings beyond the agreed lifespan of the case, the trial Court has rendered injustice to the parties, and to what extent. He added that this Court could rectify the error that occurred by applying the overriding objective principle.

The cited case of **YARA TANZANIA LTD** (supra) which Mr. Nyangarika relies on, its decision is not squarely as Mr. Nyangarika had presented it and its circumstances are certainly different from those of the case at hand. In the case of **YARA TANZANIA LTD**, this Court at its Commercial Division was faced with a preliminary objection on whether the suit, namely Commercial Case No. 29 of 2016 was still subsisting or existing for trial in so far as its life span expired and there was no pending application to extend that agreed span. The Court had to deal with interpretation of Rule 32 (2) of the High Court (Commercial Division) Procedure Rules. The case was not decided yet. After analysis of the applicable law and precedents available, the Court had this to say;

> *"As stated hereinbefore, the delay in concluding this case within the prescribed life span was occasioned by both parties and in most cases by the Defendant and in few instances by the Court. Like in*

Bata Limited Canada's case (supra) it will be unfair to place the blames on the plaintiff and dismiss or strike out her case".

After discussing the requirement of Article 107 (2) (e) of the Constitution of the United Republic of Tanzania, on the need to focus to substantive justice visa vis the rules of procedures of the Courts, the final decision on the preliminary objection was as follows;

"In view of the above discussion, I partially sustain the preliminary objection to the extent that all proceedings recorded immediately after 8th March, 2017 are expunged from the record of this case. However, in order to do substantive justice in this case parties are advised to apply for extension of the life span of the case retrospectively from the date of expiry of the initial life span. I will make no orders as to costs".

Apparently, Mr. Nyangarika had liked the quoted decision as concluded above. I would say that the above decision, much as it has some similarities with the case at hand and perfectly disposed of the matter that was placed before the Court, the same cannot apply squarely in the circumstance of this appeal. There are distinguishing reasons, as follows;

Firstly, the decision in **YARA TANZANIA LTD** was about a case that had not been finally determined. The parties found themselves outside the speed track while the matter was **sub judice**. The Court had to decide how the matter should proceed. **Secondly**, the Court was called upon to interpret Rule 32 (2) of the High Court (Commercial Division) Procedure Rules herein referred as Court Rules, which though resembling the provision of Order

VIIIA of the Civil Procedure Code [Cap 33 R.E 2019] on issues of speed track, the two are not identical. Unlike the Court Rules, the Civil Procedure code (CPC) has provided remedies under Rule 5 of Order VIIIA. **Thirdly,** while Order VIIIA of the CPC is of general application to suits instituted in Courts, the Court Rules are specifically for the Commercial Division of this Court; **fourth** and most importantly the decision in **YARA TANZANIA LTD** was made in 2016 before the Court of Appeal had an opportunity to decide on a matter touching on the fate of cases after expiry of speed track under the CPC. In the current case, the Court has at its disposal a Court of Appeal decision in the recent case of **NATIONAL BUREAU OF STATISTICS VS THE NATIONAL BANK OF COMMERCE & ANOTHER** (Civil Appeal No. 113 of 2018) [2021] TZCA 210; (18 May 2021). In that case, the Court of Appeal had an opportunity to examine the fate of a suit whose speed track had expired before the case was concluded. The High Court (Mugasha J, as she then was) had decided to struck out the suit. On appeal, the Court of Appeal endorsed the reasoning and decision by Msoffe, J. (as he then was) in the case of **MRS. ASHA RAMADHANI LASEKO VS RAMADHANI ALI LASEKO** (supra) where he stated as follows;

> *"While the policy reason for speed track is weakened or over defeated if they (the speed tracks) are not strictly observed yet non-observance can be occasioned by a party to a case or by the Court itself, sometimes for unavoidable reason. If, for example, a case lasts beyond the assigned speed track because the Court itself could not finalize it in time why should the plaintiff as a result be deprived of a decision of the Court for no fault of his own? Surely order VIIIA of the Civil Procedure Code, 1966 as amended by G. N No. 422 of 1994 was intended to improve the quality of Civil justice*

by making it speedier, not to provide occasion for depriving justice to the parties without any fault attributable to them".

The Court of Appeal in **NATIONAL BUREAL OF STATISTICS** (supra) concluded that the above quoted observation by Msoffe, J (as he then was) *"constitute a true and proper position of the law".*

Now, although the appeal in hand differs with the matter that was before the Court of Appeal for determination, as I shall immediately explain, the reasoning regarding the purpose of introducing speed tracks in our law is the same and applicable to the appeal in hand. The difference between the matter before this Court and the matter that was before the Court of Appeal is by and large, that the Court of Appeal and indeed most if not all of the decisions on expiry of speed track decided by this Court before were dealing with a suit that had outlived its assigned speed track but was yet to be conclusively determined.

