

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 73 OF 2021**

(Arising from Judgment of the District Court of Kinondoni at Kinondoni in Civil Appeal No.74 of 2020, dated 12/05/2021, before Hon. E.A.Mwakalinga- SRM, Originating from Civil Case No.164 of 2020 before Sinza/Manzese Primary Court)

**GALILEA E.A LTD.....1<sup>ST</sup> APPELLANT**

**CHRIS KUFFAR.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**GOODLUCK TECHNICS..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 05.10.2022*

*Date of Judgment: 07.10.2022*

**E.E.KAKOLAKI, J.**

Before the trial court, Sinza/Manzese Primary Court in Civil Case No. 162 of 2020, the respondent herein a company dully registered under the Companies Act, successfully sued the 1<sup>st</sup> appellant herein also the company registered under the Companies Act, for breach of contract and obtained judgment in her favour. It is however noted that, proceedings proceeded against both 1<sup>st</sup> and 2<sup>nd</sup> appellants while the judgment which was handed down on 10/08/2020, was entered against the 1<sup>st</sup> respondent's director in

person one Chris Kuffar, the 2<sup>nd</sup> appellant who was not originally sued. Unhappy with the decision both the 1<sup>st</sup> and 2<sup>nd</sup> appellants unsuccessfully appealed to the District Court of Kinondoni vide Civil Appeal No. 74 of 2020, hence the present appeal. The memorandum of appeal comprised six grounds of appeal which for the purposes of this ruling, I see no need of reproducing them.

As alluded to above, the trial Court entered judgment against the 2<sup>nd</sup> appellant who was not the party to the suit. Surprisingly and without hesitation, the 1<sup>st</sup> appellant whose judgment was not entered against appealed to the District Court alongside with the 2<sup>nd</sup> appellant. The appellate court without noting that, there were defects in both trial court's proceedings and judgment concerning parties in the appeal before it concerning parties to the case, proceeded to hear and determine the same in respondent's favour.

When the appeal came for hearing parties sought leave of the Court to proceed by way of written submission and were both represented. Mr. Dickson Matata represented both 1<sup>st</sup> and 2<sup>nd</sup> appellants while the respondent hired the services of Mr. Odhiambo Kobas, both learned advocates. The submissions were filed timely.

When preparing to compose the judgment in an attempt to thoroughly peruse the lower courts records so as to grasp of what gave rise to this appeal, strangely I noted the anomalies and defects as narrated above, stopped the exercise and summoned the parties to address the Court in the consequences of such defects. Both parties' counsels appeared in court and upon introducing them to the record they all conceded that, the defects concerning parties vitiated the proceedings in both trial court and appellate court's proceedings as well as the judgments and subsequent orders thereto. It was their submission that, since the parties to the suit before the trial court were the respondent and 1<sup>st</sup> appellant it was wrong for the trial magistrate to enter judgment against the 2<sup>nd</sup> appellant who was not a party to the suit. They further said, it was also wrong for both 1<sup>st</sup> and 2<sup>nd</sup> appellant to prefer the appeal jointly at the District Court of Kinondoni and before this Court, as judgment though wrongly entered was against the 2<sup>nd</sup> respondent only and not the 1<sup>st</sup> appellant. They therefore urged this Court to invoke its revisionary powers and proceed to quash both trial court and appellate court proceedings and set aside the judgments and orders thereto.

It is true and I agree with both counsels for the parties that, involvement of the 2<sup>nd</sup> appellant who was not sued as a party in both trial court and appellate

court proceedings and entering of judgment against him vitiated the entire proceeding in both courts and rendered the judgments thereto a nullity.

Having so found the next question is what consequences of such defects are. The only remedy as proposed by the counsel for both parties is quash the proceedings and set aside the judgments and orders thereto which will have the effect of dissolving this appeal.

Consequently, I invoke the revisionary powers of this Court and proceed to quash the proceedings of both Sinza/Manzese Primary Court in Civil Case No. 162 of 2020 and the District Court of Kinondoni in Civil Appeal No. 74 of 2020 and set aside all judgments and orders thereto. I further order that, the matter be tried do novo before another competent magistrate. The appeal is allowed to that extent.

Since the issue disposing of the appeal has been raised by the Court, I make no orders as to costs.

It is so ordered.

Dated at Dar es salaam this 07<sup>th</sup> day of October, 2022.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

Judgment has been delivered at Dar es Salaam today 07<sup>th</sup> day of October, 2022 in the presence of Mr. Michael Kabekenga, advocate for the respondent and Ms. Asha Livanga, Court clerk and in the absence of the 1<sup>st</sup> and 2<sup>nd</sup> appellants.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

