

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB-REGISTRY OF MANYARA**  
**AT BABATI**  
**CIVIL APPEAL NO. 05 OF 2023**

*(Arising from Civil Application No. 09 of 2022 of the District Court of Hanang' at Katesh and Original from Civil Case No. 12 of 2022 in the Katesh Primary Court at Hanang' District)*

**HERMAN PETRO TORONTI.....APPELLANT**

**VERSUS**

**AGASTO JAPHARY KIDAULA..... RESPONDENT**

**JUDGMENT**

*06<sup>th</sup> & 16<sup>th</sup> June, 2023*

***Kahyoza, J.:***

**Herman Petro Toronti** (the appellant), successfully, sued **Agasto Japhary Kidaula** (the respondent) before the primary court of Hanang' District at Katesh for breach of contract. The primary court awarded the appellant TZS 3,749,998/= on the 29<sup>th</sup> day of April 2022. At approximately four Months later, the respondent came out from a long slumber, and sought for leave to appeal out of time before the District Court. Before the hearing of the said application, the appellant (the then respondent) raised a preliminary objection that the respondent's application was incompetent

for wrong citation of law. The District Court sustained the objection, however, it did not award costs to the appellant. Aggrieved, **Herman Petro Toronti** preferred this appeal under the one ground of appeal, which paraphrased as follows-

*"That, the Resident Magistrate erred both in law and fact in refusing to grant costs or assigning reasons for not awarding costs."*

Mr. Massanja, Advocate represented the Appellant, while the respondent was not represented. At the hearing of the appeal, the appellant had nothing substantial to add, he rather prayed for this court to consider his grounds of appeal featured in his petition. On the other side, the respondent left it in the hands of this court's machinery to determine his fate.

The appeal raises only one issue that is-

**1. Was the Court's failure to award costs to the appellant justified?**

There is no dispute that the respondent applied for extension of time before the district court. The appellant raised a preliminary point of law which the district court upheld and dismissed the application. The record further bears testimony the district court dismissed the application with no

order as to cost. Thus, it dismissed that application without granting the appellant who was the respondent costs. With that background, I now determine the only issue of this appeal, whether the district court was justified not to award costs to the appellant.

**Was the court's failure to award costs to the appellant justified?**

I will commence to state that costs are awarded under section 30 (1) and (2) of **the Civil Procedure Code**, [Cap. 22 R.E 2019] (the **CPC**) The section provides-

**"30. Costs**

*(1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law from the time being in force, **the costs of, and incidental to, all suits shall be in the discretion of the court** and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.*

*(2) **Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing.***  
*(Emphasis added)*

The cited provisions are couched in mandatory terms, that the issue of costs is at court's discretion, "costs shall follow the event" and where costs do not follow event, reason(s) must be given in writing. The same is amplified in **Cma Cgm (Tanzania) Limited vs Insignia Limited** (Misc. Commercial Application No. 168 of 2016) published in [www.tanzlji.com](http://www.tanzlji.com) (now [www.new.tanzlji.org](http://www.new.tanzlji.org)) as [2017] TZHCComD 4 where it was observed that:

*"I should only state that in the adversarial system of adjudication to which our country belongs, the position is that costs are awardable at the discretion of the court and the general rule that an unsuccessful party must be condemned to pay costs in favour of the successful party. **That principle can be gleaned in section 30 (1) of the CPC and under sub-section (2) thereof, where the court directs that any costs shall not follow the event, it shall state its reasons in writing.** As for what "costs shall follow the event" means, was stated by this court (Biron, J.) in **Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd** [1967] 1 EA 287 at pp 289 - 290 at which, relying on Mulla [supra (12th Edn.)] at p 150, His Lordship observed:*

*"The general rule is that costs shall follow the event unless the court, for good reason, otherwise orders. **This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause***

*for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation, but*

In the case of **Kiska Limited vs. Vittorio De Angelis**, Civil Appeal No. 9 of 1968 E.A.C.A at page 3, it was observed that:-

*"Thus, where a trial court has exercised its discretion on costs, **an Appellate Court should not interfere unless the discretion has been exercised unjudicially or on wrong principles.** Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. it will also interfere where reasons are given if it considers that those reasons do not constitute "good reason" within the meaning of the rule."*

From the cited authorities, it is obvious that the Resident magistrate failed to adhere to the mandatory requirement of assigning reasons as to why the appellant was curtailed his entitlement to costs. I find it befitting for this court to interfere with the order so meted, for it was injudiciously.

In addition, it was not justified as to why the appellant was not awarded costs while his preliminary objection was sustained. In **Mohamed Salmin vs Jumanne Omary Mapesa**, Civil Application No.4 of 2014 (unreported) the Court of Appeal held;-

*"One of the established principles, is that, costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of this costs. **A successful party could lose his***

***costs if the said costs were incurred improperly or without reasonable cause, or by the misconduct of the party or his advocate. The list is not exhaustive. Each case would be dictated by its own set of circumstances.***” (Emphasis added)

It is unfortunate that the appellant was denied costs unreasonably as the district court did not assign reason for no granting costs. It misused its discretion. In the circumstances, it was not justified for not awarding him costs. I am of the firm view that the appellant, having defended that application successfully, was entitled to costs before the district court.

In end, I allow the appeal with costs. I find and hold that the appellant was entitled to costs for defending the application before the district court. I quash and set aside the district court order refusing to grant costs and award the appellant with costs for defending the application.

It is ordered accordingly.

**Dated at Babati** this 16<sup>th</sup> day of June, 2023.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,  
Judge**

**Court:** Judgment delivered in the presence of parties. B/C Ms. Fatina (RMA) present.



A handwritten signature in blue ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,**

**Judge**

**16/06/2023**