In the case before this Court, which is an appeal, the Court has been called to decide on a suit that had outlived its assigned speed track but already conclusively determined by the trial Court.

Applying the principle and the reasoning in **TANZANIA BUREAU OF STANDARD** (supra), that Order VIIIA of the CPC was intended to improve the quality of Civil justice by making it speedier, and not to provide occasions for depriving justice to the parties without any fault attributable to them, I find it absolutely logical and lawful to hold that where a suit has been conclusively determined by Court without either of the parties to the suit, or

the presiding judge or magistrate taking note that its assigned speed track has actually expired before its determination, the decision so made by the Court shall be lawful and binding provided that such a decision has not occasioned miscarriage of justice to either party which attributed to such expiry of assigned speed track.

The above holding is in appreciation of the facts that, the purpose of introducing legal provisions on speed track was to facilitate speedier disposal of suits. As such ordering retrial of a suit that has otherwise been properly disposed, save for expiry of its speed track, will be legally illogical and purposely counterproductive. For this reason, I find no merit in the first ground of appeal as the learned advocate for the appellant has not shown to this Court if the non-observance of the speed track has actually occasioned miscarriage of justice, as Mr. Malinga correctly submitted.

The second issue is on departure from framed issues and unilateral introduction of new issues in the suit by the trial Magistrate. On this item, Mr. Nyangarika submitted that the trial Magistrate changed the issues framed in the case without consulting the parties, which is wrong in view of the decision in the case of **PEOPLE'S BANK OF ZANZIBAR VS SULEIMAN HAJI SULEIMAN** (supra). Mr. Nyangarika argued that a decision based on Court-framed issue was prejudicial to justice as it amounted to denying the parties their right to be heard, as required by law, during framing of issues.

On his part, Mr. Malinga conceded that the issues framed by the trial Court differed from those agreed by the parties. He argued however that retrial of

the suit was uncalled for, as this Court has power to re-evaluate the evidence adduced during trial based on the issues previously framed before trial. Mr. Nyangarika had different views. To him, this Court cannot cure the error of the trial Court by re-evaluating the evidence. He argues that the only remedy is to involve the parties through a retrial.

The amendment of issue or framing of new issue by the Court and its consequence was delt with by the Court of Appeal in **TANGANYIKA CHEAP STORE LIMITED AND OTHERS VS. NATIONAL BUREAU DE CHANGE LTD** (Civil Appeal No. 93 of 2003) [2005] TZCA 17, (24 March 2005) where the Court referred to MULLA, Code of Civil procedure, Volume II, 15th Edition at page 1432 where it was stated;

> *"If the Court amends an issue or raises an additional issue it should allow reasonable opportunity to the parties to produce documents and lead evidence pertaining to such amended or additional issue"*

Generally, the Court of Appeal found that amendment of the issue or raising additional issues is perfectly within the powers of the Court in terms of Order XX Rule 5 of the CPC. However, the Court of Appeal attached the exercise of such powers by a Court with a duty to observe the cardinal principles on the parties right to be heard. Having referred to MULLA, the Court of Appeal in the cited case of **TANGANYIKA CHEAP STORE LTD** (supra) had this to say;

> *"Having regard to the graveness of the issue so framed, we are of the considered opinion, and we agree with the learned author, MULLA, that the parties ought to have been given a hearing on the additional issue....*

The right to be heard, that is audi alterem partem rule, has been emphasized by this Court in a number of cases, among them, Ndesamburo versus Attorney General (1977) TLR 139 and the National Housing Corporation versus Tanzania Shoes and Others (1995) TLR 251.

All in all, therefore, in view of the fact that the framed additional issues raise a serious issue relating to breach of a fundamental principle of nature justice, and for lack of evidence to establish the amount the appellants owe the respondent bank we quash the judgment and decree. We further order that the case be remitted to the trial Court for hearing on the framed issue".

The above cited decision of the Court of Appeal describes so well the position of the law when the Court amends issues framed or introduces new issue in a case. So much so good on the position of the law.

Mr. Nyangarika, in this appeal, submitted that the Court introduced its Court-framed issues which are different from the issues framed earlier and agreed by the parties. I have perused the entire proceedings of this case but was unable to come across the issues that were earlier framed as per submission of Mr. Nyangarika. The proceedings in the trial Court reveal that the hearing of the suit started on 24/1/2018, as per page 14 of the typed proceedings, without the trial Court having framed the issues as alleged. The only time the framing of issue was mentioned in the said typed proceedings of the trial Court was on 07/12/2017 as appearing on page 10 of the typed proceedings. For clarity on this point, I reproduce the proceedings, of that date as follows;

"07/12/2017

Coram: Hon. Anangisye – RM

Plaintiff: Absent

Defendant: Absent

c/c: Moses. E

Wasonga: I ama for the plaintiff

Mnzava: I am for the defendant

Wasonga: as mediation has failed, we pray for hearing date for that date we are going to bring framed issued (sic). We intend to call three witnesses.

