

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 68 OF 2022

(Originating from Land Application No. 95/2019 of the District Land and Housing Tribunal for Singida)

STAR MEDIA (TZ) LTD APPELLANT

Versus

KHADIJA ISMAIL HUSSEIN RESPONDENT

RULING

4th May & 5th June 2023

KHALFAN J.

The Respondent herein was the Applicant in Land Application No. 95/2019 of the District Land and Housing Tribunal for Singida, which she instituted against the Appellant (the Respondent in the trial tribunal) claiming for among other reliefs, a declaration that, the Appellant be ordered to pay the arrears of rents for two years to the tune of 18,000,000/ TZS. The Hon. Chairperson of the Tribunal granted the Application and ordered the Appellant to pay the said amount to the tune of 18,000,000/ TZS.

Now the Appellant herein who was the Respondent, is aggrieved by the judgment and decree of the District Land and Housing Tribunal for



Singida delivered by Hon. Bahati C. Ndambo on 10th August 2022 and appeals to this Honourable Court on the following grounds:

1. That, the Learned Chairperson erred in law and in fact to hold the Appellant to have breached a contract that she never entered into as the Respondent entered into a contract with one Star Media Company.
2. That, the Learned Chairperson erred in law and in fact to hold the Appellant responsible to pay the rent arrears while the contract was entered with a company named Star Media Company.
3. That, the Learned Chairperson erred in law and in fact to hold the Appellant responsible in a contract that was opted to be resorted through Arbitration.
4. That the Learned Chairperson erred in law and in fact in upholding a contract that was signed by an unauthorized person.

In this Appeal, the Appellant was represented by Ms. Salma Musa, the learned Advocate, whereas the Respondent had the services of Mr. Mussa Chemu, learned Advocate.

Before hearing, at the very outset, the learned counsel for Appellant rose to inform this Court that there was procedural irregularities of the



trial tribunal from pages 34 to 37 of the proceedings. That, the matter was heard by Hon. Baraka Shuma, the Chairperson, and later on, the defence hearing which began with Hon. Bahati Colex Ndambo without recording any reasons as to why she took over and began hearing the defence witness case without informing the parties and their advocates that the case would be heard by her and whether they had any objections.

She insisted that, the irregularity is fatal since it does not conform to Order XVIII Rule 10 (1) of the Civil Procedure Code [CAP. 33 R.E 2019]. The provision requires one to state the reasons as to why she took over the case and proceeded with taking the evidence in the case that was not in the first place assigned to her and the requirement to ascertain whether the case should proceed from where it ended. She further maintained that, the requirements underlined the importance of a judicial officer observing the witnesses as they testify and their demeanor.

The Appellant's Advocate cited the case of **Mirambo Mabula vs. Yohana Maiko Sengasu and Another**, Civil Appeal No. 71/2020, (CAT) Dar es Salaam, drawing this court's attention to page 8, 9 and 10, of the typed judgment on how the transfer orders should be adhered to. Also, she referred to the case of **Fahari Bottlers Limited and Another vs Registrar of Companies and Another** [2000] TLR 102, which stated

A handwritten signature in blue ink, appearing to be 'K. H. P.', is located in the bottom right corner of the page.

that the transfer orders should be indicated and should discharge the previous trial judge or Magistrate before the commencement of that suit.

Ms. Salma Musa insisted that, since compliance with the above was missing on the record, it is clear that the procedure was not adhered to as provided by the law. Therefore, she prayed for this court to uphold this preliminary point of law and irregularity so that the proceedings can be rectified by the trial court with costs to the respondent.

Mr. Mussa Chemu, argued that the omission in the proceedings is cured by the overriding principle where there is noncompliance. He relied on the case of **Regina Ishemwabura vs. Nasser Hamis Nasor and Two Others**, Civil Appeal No. 38 of 2020, (CAT) Dar es Salaam, specifically from page 10 up to 12 where it was stated that, by invoking the principle of overriding objective, it would mean that the omission does not prejudice the rights of the parties in case where the trial was represented by advocates. He also cited the case of **Charles Bode vs. The Republic**, Criminal Appeal No. 46 of 2016 (Unreported).

Mr. Mussa Chemu submitted that, in so far as the instant matter is concerned, both parties were represented by the advocates. By virtue of the overriding principle, the said omission of failure to record the reasons

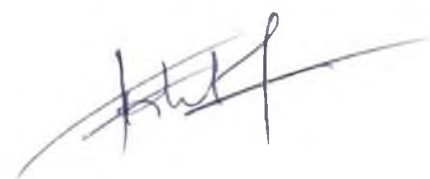
A handwritten signature in black ink, appearing to be 'J. Chemu', written in a cursive style with a long horizontal stroke extending to the right.

would not affect the rights of the parties and the court being the frontline of justice, has always been looking at substantive justice on the rights of the parties. In such circumstance, there is no injustice since there were advocates representing the parties and for the interest of justice and per the facts at hand, there are just minor but curable omissions.

In rejoinder, Ms. Salma Musa stated that, there are some procedures that the court can be lenient about while there are some procedures that affect the entire proceedings of the trial. The same Court of Appeal, in most of its decisions, directed such irregularities to be cured before prolonging the administration of justice so that parties' case can be dispensed timely and justly.

Having said so, she called upon this court to analyse and see if this procedure should be corrected and parties' case be heard on merit as provided for by Order XVIII Rule 10(1) [CAP. 33 R.E 2019].

In view of the rival submissions, it is pertinent to say that the records in the case reveal that the hearing of the case commenced on 24th March 2021 before Honourable B. Shuma, Chairperson. However, for no apparent reasons, the case file was placed before Honourable B. C. Ndambo, Chairperson, who proceeded to hear the defence evidence, final

A handwritten signature in black ink, appearing to be 'J. Shuma', is written in the bottom right corner of the page.

submissions of the learned counsels for both sides and finally, composed the judgment which is the subject of the current appeal.

In the case of **Oysterbay Villas Limited vs. Kinondoni Municipal Council**, Civil Appeal No. 173 of 2017, (CAT) Dar es Salaam; it was stated that:

'The procedure pertaining to the individual calendar system as practised in our jurisdiction is that, once a case file has been assigned to a Judge or magistrate, the said Judge or magistrate has to handle it to its conclusion. In case the circumstances necessitate for the transfer of the case file from one Judge/magistrate to another, then the reasons for such transfer have to be given and reflected in the proceedings of the case file.'

Also, the case of **Fahari Bottlers Limited and Another vs. Registrar of Companies and Another**, [2000] TLR 102, stated that the reasons for compliance with the system are numerous, but the crucial ones are:

'The individual calendar system requires that once a case is assigned to a judge or magistrate, it has to continue before that judge or magistrate unless there are good reasons for doing otherwise. The system is meant not only to facilitate case management by trial judges and magistrates, but also to promote accountability on their

A handwritten signature in black ink, appearing to be 'K. H. H.', is located in the bottom right corner of the page.

part. Failure to follow this procedure was certainly irregular and was amenable to the revisional process.'

In line with the foregoing holdings, since in the instant matter, there were no reasons advanced as to why the case file was transferred from Honourable B. Shuma, Chairperson to Honourable B. C. Ndambo, Chairperson, the omission was fatal and did vitiate the proceedings.

I hereby quash the proceedings before Honourable B. C. Ndimbo, Chairperson and direct that, the case file be remitted to the District Land and Housing Tribunal for Singida before another Chairperson for continuation from where the Honourable B. Shuma ended. I make no order as to costs and therefore, each party shall bear its own costs.

DATED at **DODOMA** this 5th day of June, 2023.




F. R. KHALFAN
JUDGE