IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL APPEAL NO. 197 OF 2020

KINONDONI MUNICIPAL COUNCIL ..... APPELLANT

VERSUS

LETICIA PATRICK LWANTERE ..... 1ST RESPONDENT

YOHANA EDWARD BGOLEKWA ..... 2ND RESPONDENT

(Appeal from the decision of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 182 of 2018)

JUDGMENT

23rd January & 9th March, 2023

KISANYA, J.:

The appellant, Kinondoni Municipal Council, is appealing against the judgment and decree of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 182 of 2018. In that decision, the appellant and 2nd respondent were ordered to pay the 1st respondent, specific damages of TZS 50,000,000, general damages of TZS 10,000,000/= and costs of the suit.

The material facts leading to this appeal can be briefly stated as follows: On 25th September, 2015, the appellant's motor vehicle with registration number SM 2930 was being driven by the 2nd respondent. It

knocked the 1st respondent who was a pedestrian, while crossing the road thereby causing bodily injuries to her. On 12th November, 2015, the 2nd respondent was charged and convicted of the offence of driving a motor vehicle on public road without a valid driving licence and causing bodily injuries to the 1st respondent through careless driving of the vehicle. The 1st respondent alleged that the 2nd respondent was an employee of the appellant and thus, the duo were jointly and severally liable for the personal injuries and resultant specific and general damages. Therefore, the 1st respondent sued the 2nd respondent and appellant claiming for specific damages of TZS 84,340,900/=, general damages of TZS 50,000,000/=, interest on decretal sum and costs of the suit.

The appellant denied the 1st respondent's claim. It was her contention that the 2nd respondent was not her employee. The appellant stated further that at the time of the accident, the motor vehicle was at the garage for service and thus, not in her control. The 2nd respondent neither filed the written statement of defence nor entered appearance. Therefore, the hearing proceeded ex-parte against him.

At the end of the trial, the trial court was satisfied that the 1st respondent had proved her case on a balance of probabilities. Consequently,

judgment and decree were entered in favour of the 1st respondent and against appellant and the 2nd respondent as stated earlier.

Undaunted, the appellant preferred this appeal. In the memorandum of appeal to this Court, the appellant has fronted eight grounds of appeal. For the reason to be noticed in this judgment, I find it appropriate to reproduce the eighth eight ground of appeal as hereunder:

> *"8.* ***That the trial Court erred both in law and facts for not specifying*** *the extent of liability to each defendant and* ***appearance of the 1st defendant in the case****." (Emphasis supplied).*

At the hearing of the appeal, Mr. Jeremia Odinga, learned State Attorney represented the appellant, whereas the 1st respondent enjoyed the legal services of Mr. Elinihaki Kabura, learned advocate. It is worth noting here that the appeal was disposed of by way of written submissions. As it was before the trial court, the 2nd respondent defaulted to appear. Thus, the appeal proceeded *ex-parte* against the 2nd respondent.

After a careful consideration of the record and competing submission, I am of the view that this appeal can be disposed of by considering the second limb of the eighth ground of appeal. The trial court is faulted for failing to specify appearance of the 1st defendant.

Arguing on the said ground, Mr. Odinga submitted that Order XX Rule 1 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC) requires the court to issue a notice on the date of judgment to the parties. He also relied on the cases of **Chausiku Athuman vs Atuganile Mwaitenge**, Civil Appeal No. 122 of 2007, **Ilala Municipal Council vs Twaha Rwehabura and Three Others**, Misc. Land Case Application No. 552 of 2016, HCT Land Division at DSM (unreported) and **Khadija Rehire Said vs Mohamed Abdallah Said**, Civil Application No. 39 of 2014, CAT (all unreported). Therefore, he was of the view that the trial court's judgment and decree are untenable for being issued in contravention of the law.

