

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**SUMBAWANGA DISTRICT REGISTRY**

**AT SUMBAWANGA**

**PC CIVIL APPEAL NO. 8 OF 2021**

*(Originating from Civil Appeal No. 14 of 2021 of Sumbawanga District Court Original Civil Case No. 5 of 2021 from Sumbawanga Urban Primary Court)*

**FAUSTINA MWAKAPANGALA.....APPELLANT**

**VERSUS**

**DANIEL LUCAS MABULA.....RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 21/04/2022*

*Date of Judgement: 19/05/2022*

**NDUNGURU, J**

At the Sumbawanga Urban Primary Court, the appellant herein was awarded a monetary decree against the respondent in the sum of Tshs. 29,000,000/= as unremitted amount due plus Tshs. 6,000,000/= being expected profits for the two months. The respondent successfully appealed to the District Court of Sumbawanga. The District Court of Sumbawanga quashed the decision and orders of the Primary Court for the lack of jurisdiction. Aggrieved by such decision and orders of the District Court of Sumabawanga, the appellant has preferred this appeal with the following four (4) grounds of complaints: -

- 1. That the appellate court erred in law by raising the issue of jurisdiction suo motto when composing the judgment without according the parties the right to be heard on the same.*
- 2. That the appellate court erred in law and fact by holding that the trial court lacked jurisdiction to try the matter while the claim in the form was Tshs. 29,000,000/= which fall within jurisdiction of primary court.*
- 3. That the appellate court erred in law and fact by holding that the award of Tshs. 6,000,000/= was not proper while was properly granted per evidence on the records.*
- 4. That the trial court erred in law by awarding cost to the respondent without legal justification on the same.*

At the hearing before me, the appellant had a legal services of Mr Baltazar Chambi, learned counsel. The respondent enjoyed the legal services of Ms. Tunu Mahundi.

Ms Mahundi informed this court that she conceded to the present appeal after going through the records and the grounds of appeal and she prayed for the waive of the costs.

On his part, Mr Chambi submitted that he has no objection to that, however he prayed for the consideration of costs be granted.

Responding Ms Mahundi submitted the fault giving raise to this appeal was caused by the court not parties, thus she insisted costs be waived.

In this case which was before the first appellate court, District Court of Sumbawanga there was no dispute that the first appellate Magistrate raised the issue of jurisdiction *suo motto* in the course of composing judgement without accorded the parties to the case to address the issue. This being the first complaint by the appellant which if dealt successfully would dispose of the entire appeal without discussing remaining grounds of complaints

I entire agree with the legal principle that any decision affecting the right or interest of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard. The principle had been pronounced in several Court of Appeal cases, among them being the case of **Wegesa Joseph M. Nyamaisa vs Chacha Muhogo**, Civil Appeal No. 161 of 2016, and **Margwe Erro Benjamini Margwe & Pater Marwe vs Moshi Bahalulu**, Civil Appeal No. 111 of 2014.

In the above two cases, it was held generally that where a judge raises an issue *suo motu*, he has the duty to call the parties to address

him on the issue raised before basing on that issue to reach the decision in that particular case.

Further, in the case of **Mbeya-Rukwa Auto Parts and Transport Ltd vs Jestina George Mwakyoma** [2003] TLR 251, It was observed that, hearing of parties on the issue raised *suo motu* by the court shows respect of the principle of natural justice, the right to be heard, and the constitutional principle of equality before the law as enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1997.

In view of the above position of the law, I find the decision and orders thereof of the District Court of Sumbawanga a nullity, consequently I proceed to quash and set aside the proceedings and the orders emanated thereof.

Now, having resolved that issue, the crucial issue for determination in this appeal is whether the Sumbawanga had jurisdiction to award monetary decree to the tune of Tshs. 29,000,000/=. From the record, the appellant sued respondent at the Sumabawanga Urban Primary Court claiming monetary amount of Tshs. 29,000,000/= only. The amount is within the jurisdiction of the Primary

Court as per the provision of part III of **section 18 (1) (a) (iii) of the Magistrate Courts Act**, Cap 11 RE 2019 which provides that: -

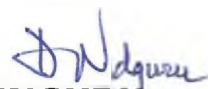
*"A primary court shall have and exercise jurisdiction in all proceedings of a civil nature for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value."*

In view of the above, I proceed to uphold the decision of the Sumbawanga Primary Court which granted the award to the tune of Tshs. 29,000,000/= as pleaded and proved thereof by the appellant plus the expected profit of Tshs. 6,000,000/=.

Regarding the costs of the suit, I order that the respondent to bear the costs of the suit.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
**19. 05. 2022**