

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA**  
**(SUMBAWANGA DISTRICT REGISTRY)**  
**AT SUMBAWANGA**

**PC CIVIL APPEAL CASE No. 07 OF 2022**

*(Originating from the District Court of Mpanda in Civil Appeal No.15 of 2022 which Originated from Mpanda Urban Primary Court in Misc. Civil Application No. 01 of 2022)*

**FRANK HANJA.....APPELLANT**

**VERSUS**

**VICTORIA ERNEST.....RESPONDENT**

**JUDGMENT**

*06/06/2023 & 31/07/2023*

**MWENEMPAZI, J.:**

The parties herein are siblings of the same father but from different wombs. Whereas, the respondent had successfully filed an application against the appellant at the Urban Primary Court of Mpanda for a redistribution of her late father's properties particularly a house which had ten rooms in it. The appellant was not satisfied by the decision of the trial court and thereafter appealed to the District Court of Mpanda in which the appeal was dismissed with costs, hence this appeal to this court.

As the appellant seeks to turn the decision in his favour, he filed a petition of appeal which consisted of three (3) grounds which are as reproduced hereunder;

1. That, the first appellate court erred in law by failing to determine all grounds of appeal raised by the appellant.
2. That, the first appellate court misdirected itself by failing to determine the issue of functus officio as raised by the appellant in the first ground of appeal.
3. That, the first appellate court erred in fact and law by raising new issues which were not raised by the appellant in the grounds of appeal.

In that, the appellant prays for this court to allow this appeal and quash the decisions of both lower courts and set them aside, and the costs of this appeal be borne by the respondent and any other relief this court deems fit and proper to grant.

Essentially, the respondent refuted the grounds of appeal paraded in discontent of the findings of the decision of both lower courts. At the hearing of this appeal, the appellant enjoyed the legal services of Ms. Sekela Amulike meanwhile the respondent had no legal representation. However, this court found it prudent for both parties to battle out this appeal by way of written submissions, and both parties adhered to the order and complied to the scheduling effectively.

Ms. Amulike for the appellant submitted first that, she will submit on the 2<sup>nd</sup> ground first and then followed by the 3<sup>rd</sup> ground and finish up on the 1<sup>st</sup> ground. In doing so she started off that, it is the trite law that the court will be rendered *functus officio* when it disposes of a case or matter by a verdict of not guilty or by-passing sentence or by making some orders finally disposing of the case. She referred this Court to the case of **Karori Chogoro vs Waxtihache Merengo, Civil Appeal No. 164 OF 2018** in which the Court of Appeal sitting at Mwanza, at page 8-9 cited with approval the principle laid down by the earnest Court of Appeal for Eastern Africa in **Kamundi vs Republic (1973) EA 540** where it was stated:

*"Further question arises, when does a magistrate's court become functus officio and we agree with the reasoning in the Manchester City Recorder case that this can only be when the court disposes of a case by a verdict of not guilty or bypassing sentence or making some other orders finally disposing of the case."*

She then added by stating that, similar views were pronounced by the Court of Appeal and she cited the case of **Scolastica Benedict vs Martin Benedict 1993 TLR 1**, in which the Court of Appeal discussed

in detail when the primary court becomes *functus officio*, in a case and she quoted the holding as hereunder that;

*"As a general rule, a primary court, like all other courts, has no jurisdiction to overturn or set aside its own decisions as it becomes functus officio after making its decisions."*

Ms. Amulike proceeded that, the appellant submitted before the Primary Court as well as the District Court that, the case at Mpanda Urban Primary Court was *functus officio*, as the Primary Court marked its final order in the Probate cause No. 26 of 1995 hence had no power and jurisdiction to reopen again a new case as Miscellaneous Application which dealt with the estate of Ernest Hanja.

That, the appellant while in the Primary Court, he produced a Primary Court decision in Probate Cause no. 26 of 1995, and the court did receive it, and in insisting her argument, Ms. Amulike referred to the court to page 18 of the typed proceedings of the Primary Court. She then added that, the decision in Probate Cause no 26 of 1995 shows how properties of the late Ernest Hanja, among them being the house in dispute was distributed to his beneficiaries, and in that, she states that the Mpanda Urban Court had no other interest in reopening the case

relating to the Estate of the late Ernest Hanja, which was already distributed by the administrator of estate of the late Ernest Hanja and approved by the said Court. Whereas, the trial magistrate of the Primary Court without considering that it was *functus officio* to entertain the matter, he pronounced an impugned decision in which the First Appellate court also blessed it, without determining the same appropriately as raised by the appellant.

