

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 42 OF 2021**

**WILFRED MICHAEL BATAKANYWA ..... APPELLANT**

***VERSUS***

**EFC TANZANIA MICROFINANCE BANK LIMITED ..... RESPONDENT**

**(Appeal from the judgment and decree of the District Court of Ilala  
at Kinyerezi (Hon. Abasi S.J. RM) dated the 21<sup>st</sup> day of January,  
2021 in Civil Case No. 28 of 2019)**

**RULING**

7<sup>th</sup> and 10<sup>th</sup> June, 2022

**KISANYA, J.:**

The appellant, Wilfred Michael Butakanwa is challenging the judgment and decree of the District Court of Ilala at Kinyerezi (henceforth the trial court) in Civil Case No. 28 of 2020 which was decided in favour of the respondent, EFC Tanzania Microfinance Bank Limited.

In terms of the record, the suit before the trial court was instituted by Wilfred Michael Batakanwa t/a Marilyn Nursery & Primary School. It was stated, among other things that, the appellant had been defamed and that Marilyn Nursery & Primary School had been lowered beyond imagination, suffered public humiliation and suffered loss of income due to the respondent's conducts

and acts of recovering loan illegally. Therefore, the then plaintiff, Wilfred Michael Batakanwa t/a Marilyn Nursery & Primary School prayed for judgment and decree against the respondent (the then defendant) as follows:

- (a) Court to declare the 3 times actions and conducts of the defendants upon entry on the compound of the plaintiff's schools and offices were unlawful and caused the plaintiff damages.*
- (b) Court be pleased to declare that the defendant as an esteemed and professional banker demanded the alleged outstanding on the loan agreement with menace hence caused the plaintiff and his business to suffer damages in the sum of 100,000,000/= as loss of income.*
- (c) Court be pleased to declare that the plaintiff suffered further damages in the sum of 40,000,000/= being compensation for defamation of character and damaging of the goodwill of the schools. =*
- (d) Court be pleased to declare that the plaintiff have suffered damages in the sum of 20,000,000/= as costs of replacement and/or order repair of the damage that were done to the*

*assets of the plaintiff and the schools due to the actions of the defendant.*

*(e) Court be pleased to declare that the plaintiffs are entitled to general damages not exceeding the sum of Tshs. 40,000,000/= for the inconveniences caused by the defendant to plaintiff, assets and schools.*

*(f) ...*

*(g) ...*

*(h) ...”*

In its judgment dated 1<sup>st</sup> January, 2021, the trial court, dismissed the suit. The typed judgment and decree indicated that the plaintiff was Wilfred Michael Batakanwa, without indicating whether he was trading as Marilyn Nursery & Primary School as stated in the pleadings.

When the appeal came up before me for hearing on 7<sup>th</sup> June, 2022, Mr. Godfrey Ukwonga, learned advocate who appeared for the appellant conceded, at the Court's prompting, that the appeal, the judgment and decree were defective for not reflecting the plaintiff's name indicated in the pleadings. He also contended that the memorandum of appeal was drafted basing on the parties appearing in the judgment and decree. However, the learned counsel

urged this Court to correct the defect in the judgment and decree, under section 96 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC)

On the other side, Mr. Cleoplace James, learned advocate for respondent argued that the appeal was incompetent for being preferred by a person who was not a party to the case before the trial court. He submitted that the judgment and decree ought to have reflected the parties named in the pleadings who instituted the suit before the trial court. It was his argument that the mandate to correct the judgment and decree under section 96 of the CPC is vested in the trial court and not appellate court. The learned counsel went on to contend that the appellant was required to cause amendment of the judgment and decree before lodging the appeal at hand. Therefore, he urged me to strike out the appeal for being incompetent.

In his rejoinder submission, Mr. Ukwonga urged me to consider the principle of overriding objective provided for under section 3(1) of the CPC. He was of the firm view that this Court has inherent powers to correct the judgment and decree on the account that the defect does not go to the root of the case.

In light of the foregoing submissions, it is common ground that the judgment and decree subject to this appeal are defective. As alluded earlier, the suit before the trial court was preferred by Wilfred Michael Batakanwa t/a

Marilyn Nursery & Primary School. Such fact is also gathered from the plaint, written statement of defence and reply to statement of defence. Nothing shows that the trial court made an order as to changes of names under Order I, Rule 10 (2) of the CPC. Yet, the judgment and decree were issued in the name of Wilfred Michael Batakanwa. The appeal followed the same path. It was lodged by Wilfred Michael Batakanwa. In that regard, I agree with Mr. James that the judgment and decree were issued against the person who was named in the pleadings before the trial court. Considering further that, the memorandum of appeal was lodged by a person who does not feature in the trial court's pleading, I am at one with Mr. James, that the appeal is incompetent. The appellant ought to have observed the defect in the judgment and decree and move the trial court to correct the errors instead of lodging the appeal in the name of the appellant.

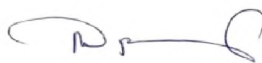
I have considered Mr. Ukwonga's plea of causing correction of the judgment and decree under section 96 of the CPC. It is my considered view that the mandate to correct the judgment and decree is vested with the Court which passed the said judgment and decree and not the appellate court. Further to this, errors in the judgment and decree were to be ignored, the memorandum of appeal is in the name of the person who was not a party to the case before the trial court.

For the reasons which I have endeavored to state, I am of the considered view that the appeal is incompetent. The law is settled that an incompetent matter cannot be withdrawn, amended or adjourned. It was held in **Ghati Methusela vs Matiko w/o Marwa Mariba**, CAT, Civil Application No. 6 of 2006 (unreported)] that the proper recourse against an incompetent matter is to strike out the same.

Eventually, this appeal is hereby struck out with no order to costs. Considering that the defect in the judgment and decree were caused by the trial court, I find it appropriate to make an order to the effect that the appellant is at liberty to refile the appeal after obtaining the corrected judgment and decree. It is further ordered that, the fresh appeal (if any) should not be subjected to the law of limitation if filed within thirty days from date of corrected judgment and decree.

It is so ordered.

DATED at DAR ES SALAAM this 10<sup>th</sup> day of June, 2022



S.E. Kisanya  
JUDGE

COURT: Ruling delivered this 10<sup>th</sup> day of June, 2022 in the presence of the appellant in person and in the absence of the respondents. B/C Bahati present.



S.E. Kisanya  
JUDGE  
10/06/2022