

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM SUB DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 128 OF 2020

(Originating from Civil case No.44 of 2019 from the Primary Court of Manzese before Hon. Furutuni and Civil Appeal No.08 of 2020 from Kinondoni District Court before Hon. Donasian, RM)

CHAMA CHA MADEREVA BAJAJI VICTORIA..... APPELLANT

VERSUS

JOHN ROBERTO..... RESPONDENT

RULING

Date of last Order: 11/08/2022

Date of Judgement: 09/09/2022

E.E.KAKOLAKI, J

The appellant herein instituted Civil Case No.08 of 2020 before the Primary Court of Manzese claiming against the respondent the sum of Tshs. 11,333,841/=, being the amount of money lost during the respondent's leadership as Chairman of CHAMABAVU Vicoba Group. The trial court entered judgment in favour of the appellant whereby the respondent was ordered to pay Tshs.11,333,841/= to the appellant. Dissatisfied, the respondent successfully appealed to the District Court of Kinondoni in Civil Appeal No. 08 of 2020, as the trial court's decision was set aside. Undaunted, the appellant preferred the present appeal equipped with seven (7) grounds

of appeal which for the purposes of this ruling and reasons to be revealed soon, I find it not necessary to reproduce them.

At the hearing this appeal both the appellant and the respondent appeared represented by Felix Fabian Mtunzi and Mr. Godfrey John Ambet, learned advocates respectively. With leave of the Court the appeal was argued by way of written submissions which were timely filed by the parties as scheduled.

As the Court was about to compose its judgment it came into its knowledge that, the trial court judgment forming the basis of the appeal to the District Court hence the impugned decision to this Court had legal deficiencies in which parties were called to address the Court on. Parties were asked to address the Court as whether the said trial court judgment had met the required standard of sound judgment for not being signed by both trial magistrate and the two assessors who sat with him. On 07/09/2022 both parties represented by their respective advocates appeared and addressed the Court on the suo motu raised issue.

It was Mr. Mtunzi who took the floor first and informed the Court that, after revisiting the trial court records as well as the judgment allegedly rendered

by the said court he noted that, the same lacks trial magistrate's signature hence invalid, and further that, there is no evidence that the decision was delivered to the parties as required by the law. According to him since there was no sound judgment, all the subsequent proceedings in the District Court, judgment and orders thereto were rendered a nullity, hence there is no competent appeal before this Court.

On the other side Mr. Ambet joined hands with Mr. Mtunzi when submitted that, the trial court judgment was not signed by both trial magistrate and the sitting assessors and that, the proceedings are barren as to whether the same was delivered to the parties, the omission in his view renders the judgment a nullity for violating the law, which also requires the same to be read in open court. With that illegality of the decision, he implored the Court to find the said judgment not a decision, hence affected both proceedings and judgment of the District Court of Kinondoni, for being a nullity too deserving to be quashed and set aside. And added that, once the same is set aside then there will be no valid judgment from the District Court to render the present appeal competent before this Court. He thus, invited the Court to make necessary orders as it deems fit. On his side Mr. Mtunzi had no rejoinder to make apart from reiterating what he had submitted in chief.

I took time to peruse both lower courts records as well as considering the arguments by the learned counsels for both parties. It is true as submitted by both counsels and for that matter, I have no hesitation in holding that, the trial court's judgment is not a sound decision in law. The ingredients of the sound judgment before the High Court had its subordinate Courts is provided by different laws including section 312(1) of the Criminal Procedure Act, [Cap. 20 R.E 2022] and Order XX Rule 3 and 4 of the Civil Procedure Code, [Cap. 33 R.E 2019]. In the above cited provisions of the law it is articulated that, a "*Judgment*" shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision and further that, the same must be signed by the officer of the Court presiding over the matter before it is pronounced in open court. There are also a litany of Court decisions on that stance. See the cases of **Hamis Rajabu Dibagula Vs. R**, Criminal Appeal No. 53 of 2001 and **Yusuph Abdallah Ally Vs. DPP**, Criminal Appeal No. 300 of 2009 (All CAT-unreported). In the case of **Yusuph Abdallah Ally** (supra) on the contents of sound judgment the Court of Appeal had the following observation:

"It is settled law that a judgment should contain inter alia, the point or points for determination; the decision thereon and the reasons for such a decision."