Ms. Amulike proceeded even further that, at the First Appellate Court, the appellant submitted that in Miscellaneous Application No. 01 of 2022 instituted at Mpanda Urban Primary Court, was *functus officio* as the same had already been discussed and determined by the same court in 1996 vide a Probate Cause No. 26 of 1995, and that the judgement of the said case was also availed in the Primary Court.

After the submission by the appellant she added, the First Appellate court itself agreed with the appellant that the court was *functus officio* reference being made to page 5 of the Judgement in which it stated that;

*"... the issue is functus officio. And what I quoted same as to further order made by the trial court in 1996, the best*

*word to use is that here were orders which finally dispose of the case. Hence the court was functus officio."*

Thereafter, First appellate Court failed to determine properly the issue of functus officio as raised by the appellant that is why it arrived in a wrongful judgment which they wish this court to overturn it, and basing on the above submission and holding into **Scolastica Benedict case** (supra), the learned counsel prays for this court to overturn the decision of Mpanda District Court in Civil Appeal No. 15 of 2022 as well as to quash the decision of Mpanda Urban Court in Miscellaneous Civil Application No. 01 of 2022.

Submitting for the third ground of appeal, Ms. Amulike submitted that in our country, natural justice is not merely a principle of common law, it has become a fundamental constitutional right. She cited Article 13 (6) (a) of the Constitution of the United Republic of Tanzania which includes the right to be heard among attributes of equality before the law.

In supporting her argument, she referred me to the case of **Kumbwandumi Ndemfoo Ndossi vs Mtei Bus Services Ltd (Civil Appeal 257 of 2018)**, where the Court of Appeal at Arusha, at page 6 held that;

*"..Basically, cases must be decided on the issues or grounds on record and if it is desired by the court to raise other new issues either founded on the pleadings or arising from the evidence adduced by witnesses or arguments during the hearing of the appeal, those new issues should be placed on record and parties must be given an opportunity to be heard by the court.."*

The learned counsel clarified further that, from our Constitution as well as the above cited case her side concludes on saying that in Tanzania, a court cannot raise a new issue ***suo motto*** without according parties their right to. Submit on the same.

She added that, in the case at hand, the First Appellate court in determining the appeal, it raised a new issue and did not accord parties their right to be heard on the said issue contrary to the law. She referred me to page 3 and 5 of the Appellate court judgement in which the court itself raised an issue ***suo motto***. She added that, at page 5 after the magistrate agreed to the fact that the trial court was *functus officio*, magistrate continued to ask her self that, and Ms. Amulike then quoted;

*"Having seen so, the other part to be seen is if it was improper for the respondent to open the miscellaneous application regarding the distributed house?"*

She did not end there, she added that, without granting parties their constitutional right to be heard, the Appellate court wrongfully asked itself and wrongfully answered itself by affirming that the Respondent was right to open such Miscellaneous Application and that the Primary court was correct to make the said order, contrary to the law.

However, she contended that, it is the principle in law that, a probate and administration court cannot order distribution or choose who gets or does not get the division as the same are duties of an administrator/executor also as stated above in ground no 2, and so she concluded that it was not right for the court which is functus officio to reopen the case and determine the same.

In support of her argument, Ms. Amulike referred this court to the case of **Monica Nyamakare Jigamba vs Mugeta Bwure Bhakome as Administrator of Estate of Musiba Reni Jigabha, Hawa Salum Mengele, Civil Application No. 199/01 of 2019**, Court of Appeal at Dar es salaam, where the Court held that;

*"... probate or letters of administration court has no power to determine the beneficiaries and heirs of the deceased, similarly, it has no power to distribute the estate of the deceased. The law has vested that power to grantee of probate or letters of administration..."*

From the above holding of the Court of Appeal, the learned counsel stated that the Primary court was wrong to order the appellant who is not even an administrator to distribute and give Respondent two rooms from the house which was the property owned by the late Ernest Hanja and subject to probate and administration case and that, the District Court as well as Trial court erred in law to distribute the same and as per **section 29 (c)** of the The Magistrate s' Courts Act, Cap 11 R.E 2019 she prayed for this court to make an order for rejecting Respondent application in the trial court, as the Trial court does not have jurisdiction to order any person whatsoever administrator on how to distribute, and divide estate of a deceased person.