Submitting in rebuttal, Mr. Kabura argued that the counsel for the appellant being an officer of the court had a duty to remind the court of the provision of Order XX, Rule 1 of the CPC. He blamed the said counsel, by keeping quiet and raising that issue as a ground of appeal. It was his further view that the ground is just a mere afterthought designed to deprive the rights of the 1st respondent on a technical ground.

Mr. Kabura went on to argue that the fault of the court should not haunt an innocent litigant who prosecuted his case diligently. He therefore urged the court to assess the balance of convenience and see whether the appellant was aggrieved by the failure of the trial court to issue summons

for judgment. It was his contention that much as the trial court did not proceed ex-parte against the appellant, she cannot be aggrieved by the alleged omission. Thus, the learned counsel asked the Court to overrule this ground in its entirety.

Mr. Odinga reiterated his submission in chief. He had nothing to add on the eight ground.

In the light of the foregoing submissions, the issue for determination by the Court is whether the challenged judgment was delivered to the parties warranting the instant appeal. The revenant provision on the said issue is Order XX rule 1 of the CPC which provides:

> *"The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates."*

As it can be observed from the above cited provision, the court is mandatorily required to notify the parties or their advocate, of the date of judgment. It is trite law that failure to comply with the above provision renders the judgment a nullity and that no appeal cannot arise thereon. There are plethora of authorities on that position. See for instance, the case of **Dr. Maua Abeid Daftari v. Fatma Salmin Said**, Civil Appeal No. 88 of 2008 (unreported), Court of Appeal held:

"With the judgment being appealed against incompetently pronounced and dated, there is therefore no valid statement given by a judge of the grounds for a decree" (see, section 3 Civil Procedure Code).

Upon so holding, the Court of Appeal found the appeal before it incompetent and thus, struck it out for want of a proper judgment.

In another case of **Awadhi Idd Kajass v. Mayfair Investment**, Civil application No. 281/17 of 2017 (unreported), the Court of Appeal had this to say on the issue under consideration:

"... we are inclined to agree with the learned advocates for both parties that the purported delivery of the judgment was inoperative with the net effect that no valid judgment and decree came into existence."

Similar stance was taken in the cases of **Robert Edward Hawkins & Another vs. Patrice P. Mwaigomole**, Civil Appeal No. 48 of 2006 (unreported), **Mashishanga Salum Mashishanga vs CRD Bank PLC and 2 Others**, Civil Appeal No. 335 of 2019 (unreported).

Reverting to the instant case, it is on record that the trial court proceeded in the absence of the 2nd respondent who is alleged to have caused the accident which led to the suit instituted before the trial court. The record further reveals that notice for judgment was not issued to the

2nd respondent. That being the case, the impugned judgment was delivered in contravention of Order XX, Rule 1 of the CPC. Being guided by the above cited authorities, the challenged judgment is a nullity.

It was Mr. Kabura's argument that the appellant was not prejudiced by the trial court's omission to notify the second respondent of the date of judgment. However, the Court has considered that one of the grounds of appeal centers on the issue whether the appellant is vicariously liable for the second respondent's acts or omission which led to the accident. In the event the foresaid ground is decided in the appellant's favour, only the 2nd respondent will be held responsible to pay the decretal sum. Since he was not notified of the judgment subject to this appeal, this Court hold the view that it will be unfair to determine the appeal basing on the judgment which is a nullity against the second respondent.

Basing on the above analysis, the second limb of the eight ground is found meritorious. Thus, the appeal is incompetent for want of a valid judgment. It is for the foresaid reason that the Court finds no need of addressing other grounds of appeal.

In the circumstances, the Court exercises its revisionary powers by nullifying the proceedings of the trial court for 19th March, 2020. On the way forward, the trial Court is directed to pronounce the judgment fixed to be

delivered on 19th March, 2020, after complying with the provision of Order XX, rule 1 of the CPC. As the parties are not to be blamed for the said anomaly, the Court makes no order as to costs.

DATED at DAR ES SALAAM this 9th day of March, 2023.

S.E. KISANYA
JUDGE
09/03/2023