

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**PC CIVIL APPEAL CASE NO. 20 OF 2021**

(Arising from the decision of the District Court of Dodoma at Dodoma in Misc. Civil Application No. 68 of 2020 dated 30<sup>th</sup> March, 2021 before Hon. P. F. Mayumba, RM. Originated from the Judgment of Chamwino Primary Court in Civil Case No. 118 of 2020)

**JOHN MGOGWE..... APPELLANT**

**VERSUS**

**BONIFACE MICROFINCE**

**CO. LTD CHANG'OMBE ..... RESPONDENT**

*26/7/2022 & 31/8/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, John Mgogwe, unsuccessfully sued the Respondent Boniface Microfinance Company Limited in Chamwino Urban Primary Court at Dodoma for the recovery of TZS 15,165,500/= construction fees. Aggrieved by the decision, the Appellant filed a Chamber Summons Application in the District Court of Dodoma for Revision. The Application was dismissed "*suo motto*" by the District Court of Dodoma for being defective, hence the appeal in the Court.

The Appellant's Petition of appeal is made up of two (2) grounds of appeal.

When the appeal was heard in the Court on the 26<sup>th</sup> day of July, 2022 the Appellant was represented by Mr. Ayoub David Suday, the learned counsel, while the Respondent was represented by Mr. Boniface Dotto Sungura, the Respondent's Principal Officer.

The Appellant argued on the 1<sup>st</sup> ground of appeal that the District Court of Dodoma erred in dismissing the Miscellaneous Civil Application without determining the issues raised by the Appellant of objecting the tendering of documentary evidence by the Respondent which was contrary to Order XIX Rule 3 (1) (2) of the Civil Procedure Code [Cap 33 R.E 2019].

That the District Court raised another issue "*suo motto*" which was not addressed by the parties. That, this was a violation of their right to be heard contrary to article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1997 on fair hearing.

As regards the 2<sup>nd</sup> ground of appeal the Appellant submitted that the Application by the Appellant was for Revision but in the decision by the District Court on an issue raised "*suo motto*" decided that the Appellant should have appealed instead of applying for Revision, hence misconception. That, it is not true that the Affidavit contained the would be grounds of appeal but facts narrative of illegality. The Appellant prayed the Court to allow the appeal with costs.

The Respondent contested the appeal by submitting against the grounds of appeal generally together that the parties were given the right to address the said court. That, the Appellant raised a preliminary objection. That, the Respondent prayed to be given more time so as to attempt the preliminary objection upon a short adjournment. That, prior to his making his submissions thereto the District Court so rightly directed itself that the

Affidavit was legally wanting. The Respondent prayed the Court to dismiss the appeal with costs.

That is what was shared by the parties in support of, and against the appeal in the Court.

Indeed, the original record of proceedings of the District Court of Dodoma shows that on the 30<sup>th</sup> day of March, 2021 the Appellant raised a Preliminary Objection on point of law that the Respondent's Counter Affidavit was defective for containing arguments contrary to Order XIX Rule 3 (2) of the Civil Procedure Code [Cap. 33]. The Respondent prayed for an adjournment for him to get time to prepare himself for hearing of the preliminary objection.

After the prayer by the Respondent, the District Court wrote a Ruling raising an issue "*suo motto*" that in the Affidavit, the Applicant had discussed the grounds of appeal contrary to what he prayed for in his Chamber Summons, that is Revision. Thus, the Court dismissed the Miscellaneous Chamber Summons Application without giving the parties the opportunity to address the Court on the issue raised by it "*suo motto*".


The Court is of the considered position that there was violation of the right to be heard contrary to Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 which provides for right to fair hearing and right to be heard.

The Court invokes its revisionary powers under section 44 of the Magistrate Courts Act [Cap 11] to nullify, quash and set aside the Ruling entered by the District Court of Dodoma on the 30<sup>th</sup> day of March, 2021. The original file shall be remitted back to the District Court of Dodoma and placed

before another Magistrate for the Court to proceed with the hearing of the preliminary objection as raised by the Appellant.

The parties shall bear their own costs.



  
GEORGE M. MASAJU

**JUDGE**

31/8/2022