Order: *Hearing on 24/1/2017*

E. Anangisye- RM

07/12/2017"

On 24/1/2018 there was no production of framed issues and the Court adjourned the matter for hearing to 26/02/2018. This is as per proceedings on page 11. Next records of proceedings are for 22/11/2017 (sic) captured on page 12 of the typed proceedings where the matter was presided over by E. J. FOVO – RM who signed on the correct date of 26/2/2018 who ordered hearing to proceed on 2/3/2018. Next proceedings are for 02/3/2018 presided over by M. F. LUKINDO–RM who ordered hearing on 22/3/2018. Next proceedings are for 22/3/2018 presided over by E. ANANGISYE – RM who ordered hearing on 24/4/2018 when eventually plaintiff's case opened without there being any framed issues. As such, in this case we have a completely different scenario from the cited case of **TANGANYIKA CHEAP STORE** (supra). The case at hand, unlike what Mr. Nyangarika submitted in the 2nd ground of appeal, the reality is, the trial

Court did not hold a final pre-trial conference, neither did it frame issues as mandatorily required by law. The ground of appeal as raised by the appellant for determination by this Court reads;

> *"2. That, the Honourable trial Resident Magistrate erred in law and in facts* ***in deciding the suit relying on new framed issues which were different from the issue framed at the commencement of the trial of the suit*** *without the participation of the parties"* [Emphasis added].

Apparently, the second ground of appeal quoted above, was misconceived by the appellant's advocate. What was presented in the cited ground of appeal is not what actually happened. There were no issues framed at all. As such the above ground of appeal was itself wrong and so were the submissions made by both advocates on it. Since the Court cannot enter into the shoes of the appellant to compose the said ground of appeal in the right way, for obvious reason that the Court is not a party to the Appeal, prudence requires that the Court should disregard that wrongly framed ground of appeal, as we accordingly do.

However, the Court having found, on its own, that the trial Court proceeded with hearing the case to its finality without a pre-trial conference and without framing issues as mandatorily required by the provision of Order XVI Rule 1 (5) of the CPC, it is our further finding that such an omission is fatal to the proceedings and the resultant judgment of the trial Court. To appreciate this position, we reproduced the cited violated provision of CPC as follows;

> *"(5) At the first hearing of the suit the Court* ***shall,*** *after reading the plaint and the written statements, if any, and after such*

*examination of the parties as may appear necessary, ascertain upon what material proposition of fact or law the parties are at variance, and **shall** thereupon proceed to frame and record the issues on which the right decision of the case appears to depend"* [Emphasis added].

These omissions are not uncommon. In the case of **JUMANNE KAGORO V. JOHN SHIJA**, (Civil Appeal No. 66 of 2020) [2021] TZHC 3399, (17 May 2021), this Court, in Mwanza, presided over by A. Z. Mgenyekwa, J faced a similar matter whereby the trial Magistrate had skipped a pre-trial conference and framing of issues. Hon. Mgeyekwa, J impressively summarized the importance of pre-trial conference, when she stated;

"The pre-trial conference was important since the Court and the parties were required to plan the trial, to discuss which matters should be presented to the Court, to review proposed evidence and witness, and to set a trial schedule".

For such an omission, this Court in the cited case of **JUMANNE KAGORO** (supra) remitted the case file to the trial Magistrate to conduct a final pre-trial conference, framing issues for determination and composing a new judgment.

The Court in **JUMANNE KAGORO** was fortified in its decision by the decision of the Court of appeal in **STANSLAUS RUGABA KASUSURA Vs. THE ATTORNEY GENERAL (1982) TLR 338** where the Court of Appeal nullified the judgment and proceedings of the High Court for failure to frame issues for determination.

I fully subscribe to the approach taken by my learned colleague Hon. Mgeyekwa, J. in handling that case, which is in all respect similar to the matter before me. However, since unlike in **JUMANNE KAGORO** where the omission was raised to the Court by way of an additional ground of appeal, in the matter before me the omission to conduct final pre- trial conference and framing of issues has come up as a finding of the Court raised *suo mottu;* and in view of the fact that such an omission is fatal to the proceedings and the decision reached by the trial Court, I invoke the revisionary powers bestowed upon this Court under section 31 (1) of the Magistrate Court Act [Cap 11 R.E 2019] to quash the proceedings of the trial Court from 7/12/2017 to the end as well as setting aside the judgment of the trial Court that ensued from the quashed proceedings and order that the case file for Civil Case No. 7/2017 be remitted to the Resident Magistrate Court of Dodoma at Dodoma, to proceed with trial according to the law. No order as to costs.

Having decided as above, I shall not proceed to determine the remaining two issues raised in this appeal as doing so will be inconsequential.

It is so ordered.

ABDI S. KAGOMBA
JUDGE
16/11/2021