

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM**

CIVIL APPEAL NO. 252 OF 2020

(From Civil Case No.47 of 2020 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu)

CATHERINE EVARIST MASALA1ST APPELLANT
NICHOROUS KARIGO.....2ND APPELLANT
PIUS LAURENT.....3RD APPELLANT

VERSUS

AMINIEL PETER NGOMOI.....RESPONDENT

JUDGMENT

26/8/2022 & 30/9/2022

MASABO, J.:-

The appellant herein were defendants in Civil Case No.47 of 2020 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu. After being served with the plaint, they filed a joint written statement of defence accompanied by a preliminary objection premised on the following two limbs: *one*, the court had no jurisdiction to entertain the suit and *second*, the plaintiff has no *locus standi*. On 14th April 2020, hearing was scheduled to proceed in writing as per the schedule fixed by the court upon consultation with the parties. The defendants were to file their submission in chief on 20th

May 2020 followed by the plaintiff's reply submission on 3rd June 2020 and a rejoinder by 10th June 2020.

In total disregard of the court's order, the defendants never prosecuted the preliminary objection as they never filed their respective submissions. This prompted the plaintiff's counsel to make a prayer that the preliminary objection be marked as abandoned. Much as the court was convinced by the prayer and the submission there to, it refrained and correctly proceeded to determine the first limb on the jurisdiction of the court and found it to have merit. Having sustained it, it struck out the suit but refrained from granting costs. The defendants were aggrieved by the omission to grant costs and have come to this court armed with only one ground of appeal to wit, *the trial court erred in law and facts in denying them the costs they incurred defending the case.*

Submitting in support of their ground of appeal during the hearing which proceeded in writing, their counsel, Mr. Edward Samson Mbamba, cited the decision of the Court of Appeal in **Ramani Consultants v The Board of Trustees of the National Social Security Fund & Another**, Civil

Application No. 184 of 2014 (unreported) where it was underscored that, ordinarily, costs follow event and in the event it does not, a good reason must be demonstrated. He then argued that, as the court did not award costs to the appellants (defendants) it ought to have assigned a good cause for not doing so. Since it did not, it offended the law.

For the respondent, Ms. Glory Evance, learned advocate conceded that, the **Ramani Consultants v The Board of Trustees of the National Social Security Fund & Another** (supra), is in deed the prevailing law. However, she submitted that the application of this rule proceeds in consideration of the circumstances of the case. Since the appellants in the present case abandoned the preliminary objection, it was fair and just not to award them costs. The trial court can, therefore, not be faulted for denying them cost.

Rejoining, Mr. Mbamba reiterated his position and added that, the appellants ought to have been compensated for the costs they incurred in hiring an advocate to defend them in court. He then added the decision of **John Eluiafye v Michael Lesani Kweka**, Taxation Reference No. 12 of 2007 in which the court of appeal cited the case of **Prechand v Quarry Services**

of Africa Ltd and Another [1972] EA 162 which underscored that the successful party must be fairly reimbursed for the costs he has incurred.

I have considered the submission by the counsel and the proceedings in the lower court record which depict what has been summarized above. The task ahead of me is to determine the sole ground of appeal and in doing so, answer the question whether the refusal by the trial court to award costs was legally justified. As correctly argued by the Mr. Mamba and supported by Ms. Venance, the law with regard to award of costs is well settled that, much as the award of costs is within the discretion of the court, the exercise of such discretion should be favourable to the winning litigant unless save where there are good reasons for not doing so. It is similarly trite that, the reasons for departure from the above rule, must be disclosed. Dealing with this rule in **Prachand v Quarry Services of Africa Ltd and Another** [1972] EA 162, the Court of Appeal of East Africa, as cited by the Court of Appeal in **John Eluiafye v Michael Lesani Kweka (supra)** underlined that in awarding costs, one of the crucial factors for consideration is the need to ensure that the saucerful litigant is fairly reimbursed for the costs he has incurred in the suit. And, in **Ramani Consultants v The Board of**

Trustees of the National Social Security Fund & Another (supra), it was held that:

On the issue of costs, we would, at first, state that costs are awarded at the discretion of the court subject to the general rule and practice that costs should normally follow the event unless the Court orders otherwise for a good cause (see for example, this Court's decision in **Itex Sarl v The Chief Executive, Tanzania Roads Agency (TANROADS) & Another**, Civil Application No. 14 of 2015). The proper exercise of such discretion involves taking into account all relevant factors.

In the preset case, much as the record is silent on the reasons for departure from the general rule, the same appears to be not far-fetched. The fact that the defendant having raised the preliminary objection disgracefully abandoned it in total defiance of the court's schedule for filing of written submission might have prompted the court to deny them costs. Being in his shoes I would have possibly done so. Nevertheless, as per the authorities above stated, however obvious, the reason ought to have been clearly stated in the proceedings. The omission constitutes an error.

For this reason and considering that the appellant might have incurred some costs in hiring a counsel, drafting and filing a written statement of defence and a notice of preliminary objection, I find merit in the appeal. In the up short of the above, the appeal is allowed. The appellant is awarded costs for this appeal and for Civil Case No. 47 of 2020.

Dated and delivered at Dar es Salaam this 30th day September, 2022.

X

J.L. MASABO

JUDGE

30/09/2022

