

**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. 165 OF 2020

FRANK ISRAEL MADANHA APPELLANT

VERSUS

FLORENCE MEDARD RESPONDENT

**(Appeal from the decision of the District Court of Kinondoni
at Kinondoni in Civil Appeal No. 97 of 2018)**

JUGDMENT

29th and 29th March, 2022

KISANYA, J.:

The appellant, **Frank Israel Madanha** lost a suit instituted against him by one, **Emigidius F. Medadi** in the Primary Court of Sinza in Civil Case No. 174 of 2018. In that action, the appellant was sued for a debt of Tshs. 4,130,000/= . The trial court awarded Tshs. 3, 330,000 in favour of the said **Emigidius F. Medadi** and against the appellant.

Dissatisfied by the aforesaid decision, the appellant appealed to the District Court of Kinondoni at Kinondoni in Civil Appeal No.97 of 2018. The petition of appeal was preferred against **Florence Madard** who is the respondent herein. Having the first appeal before the District Court of

Kinondoni dismissed, the appellant seeks to challenge that decision in this second appeal.

With leave of the Court, the appeal was disposed of by way of written submissions. Save for rejoinder submission, the appellant and respondent filed their respective submissions in accordance with the order issued by the predecessor judge on 16th June, 2021. The predecessor judge was transferred to another duty station before composing the judgment.

In the course of composing the judgment when the matter was reassigned to me, I found it apposite to probe the parties to address me on the competence of the appeal before the trial court. That issue was raised after noticing that the petition of appeal which was filed in the district court was preferred against **Florence Medard** who does not feature in the proceedings and judgment of the trial court. The matter proceeded in the absence of the respondent who defaulted to appear.

Reacting to the issue raised by the Court, the appellant contended he disputed the case filed by Emigidius F. Medali on the account that he had no business with him. He submitted that he filed an appeal against Florence Medard because the case before the trial court proceeded against the latter.

That being the position, he was firm that the appeal filed in the district court was competent.

I have dutifully considered the submission made by the appellant and examined the record of the lower courts. From the outset it is pertinent to point out that, an appeal from the primary court to the district court is governed by the provisions of section 20(1) (a) and (3) of the Magistrates' Courts Act [Cap. 11, R.E. 2002] (now R.E. 2019) which provide:

"20(1).- Save as hereinafter provided–

(a) N/A; or

(b) in any other proceedings, any party,

***if aggrieved by an order or decision of the primary court, may appeal therefrom to the district court** of the district for which the primary court is established.*

*(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of **the decision or order against which the appeal is brought.**"* (Emphasize supplied).

In addition, rule 4(1) of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963 [GN No. 312 of 1963] provides as follows:

“Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the High court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent.”
(Emphasize supplied).

In this regard, it is clear that an appeal to the District Court is against the decision or order the primary court and not otherwise. In my considered opinion, the order or decision of the primary court includes a party to that decision. Thus, an appeal cannot be considered to have been preferred against the decision or order of the primary court if any of the parties thereto does not feature in the order or decision of the primary court

In the instant case, petition of appeal indicated that the appeal was against the decision of the Primary Court of Manzese at Sinza in Civil Case No. 174 of 2018. It was preferred against **Florence Medard**. However,

reading from the proceedings and judgment of the Primary Court of Manzese at Sinza in Civil Case No. 174 of 2018, the party thereto was **Emigidius F. Medadi** who happened to be the plaintiff. The appellant's contention that case proceeded with **Florence Medard** and not **Emigidius F. Medadi** is not supported by the record. In fact, his submission suggests that **Emigidius F. Medadi** and **Florence Madard** are two different persons. In any case, the appeal lodged before the district ought to have been lodged against the person named in the proceedings and judgment of the primary court.

In the light of the foregoing, I am satisfied that the appeal before the District Court was incompetent for being brought against a person who did not feature in the proceedings and judgment of the primary court. Consequently, the proceedings and decision of the District Court of Kinondoni in Civil Appeal No. 97 of 2018 were a nullity. It follows that the present appeal is also incompetent because it stemmed from the vitiated proceedings and judgment of the District Court of Kinondoni. Thus, the Court will not proceed to consider the merits of this appeal.

In view of what I have endeavored to discuss, I hereby exercise the revisional power bestowed in this Court by nullifying the proceedings of the

District Court of Kinondoni in Civil Appeal No. 97 of 2018, quashing the judgment and setting aside the decree passed thereon. The appellant is at liberty to institute a fresh appeal to the District Court. For the interest of justice, the said appeal should not be subjected to the law of limitation during the time which the matter was pending in the first appellate court and this Court if it is filed within thirty (30) from the date hereof. I make no order as to costs because the appeal is determined on the issue raised by the Court, *suo mottu*.

It is so ordered.

DATED at DAR ES SALAAM this 29th day of March, 2022.



S. E. Kisanya
JUDGE