

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**CIVIL REVISION NO. 7 OF 2022**

*(Originating from Civil Case No. 3 of 2017 Kishapu District Court)*

**JAMES DUTU..... APPELLANT**

**VERSUS**

**ELAXI'S TEXTILE INDURIAL CO. LTD.....RESPONDENT**

**RULING**

*04/04/2023 & 04/04/2023*

**S. M. KULITA, J.**

This court received a case file for a Civil Case No. 3 of 2017 from Kishapu District Court. It was attached with a letter with Ref. No. AB.49/165/01/02 dated 08/04/2022 stating that the said court submits to this court the said case file for necessary orders.

The reason behind according to the District Resident Magistrate In-charge for that court who is also a trial Magistrate for that matter is that she has noticed that the 1<sup>st</sup> Pre-Trial Conference and Mediation had not been conducted for that matter which had attained the hearing stage.



Upon inviting the parties to address the court on that, they never disputed on that and left this court to take necessary steps on that.

I went through the records, particularly the proceedings for the said Civil Case No. 3 of 2017 and noticed that the 1<sup>st</sup> Pre-Trial Conference and Mediation had not been conducted. Be it noted that according to the law, particularly **Order VIIIA, Rule 18(1)** and **Order VIIIC, Rule 24 of the Civil Procedure Code** respectively, those Procedures, to wit, 1<sup>st</sup> Pre-Trial Conference and Mediation should be adopted in entertaining Civil Cases like this one which has no exception for those stages to be skipped.

Citing the case of **CHARLES RICK MULAKI V. WILLIAM JACKSON MAGERO, Civil Appeal No. 69 of 2017, High Court at Mwanza** (unreported) Hon. De-Mello, J (Rtd), as she then was, stated in **LB MAFIA ISLAND COMPANY LTD V. RAMADHANI BAKARI YUSUPH, Civil Appeal No. 106 of 2019, High Court, at DSM** (unreported) that the omission to conduct mediation vitiates the judgment and the proceedings of the trial court.

As the said mandatory procedures have been skipped in the trial court's proceedings, through the Revisionary Powers that I have under **section 44(1) of the Magistrates' Court Act**, I hereby order the trial court to

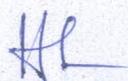


conduct the 1<sup>st</sup> Pre-trial Conference and Mediation from the proceedings dated 21/02/2018. As the same were supposed to be done before the final Pre-Trial Conference and Hearing, all proceedings that had been entered into the record after completion of pleadings, but in the absence of the mandatory procedures of the 1<sup>st</sup> Pre-trial Conference and Mediation, are declared a nullity, hence nullified from the record.

That being the case, all proceedings which were recorded from 28/03/2018 inclusive are nullified. In that sense, the trial court remains with the proceedings ended up on 21/02/2018. It has thus to conduct Mediation from that date's proceedings, as usual through another Magistrate.

If the said mediation will be marked failed, the case file will have to be remitted back to the trial Magistrate for Final Pre-Trial Conference, then hearing.

As this matter is a backlog at the trial court, I hereby order for the quick implementation of this court's decision, that the case be frequently heard and immediately determined.

  
**S. M. KULITA**  
**JUDGE**  
**04/04/2023**



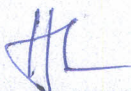
**ORDERS:**

1. The original case file to be remitted back to Kishapu District Court as soon as possible for the implementation of this court's orders.
2. Mention before the trial Magistrate on 19/04/2023 at 0900 hours for scheduling the 1<sup>st</sup> Pre-Trial Conference date.

Sgd  
**S. M. KULITA**  
**JUDGE**  
**04/04/2023**

**DATED** at **SHINYANGA** this 4<sup>th</sup> day of April, 2023.



  
**S. M. KULITA**  
**JUDGE**  
**04/04/2023**