

**IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA**

PC CIVIL APPEAL NO. 9 OF 2021

(Originating from Civil Appeal No. 15 of 2021 of Sumbawanga District Court Original Civil Case No. 6 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. 12,000,000/= . 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 ground that respondent was denied the constitutional right to be heard. Aggrieved by such decision and orders of the District Court of Sumabawanga, the appellant has preferred this appeal with the following three (3) grounds of complaints: -

- 1. That the appellate court erred in law by raising the issue of service of summons 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 deciding the application for set aside ex-parte judgement on merits which was filed out of time contrary to the law.*
- 3. 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 grounds of appeal, however she prayed for the waive of the costs as she has served the time for both the appellant and respondent and the fact that the defect giving raise to the present appeal was caused by the court.

On his part, Mr Chambi submitted that he has no objection to that, however he prayed for the consideration of costs be granted. He submitted that he had incurred some costs in research.

Responding Ms Mahundi insisted for the waive of the costs.

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 service of summons *suo motto* in the course of composing judgement without accorded the parties to the case to address the issue. This being the first main 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, and the fact that the respondent conceded to the present appeal, I see no need to disturb the findings of the Sumbawanga Primary Court.

In view of the above, I proceed to uphold the decision and order of the Sumbawanga Primary Court awarding the amount of Tshs. 12,000,000/= as pleaded and proved thereof by the appellant.

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