

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**(PC) CIVIL APPEAL CASE No. 36 OF 2021**

*(Arising from the District Court of Musoma at Musoma in Civil Appeal No. 32 of 21 and Originated from Mugango Primary Court at Musoma in Civil Case No. 5 of 2021)*

**PRISCA MASATU WAJERE ..... APPELLANT**

***Versus***

**1. MADARAKA MNADA } ..... RESPONDENTS**  
**2. SAMASI MNADA }**

**JUDGMENT**

02.06.2022 & 02.06.2022

Mtulya, J.:

*'My Lord, we are officers of this court and it is vivid that the district court raised and determined issues suo moto without involving the parties.'*

This text was extracted in today's proceedings from an officer of this court, Mr. John K. Manyama, learned counsel for Mr. Madaraka Mnada & Samasi Mnada (the respondents) in support of ground number one (1) of appeal registered by learned counsel Mr. Ostack Mligo, and argued by Mr. Edson Philipo, learned counsel, who appeared for Ms. Prisca Masatu Wajere (the appellant) during the hearing of **(PC) Civil Appeal Case No. 36 of 2021** (the appeal) filed in this court. The submission in substantiating the ground of appeal originated from the following words:

*That the first appellate court erred in law and fact for raising and deciding new matters suo moto without offending the appellant the right to be heard.*

The ground was traced from the text found at page 6 of the decision of the **District Court of Musoma at Musoma** (the district court) in **Civil Appeal Case No. 32 of 2021** (the case) originating from the **Mugango Primary Court at Musoma** (the primary court) in **Civil Case No. 5 of 2021** (the civil case). During the submission, which was very brief, Mr. Philipo stated that the practice of raising and determining issues *suo moto* is not allowed by the law and prayed this court to allow the appeal and order the learned magistrate who sat in the case to involve the parties in the raised issues before deciding the same. This submission was received well by Mr. Manyama and accordingly supported the move without any reservation.

I have perused the record of the present appeal and found at page 6 of the judgment of the case in the district court and noted the district court after determination of grounds of appeal, noted four defects and some of them touch the legality of the matter at the primary court. However, instead inviting the parties to cherish the right to be heard, as per directives of the Court of Appeal in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George**

**Mwakyoma** [2003] TLR 251, the learned magistrate moved and determined the raised issues and composed judgment without inviting the parties to register materials on the issues to assist him in smooth landing at justice.

The practice of raising and deciding matters *suo moto* without consultation of the parties during proceedings is discouraged by this court and Court of Appeal. I aware that the right to be heard is no longer a natural or human right matter. It is constitutional right enacted under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and celebrated in a bunch of precedents of this court and Court of Appeal (see: **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44; **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251; **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018; and **Ponsian Kadangu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018).


Having noted the fault, and the learned minds are in agreement that the error was committed by the district court during composition of the judgment, I have decided to quash the judgment of the district court and let the proceedings of the case

intact. I therefore order the same district magistrate to summon and hear the parties on the raised new issues and compose a fresh judgment which shall capture all issues in the case. Calling of the parties and composition of the fresh judgment shall be completed to the finality within two (2) months from the date of this judgment.

I award no costs in the present appeal as learned minds acted as officers of this court under section 66 of the **Advocates Act** [Cap. 341 R.E 2019] and cherished section 3B (2) of the **Civil Procedure Code** [Cap. 33 R.E 2019] and in any case, the dispute was not resolved to the finality to identify the wrongdoer in the case.



Ordered accordingly.

  
F. H. Mtulya

**Judge**

02.06.2022

This judgment was delivered in chambers under the seal of this court in the presence of the parties and their learned counsels, Mr. Edson Philipo and Mr. John K. Manyama.

  
F. H. Mtulya

**Judge**

02.06.2022