

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

**PC. CIVIL APPEAL NO. 65 OF 2021**

*(Arising from Civil Appeal No. 20/2020 of the District Court of Sengerema at Sengerema dated 22/09/2020 Originating from Civil Case No. 38/2020 of the Primary Court of Nyehunge at Sengerema)*

**1. TCG C/O MELKIAD TIBEZUKA }  
2. SAMWEL ALFRED } ..... APPELLANTS**

**VERSUS**

**1. DENIS MGETA }  
2. WEO NYEHUNGE } ..... RESPONDENTS**

**JUDGMENT**

*20<sup>th</sup> September & 6<sup>th</sup> October 2022*

**OTARU,J.:**

The Appellants are dissatisfied with the decision of the District Court of Sengerema at Sengerema in Civil Appeal No 20 of 2020 which set aside the attachment and sale process of the 1<sup>st</sup> Respondents by the 2<sup>nd</sup> Respondent.

The Appeal emanate from the following facts 1<sup>st</sup> Appellant successfully sued the 1<sup>st</sup> claiming T. Shs 4,916,536/=. During execution of the decree a house belonging to the 1<sup>st</sup> Respondent was attached and sold by the 2<sup>nd</sup> Respondent to the 2<sup>nd</sup> Appellant. Aggrieved, the 1<sup>st</sup> Respondent unsuccessfully filed Civil Case No. 38 of 2020 against the 2<sup>nd</sup> Respondent in the Primary Court of Nyehunge at Sengerema, to nullify the sale.

Dissatisfied, the 1<sup>st</sup> Respondent filed Civil Appeal No. 20 of 2020 in the District Court of Sengerema at Sengerema. This time he was successful as the decision to attach and sell the house was set aside and ordered to start afresh.

The Appellants filed 3 grounds of Appeal. At the hearing they dropped the 3<sup>rd</sup> ground and remained with the first two which read as;-

1. That the trial court erred in law and fact for determining the appeal against the appellants while they were not party to the original proceedings of setting aside the sale at the trial court.
2. The court erred in law and fact for entering judgments in favour of the 1<sup>st</sup> respondent while at the trial court never involved decree holder and buyer of the house subject to Public Auction in Civil Case No. 59/2019

On ground 1 the learned advocate for the Appellants argued that the Appellants were not part of original proceedings in Civil Case No 38/2020 but were included in Civil Appeal No 20/2020 in the District Court of Sengerema. He argued further that the act of including them was wrong as they were not heard at the trial court but only at the appellate court, citing the case the case of **Magu District Council Vs Mhando Nkwabi** (1997)TLR 286 counsel relied on the holding of the case to the effect that

'adding the parties at the appellate level was found to be invalid and the judgment reached was held to be also invalid.

On the second ground of appeal counsel for the Appellant contended that had the buyer been joined in the trial court with the Decree Holder under Rule 85(1)(a) and (b) of the **PC Civil Procedure Rules** GN No. 310/1964, the District Court would not have entertained the sale and that if the District Court considered the fact that the buyer and the Decree Holder were never joined as parties in Civil Case No 38/2020, it would not have decided to set aside the sale. Then prayed to allow the appeal by quashing the proceedings and set aside the judgment of the District Court of Sengerema with costs.

The learned counsel for the Respondent adopted the Reply to the Petition of Appeal filed on 1<sup>st</sup> December 2021. And submitted that the Appellants were fully involved, pointing at page 3 of the typed judgment of the District Court where the 1<sup>st</sup> and 2<sup>nd</sup> Appellants are recorded making submissions. Adding that even if they were heard, it could not have changed the situation, because the whole process in the trial court was irregular and improper before the eyes of the law. He further added that the order by the appellate court did not prejudice the appellant because it directed the execution process to start afresh therefore could give them

the chance to be heard and cure the irregularities complained of. Submitting that the decision of the District Court was proper thus should not be faulted the learned counsel prayed for dismissal of the Appeal with costs.

In the Rejoinder, the Appellants agreed that no one was prejudiced but argued that the District Court of Sengerema did not have the mandate to entertain the appeal due to the added parties and reiterated his prayers.

Having considered the submissions by the parties, I believe that the question before this Court is **whether the trial court erred in law and fact in determining the appeal against the appellants while they were not party to the original proceedings of setting aside the sale at the trial court.** If the answer to this will be affirmative, then **whether the court erred in law and fact in entering judgments in favour of the 1<sup>st</sup> Respondent while at the trial court he never involved 2<sup>nd</sup> Respondent.**

The proceedings indicate that on 1<sup>st</sup> September 2020, before hearing commenced in the District Court, counsel for the 1<sup>st</sup> Respondent successfully requested the court to add the Appellants as Respondents. The Appellants were notified and served with the Amended Memorandum

of Appeal to which they responded to and appeared to the very end without any objections to them being joined. When the appeal was decided in favor of the 1<sup>st</sup> Respondent, that is when the Appellants dissatisfied, filed this Appeal. As correctly observed by the Respondent, and admitted by the Appellants, them being joined in the District Court did not and could not have prejudiced them in anyway possible. They had an opportunity to object but they did not.


I have also considered the case of **Magu District Council Vs Mhando Nkwabi** (supra) cited by the Appellants' learned counsel. I do not find this case relevant because it was based on an action of a learned advocate drafting a decree, in the process adding new parties after the conclusion of the case and without their knowledge. The court observed that the action of the advocate was improper, rendering the entire application incompetent before the court and, therefore invalid. In the case at hand, the Appellants were not only added but were also given the opportunity to respond.

It seems to me that the issue of joinder and non-joinder of parties is merely an afterthought on the part of the Appellants, as such, the issue **whether the trial court erred in law and fact in determining the appeal against the appellants while they were not party to the original proceedings of setting aside the sale at the trial court**, is

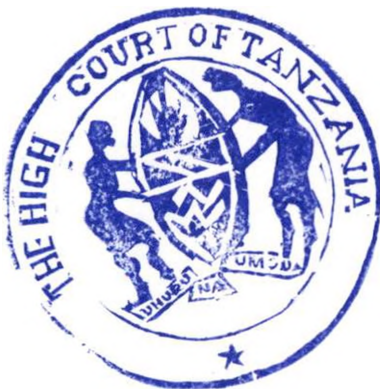
answered in the negative, as a result, I do not find this Appeal to have any merits and I shall not go the next ground. The Appeal is therefore dismissed in its entirety.


The Appellants to pay the Respondents' costs.

**DATED at MWANZA** this 6<sup>th</sup> day of October 2022.

  
M.P. OTARU  
**JUDGE**

This Judgment is delivered under my hand and the seal of this Court this 6<sup>th</sup> day of October, 2022 in the presence of Stephen Kaijage (Adv) holding brief for Acram Adam (Adv) for the Appellant and Stephen Kaijage (Adv) for the Respondent.



  
M.P. OTARU  
**JUDGE**  
**06/10/2022**