The Primary Court decision like any other Courts' decision (ruling or judgment) is not exempted from adhering to the above described ingredients of the sound judgment. As whether the same should be signed or not, Rule 3(2) of the Magistrates' Courts (Primary Courts) (Judgment of Court) Rules, G.N. No. 2 of 1988, provides the answers that, the same must be signed by both presiding officer and the assessors sitting with him and must be pronounced in open court and dated on the day in which it was pronounced as also provided under Rule 53(1) and (2)(c) and (d) of the Magistrates' Courts (civil Procedure in Primary Courts, Rules, G.Ns. No. 310 of 1964 and 199 of 1983. Rule 3(2) of G.N. No. 2 of 2088 reads:

(2) If all the members of the Court agree on one decision, the magistrate shall proceed to record the decision or judgment of the court which shall be signed by all members of the court.

And Rule 53(1) and (2) of G.Ns. No. 310 of 1964 and 199 of 1983, provides:

53(1) At the conclusion of the hearing or on a later day fixed by the Court, the court shall give its decision.

(2) Every decision shall-

(c) be pronounced in open court; and

(d) be dated as of the day on which it is pronounced.

In this matter as submitted by both learned counsels for the parties there is no doubt that, the trial court judgment was not signed not only by the presiding judicial officer but also the sitting assessors and that, the same was not read in open court. To appreciate this fact I quote the excerpt from the said judgment and court proceedings. To start with the judgment at page 8 the same reads:

Hivyo mahakama hii inaona kuwa upande wa madai umeweza kithibitisha madai yake dhidi ya mdaiwa na hivyo Mahakam hii inaamuru mdaiwa kilipa deni la kiasi cha mil 11,333,841/= ikiwa ni dai stahiki.

WASHAURI

- 1. AMINA ISRAEL*
- 2. JENEVIELE LEMA*

04/02/2020

FURUTUNI HAMIS- HAKIMU MKAZI

RUFAA:

Haki ya rufaa ndani ya siku 30

04/02/2020

FURUTUNI HAMISI-HAKIMU MKAZI

Similarly the trial court proceedings on the 04/12/2019 which appears to be the last entries in proceedings it is indicated as follows:

04/12/2019

Mbele ya Mhe. Furutuni Hakimu

Washauri: 1. Mwadawa Selemani

2. Fidea Mhando

Mdai -Hayupo

Mdaiwa- Hayupo

Mahakama: Shauri lipo mahakamani kwa ajili ya hukumu.

Hakimu aliyepangiwa shauri hili ana udhuru. Shauri linaahirishwa mpak tarehe 10/12/2019.

Sgn: Mshauri

Sgn: Mshauri

Sgn: Hakimu

04/12/2019

AMRI: Mdai na Mdaiwa wafike mahakamni bila kukosa.

Sgn: Mshauri

Sgn: Mshauri

Sgn: Hakimu

04/12/2019

It is the law as adumbrated herein above that, any decision of the Court must be signed and pronounced in open court. Gathered from the above excerpts of the judgment and trial court proceedings, it is evident to me that, the said trial court judgment was neither signed by the presiding judicial officer nor the sitting assessors, the acts which infringed the provisions of Rule 3(2) of the Magistrates' Courts (Primary Courts) (Judgment of Court) Rules, G.N. No. 2 of 1988. Equally, there was contravention of the provision of Rule 53(1) and (2)(c) and (d) of the Magistrates' Courts (Civil Procedure in Primary Courts), Rules, G.Ns. No. 310 of 1964 and 199 of 1983, as it is not indicate whether the said judgment was pronounced in open court before the parties. All these above mentioned omissions in my considered view rendered the said judgment, no decision at all in law for want of signature and pronouncement in open court. As the same is not a sound decision even the subsequent proceedings and judgment of the appellate Court before the District Court of Kinondoni were rendered a nullity as rightly submitted by both counsels for the parties. Having so found I invoke the revisionary powers bestowed to this Court and proceed to set aside the judgment of the Primary Court of Manzese/Sinza in Civil Case No. 44 of 1999, quash the proceedings before the District Court of Kinondoni in Civil Appeal No. 08 of

2020 and set aside its judgement and orders thereto. The effect of all that annulment is to render the appeal before this court incompetent for want of valid judgment of the District Court. In the end the appeal is incompetent and proceed to strike it out for want of competency. I direct that the file be remitted to the trial court for the same to compose the judgment and pronounce it in open Court in accordance with the law.

Given the fact that, the issue disposing the appeal has been raised by the Court suo motu, I make no orders as to costs.

It is so ordered.

Dated at Dar es Salaam this 9th September, 2022.



E. E. KAKOLAKI

JUDGE

09/09/2022.

The ruling has been delivered at Dar es Salaam today 09th day of September, 2022 in the presence of Mr. Mohamed Hija, chairman of the appellant, Mr. Godfrey Ambet, advocate for the respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
09/09/2022