

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

CIVIL CASE NO. 29 OF 2016

JOHN BARNABA MACHERA PLAINTIFF

VERSUS

NORTH MARA GOLD MINE LIMITED DEFENDANT

RULING

April 17th & 19th, 2023

Morris, J

This Court delivered its judgement between above parties on March 9th, 2023. Having done so, in the course of processing the necessary proceedings, I discovered that the judgement had clerical errors. Coincidentally, the counsel for the defendant also wrote a letter dated on March 20th, 2023 requesting this court to correct errors in the said judgment. Through the said letter, it was brought to the attention of the court that, one witness, Costantino Makumba Bandolla, who appeared in court as sixth



plaintiff's witness (**PW6**); was mistakenly referred to, in the judgment, as **PW3**.

Going through the court records, proceedings and the judgement, I discovered that, apart from the witness mentioned above, the second plaintiff's witness (**PW2**) was, too, wrongly recorded as **PW5**. The said clerical errors were partly attributable to the fact that the specifically-endorsed witness statements which were filed in court by the plaintiff, did not correspond with the chronology/pattern through which the respective witnesses appeared in court for cross and re-examinations. That is, **Edward Mwita Mohere's** witness statement was filed referring to him as **PW5** while in court he testified *viva voce* as **PW2**. Likewise, **Constantino Makumba Bandolla** filed his witness statement as **PW3** but he entered appearance in court as **PW6**.

The foregoing confusion was inadvertently carried on into the judgment. The subject errors in the judgement are reflected at pages 20 and 26 for Mr. Mohere - PW2 (mistakenly referred to as PW5); and pages 5, 6, 8, 9, 11, 12, 13, 14, 17, 18 and 28 for Mr. Bandolla - PW6 (who is erroneously marked as PW3).



However, as the court was about to work on the above discovery with the view to correcting the inadvertent slip of the computer keyboard, the Plaintiff filed a Notice of Appeal on March 22nd, 2023. Consequently, I summoned the parties to address this court on whether or not it retains mandate to remedy the situation in the presence of the subject Notice of Appeal. Mr. Faustine Mwalongo, learned advocate for the defendant, entered appearance. However, the plaintiff and/or his duet counsel did not pay heed to the court summons despite repeated service of the same to them. Consequently, on April 17th, 2023; acting on the prayer of the defendant-decree holder, the court ordered and proceeded with the court-raised jurisdiction matter in the absence of the plaintiff and/or his lawyers.

Mr. Malongo was brief but firm that the court has jurisdiction to rectify the errors in order to remove the subject confusion from the judgement. According to him, the envisaged alterations are meant to assign the witnesses with the appropriate chronological pattern as they testified in court; as opposed to other documents (particularly, respective witness statements) which referred to them otherwise. In doing so, the judgment will reflect the coherent state of the case proceedings and records. He also

submitted that, section 96 of the **Civil Procedure Code**, Cap.33 R.E. 2019 permits courts to correct clerical errors and typographical mistakes in the judgment at any time.

To buttress his argument, Mr. Malongo made reference to two protuberant authors' literature from India, namely, **Sarkar Code of Civil Procedure**, 12th Edition-Volume I (at page 939); and **Mulla the Code of Civil Procedure**, 16th Edition, Volume I (at pages 1447 and 1448). In particular, he cited the said works in relation to the decipher of section 152 of the **Indian Civil Procedure Code** (which is in *perimateria* to section 96 of Cap. 33 cited above). He observed that, according to the former author, the trial court can amend the judgment even if an appeal has been decided. He, thus, entreated the court to take inspiration from the subject position that if the decree or judgement can be amended even after the appeal has been decided; then the said court credentials may equally be amended before the appeal is heard. It was Mr. Malongo's further argument that, when the error is corrected before the appeal has been heard, the appellate court will be made to work and decide on the correct version of the judgement from the High Court.

