

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

CONSOLIDATED CIVIL APPEALS No. 30 &32 OF 2022

*(Arising from the Resident Magistrates' Court of Musoma at Musoma
in Civil Case No. 6 of 2021)*

CRDB BANK PLC APPELLANT

Versus

DORA SAULO RUHUMBIKA RESPONDENT

JUDGMENT

08.05.2023 & 08.05.2023

Mtulya, J.:

In the mid of June last year, our superior court in judicial hierarchy, the **Court of Appeal** (the Court) was invited to consolidate Civil Appeals No. 117/16 of 2018 & 199 of 2019 in a dispute between **Barclays Bank Tanzania Limited** and **Sharaf Shipping Agency (T) Limited & Another** to resolve an issue concerning framing of issues in the dispute. The Court then, at page 14 of the judgment, had observed that:

Framing of issues is a necessary step in resolution of civil disputes because it defines and narrows down the scope of contention and thereby making the trial more focused and short-lived. Although the

duty to frame issues is of the trial judge [judicial officer], the same cannot be done without involving the parties or their advocates who have both the duty to assist the court on the process and a right of hearing as well.

The reasoning of the Court is found at page 13 of the judgment, that:

Issues arise, according to Order XIV Rule 1 (1) of the CPC, where a material proposition of fact or law is affirmed by one party and denied by the other. Order XIV Rule 1(5) read together with Order VIII B Rule 4 requires the trial court to, upon reading the pleadings and hearing the parties or their pleadings at the first hearing, frame and record the issues on which the right decision of the case appears to depend. It is also the law according to Order XIV Rule 1 (3) that each material proposition affirmed by one party and denied by the other constituted a distinct and separate issue.

The Court thought, at page 16 & 17 of the judgment that:

The law on this issue is very settled, parties in adducing their evidence are guided by issues. They are not expected during trial, to adduce evidence which is extraneous the framed issues and pleadings. In effect, the approach taken by the trial court departed from the rules of fair hearing which require both parties to be treated equally in the hearing process.

Finally, the Court, at page 20 of the judgment, had allowed the appeal to the extent of the reply on the requested issue and quashed the judgment and set aside proceedings of the trial court. The Court had further remitted the case file to the trial court for retrial with directives that issues be properly framed and determined according to the law and practice of courts.

The thinking of the Court was appreciated by this court in the precedent of **Bank of Africa Tanzania Limited v. Malima Maghembe Chiwanyi**, Civil Appeal No. 43 of 2021. The practice is now certain and settled (see: **Peoples' Bank of Zanzibar v. Suleman Haji Suleman** [2000] TLR 347; **Peter Ng'homango v. The Attorney General**, Civil Appeal No. 114 of 2011; **Norman v. Overseas Motor Transport (Tanganyika) Limited** [1959] 1 EA

131; and **Haj Ibrahim Mohamed Saeed v. Al-Haji Othman Kaid Sallan** [1962] EA 149).

In the present appeal the record shows that the trial magistrate in the **Resident Magistrates' Court** (the trial court), when resolving **Civil Case No. 6 of 2021** (the case) between the parties, had declined to frame and record issues during the proceedings of the case. However, the learned trial magistrate had moved further to hear and determine the case to the finality. The determination of the trial court had aggrieved both parties hence each had approached this court complaining on several matters registered in **Civil Appeals No. 30 & 32** (the appeals).

Today morning when the appeals were scheduled for hearing, the parties invited legal services of **Mr. Paul Mng'arwe** and **Mr. Wilbard Kilenzi**. The dual had short consultations and conversations in Chambers and finally agreed, and it was blessed by this court, to consolidate the reasons of the appeals in one single case file for easy determination of the grounds of appeals, and of course avoiding conflicting decisions of this court emanating from one original suit.

However, before the reasons of contest could their course, this court had *suo moto* noted the indicated irregularity on the record of the appeal and invited the learned minds of the parties to explain the status of the proceedings and judgment of the trial court. According to Mr. Kilenzi, the absence of issues in the proceedings means that the trial court had not resolved the case as issues are the basis of determination of disputes in courts of law. In his opinion, the trial court had declined to frame and record issues, which is an elementary principle in resolving disputes brought before courts.

Regarding the status of proceedings and judgment of the trial court, Mr. Kilenzi thought that the irregularity is fatal and goes to the merit of the case hence the proceedings and judgment of the trial court must be quashed in favor of proper record of the court. Finally, Mr. Kilenzi prayed this court to invoke its revisionary powers enacted in section 79 (3) of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Code) to revise the record and if appropriate to invite section 76 (1) (b) of the Code to remit the case file to the trial court with directives that proper issues be framed and recorded in accordance to the law.

The observations and thinking of Mr. Kilenzi were supported by Mr. Mng'arwe, who briefly submitted, that the law enacted in the Code makes it mandatory for issues to be framed and determined. Regarding failure of the trial court to record the issues, Mr. Mng'arwe thinks that the decline is fatal irregularity which renders both the proceedings and judgment of the trial court a nullity.

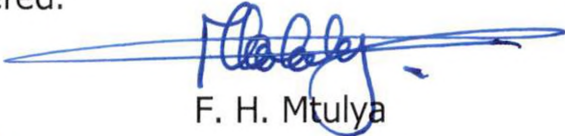
In the present appeal there is vivid display of irregularity caused by failure of the trial court to frame and record issues in the proceedings as required by the law enacted in Order XIV Rule 1 (1) of the Code and precedent of the Court in **Barclays Bank Tanzania Limited v. Sharaf Shipping Agency (T) Limited & Another** (supra). This court is bound by the decisions of the Court and cannot depart even if it thinks right to do so. For the need of respect of the directives of the Court and certainty in decisions emanated from our courts, I am moved to follow the course taken by the Court.

In the end, I set aside proceedings of the trial court from 22nd October 2021 as reflected at page 13 of the typed proceedings, when the plaintiff's case started, and quash the impugned judgment pronounced on 22nd November 2022 for

want of proper interpretation of the law in the Code and indicated precedents. Regarding the way forward, I remit this case file to the trial court for retrial with directives that the trial court to frame and record issues as per requirement of the law regulating framing and recording of issues. Considering the nature of the present appeal, and noting the fault was caused by the trial court, I shall not give an order as to costs. Each party shall bear its costs.

It is so ordered.




F. H. Mtulya

Judge

08.05.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of **Mr. Paul Mng'arwe**, learned counsel for the respondent and **Mr. Wilbard Kilenzi**, learned counsel for the appellant.


F. H. Mtulya

Judge

08.05.2023