

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
CIVIL APPEAL NO. 20 OF 2021**

*(Originating from Maswa District Court No. 6 of 2020 dated 23rd day of
April, 2021)*

**1. BOARD OF TRUSTEE OF ANGALICAN
CHURCH OF TANZANIA – MASWA
2. GODFREY YONA APOLLO** }**APPELLANT**

VERSUS

ABDON ANSIBART SABINIANRESPONDENT

JUDGEMENT

26th September 2022 at 11:00am

And 26th September 2022 at 11: 40am

L. HEMED, J

The matter at hand commenced at Nyakilungu Primary Court as civil case No. 10/2020, where **ABDON ANSIBART SABIAN**, the present Respondent successful instituted a suit against **BOARD OF TRUSTEES OF ANGALICAN CHURCH OF TANZANIA – MASWA** and **GODFREY YONA APOLLO** (the



Appellant) claiming for payment of the sum of Tshs 1,216,000/= for breach of contract to build two kindergarten class rooms and offices.

Dissatisfied by the decision of primary Court the present Appellant, Appealed to the District Court for Maswa where they were heard in Civil Appeal No. 6/2020 by Hon, E.S. Missana RM. However, while composing Judgment of the District Court, E. S. Missana – RM discovered that the petition of Appeal was prepared by unqualified person one **GODFREY YONA APOLLO**. Based in such finding the learned Magistrate proceeded in his Judgement to dismiss the entire Appeal with cost. The said Judgement annoyed the appellants hence the present appeal in the following ground;

- 1. The Appellate Court erred in fact and law by dismissing the Appeal without availing parties right to be heard.*
- 2. The Appellate Court erred in law and fact by upholding the trial Court finding, decision and subsequent orders without hearing parties on merits.*
- 3. The Appellate Court erred in fact and Law by holding that Appeal be dismissed for being drawn by unqualified person*
- 4. The Appellate Court erred by failing to exercise its power tom order the necessary reliefs.*

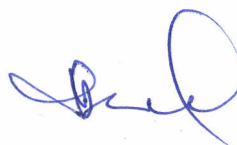


The Appellants are thus praying for the judgment of the District Court for Maswa dated 25/09/2020 be quashed and set aside. They also pray that the Appeal be determined afresh on merits.

When the matter was called for hearing on the 26th September 2022, the Appellants were represented by Ms.Milembe Lameck, learned advocate while the respondent was advocated by Mr. Daudi Masunga – Advocate.

Before hearing commenced, Mr. Masunga, addressed the Court to concede and support ground number 1 of the Appeal. He stated that they have decided to support the 1st ground of Appeal after having discovered that the District Court had contravened the principle of natural justice by failure to avail the Parties with an opportunity to address the Court on the point raised by the Court *suo motto* and proceed to disposal the case based on the said point. He prayed this Court to allow the appeal without costs and that the appeal be heard a fresh before another Magistrate. On her part Ms. Milembe, could not object the prayer.

I have gone through the proceedings and Judgment of the District Court of Maswa and found that, the point of the Petition of Appeal being drawn by unqualified person was not raised and argued by the parties. The said point was raised by the learned Magistrate *suo motto* in the process of composing



Judgement. From the proceedings of the first appellate court, it is evident that the parties were not availed with the opportunity to argue on the point so raised by the court. It is on the basis of the said point, the court proceeded to dispose of the Appeal before it by dismissing it and confirming the decision of the trial court. It is my firm view that where there is a question noted by Court to be considered, should be placed on record and the parties must be given opportunity to address the court on the said question, otherwise the magistrate/Judge is duty bound to decide a case on the issue on record to which parties have been given chance to address upon. In the case of **Said Mohammed Said Vs Muhusin Amiri and Muharami Juma**, Civil Appeal No. 110 of 2020 (un reported), the Court of Appeal of Tanzania insisted the importance of affording parties a hearing before any decision affecting their right, thus;

"Settled law is to the effect that, any breach or violation of that principle renders the proceedings and orders made therein a nullity even if the same decision would have been reached had the party been heard"

The importance of affording parties the right to be heard before any decision was also stated by the Court of Appeal of Tanzania in the case of

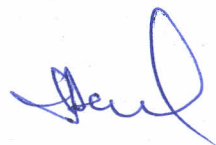


Abbas Sherally and another Vs Abdulsultan Haji Mohammed Fazal

Boy, Civil Application No.33 of 2002 (unreported) in which the Court among other things observed that;

"The right of party to be heard before adverse action is taken against such party has been stated and emphasized by Courts in numerous decisions that right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be breach of natural Justice"

Additionally, I have noted that the learned Magistrate dismissed the Appeal based on his own raised point that the petition of Appeal was drawn by unqualified person. I am of the firm view that Petition or Memorandum of Appeal, or any legal document used to institute proceedings in Court, found to be drawn and or filed by unqualified person, are treated as incompetent and bad in law. The effect of such document being incompetent or bad in law, is to be struck out and not to render the entire suit or Appeal to be dismissed as it was the case in the present matter. It was thus a grave mistake to dismiss



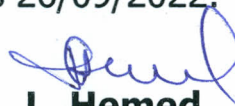
the Appeal and confirm the decision of the trial court on the mere finding that the Petition of Appeal was incompetent.

From the forgoing, based on the fact that the parties were not afforded opportunity to address the court on the point raised *suo motto* by the court, and based on the fact that the learned appellate Magistrate dismissed the appeal on the mere reason that the petition of Appeal was drawn by unqualified person, surfixes to dispose the Appeal at hand. The Respondent has supported the Appeal, therefore, I proceed to allow the Appeal without costs. It is further ordered that: -

1. The proceedings, Judgment and Decree of the District Court of Maswa in Civil Appeal No. 6 of 2020 are quashed.
2. The Appeal to be heard a fresh before another Magistrate.

It is so ordered.

DATED at **SHINYANGA** this 26/09/2022.

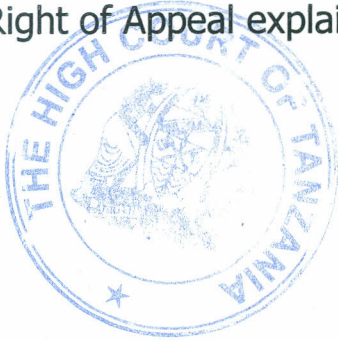


L. Hemed
JUDGE

Court:

Judgement is delivered.

Right of Appeal explained.




L. Hemed
JUDGE
26/09/2022