The relevance of the second author in this matter, according to advocate Malongo, is that, his literature points out two principles; **first**, that the courts' mistakes should not prejudice parties; and **second**, that courts are duty bound to ascertain that records are true and they present correct state of affairs. Hence, he submitted that this court should adopt the second principle and make appropriate correction of the clerical errors in its judgment so as the Court of Appeal works on the suitable record in the prospective appeal.

I have dispassionately considered the above submissions by the learned counsel. The court is now required to determine whether or not it is seized with requisite jurisdiction to correct clerical mistakes in its judgment after the party files the Notice of Appeal. It is correct that, as argued by Mr. Malongo, under section 96 of ***the Civil Procedure Code*** (Cap. 33 R.E. 2019) the court, either of its own motion or upon being moved by a party; may correct clerical or arithmetical errors in the judgement.

For precision, section 96 provides that:

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any

accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.”

Further, in the case of ***NIC Bank Tanzania Ltd and Flamingo Auction Mart v Samora Mchuma Samora Co. Ltd***, CoA Civil Appeal No. 340 of 2020 (unreported); the Court of Appeal directed that, rectification of the judgement resulting from accidental slip or omissions, should be “by way of a separate order, not by formulating a corrected version of the judgment.” I am also mindful of the judicial spirit in ***William Getari Kegege v Equity Bank and Ultimate Auction Mart***, CoA Civil Application No. 24/08 of 2019 and ***VIP Engineering & Marketing Limited v Societe Generate De Surveillance (S.A) & Another***, High Court Commercial Case No 16 of 2000 (both unreported); ***Jewels & Antiques (T) Ltd v National Shipping Agencies Co Ltd*** [1994] TLR 107 that, litigants should not suffer through mistakes of court officials associated with imprecise record of the proceedings in the administration of justice.

The foregoing legal position notwithstanding, the Court finds that the law is clear that the Notice of Appeal initiates the appeal to the Court of

Appeal. See, for instance, ***Mwanaasha Seheye v Tanzania Ports Corporation***, CoA Civil Appeal No. 37 of 2003; ***David Malili v Mwajuma Ramadhani***, CoA Civil Appeal No. 119 of 2016 (both unreported); and rule 68 (1) of the ***Court of Appeal Rules***, 2009. Hence, the effect of such initial legal step, is that proceedings relating to the matter being appealed against are forthwith transmitted to the Court of Appeal.

Further, the Court of Appeal has oftentimes ruled that upon the Notice of Appeal being filed, the High Court's jurisdiction over the matter is ousted straightaway. I am guided by the holdings in, ***TANESCO v Dowans Holdings SA (Costa Rica) & Another***, CoA Civil Application No. 142 of 2012; ***Exaud Gabriel Mmari v Yona Seti Ayo & 9 Others***, CoA Civil Appeal No. 91 of 2019; and ***Serenity on the Lake Ltd v Dorcus Martin Nyanda***, CoA Civil Revision No.1 of 2019 (all unreported). This position notwithstanding, there are statutory mandates reserved for the High Court even in the presence of the Notice of Appeal. Such powers include, determining applications for leave to appeal to the Court of Appeal; or certification as to the point of law; or issuance of certificate of delay; and for

enlargement of time for a party to file the notice of appeal or to seek leave or certificate on a point of law.

In the same connection, the Court of Appeal in ***Arcado Ntagazwa v Buyogera Bunyambo*** [1997] T.L.R. 242, made it clear a principle that:

"Once the formal notice of intention to appeal was lodged in the Registry, the trial judge was obliged to halt the proceedings at once and allow for the appeal process to take effect or until that notice was withdrawn or was deemed to be withdrawn."

In the upshot, I find that this Court lacks the requisite jurisdiction over the otherwise envisaged rectification of errors in its judgment issued on March 9th, 2023.



C.K.K. Morris
Judge
April 19th, 2023

Ruling delivered in presence of advocate Faustine Malongo, for the defendant; and in the absence of the plaintiff.



C.K.K. Morris
Judge
April 19th, 2023