Submitting for the first ground of appeal, Ms. Amulike argued that it is trite law that the Court is enjoined to consider the ground of appeal presented to it either generally or one after another, and failure to consider the grounds is fatal to the decision. In support of her argument, she cited the case of **Mwajuma Bakari vs Julita Semgeni**

**& Another (Civil Appeal 71 of 2022)** the Court of Appeal at Tanga, at page 8 held that;

*".... appellate court is bound to consider the grounds of appeal presented before it and in so doing, need not discuss all of them where only a few will be sufficient to dispose of the appeal but it is bound to address and resolve the complaints of the appellant either separately or jointly depending on the circumstance of each appeal..."*

Coming to the case at hand, Ms. Amulike submitted that at the first Appellate court, there were four grounds of appeal, as seen in his petition of appeal, but without any justified reasons the First Appellant court failed to discuss the 2 others grounds which must relate to the evidence, and only dealt with the issue of *functus officio* and thereafter raised a new ground of appeal. She referred me to page 3 of the judgment of the Appellate court.

In winding up, the learned counsel submitted that as the First Appellate Court failed to determine all the grounds of appeal, she prays for this Honourable Court to quash its decision as well as the decision of the Primary Court as the same was made without court jurisdiction due to the fact that the same was reopened while the main issue was

determined and resolved in Probate Cause No. 26 of 1995. Out of the submissions made by the counsel, she submitted that it is the appellant's prayers that the judgement of this court be in his favour; the decision of Mpanda Urban Primary Court Misc. Civil Application No. 01 of 2022 as well as the decision of the District Court of Mpanda in Civil Appeal No. 15 of 2022 be quashed and set aside, costs of this Appeal and any other relief this Court deems fit and proper to grant.

In response, the respondent submitted that, a brief glance of this probate dispute is centered on the use/enjoyment of the estate of the late Ernest E. Hanja, whose probate was dully determined by the Mpanda Urban Primary Court in Probate Cause No. 26 of 1995. That, among the properties/ estate left by the deceased, was the house located on plot no. 81 Block "Q" which was placed in the custody of the appellant for residential use of himself, his mother and his young siblings. That, it was a collective agreement and intention of the clan, which was enforced by the court in probate cause no. 26 of 1995.

The respondent proceeded by stating that, it was the appellant's **refusal/denial to cede onto** his younger sister the joint use of the

aforesaid house that led to the respondent suing his brother for ***"kutotekeleza mgao wa mirathi wa marehemu"***

The respondent submitted further that she will adopt the same chronology of starting with the second ground then the third and finally the first ground of appeal. She then started to submitted against the second ground that, the term *"functus officio"* has been succinctly defined by the courts in our jurisdiction, and referred this court to the case of **Cipex Company Limited vs Tanzania Investment Bank (TIB), Civil Appeal No. 127 of 2018**, High Court of Tanzania at Dar es Salaam (Unreported), the term functus officio was defined as;

*"The term functus officio in judicial context simply connotes that once a judge or magistrate has performed his official duty, he is precluded from reopening the decision."*

She then added by arguing that akin views were expressed by the Apex court of the land in **Scolastica Benedict vs Martin Benedict (1993) TLR1** where the court defined functus officio to wit;

*"As a general rule, a primary court, like all other courts, has no jurisdiction to overturn onset aside its own*

*decisions as it becomes functus officio after making its decisions"*

Clarifying her arguments, the respondent submitted that the trial court was not functus officio in entertaining the matter before it as suggested by the appellant. The Probate Cause No. 26 of 1995 dealt with the appointment of an administrator of the estate of the late Ernest Hanja, which was instituted by one Evarist Hanja Usiga. That, the said Evarist Hanja dully performed his duty as an administrator by distributing the estate of the deceased and filing the inventory at the trial court. That, the house in dispute was distributed to the appellant, his mother and his younger siblings, the respondent being one of the younger siblings.

contrary to what is suggested by the appellant, Misc Civil Application no 01 of 2022 at Mpanda urban Primary Court did not seek to re open a new probate case nor did it seek to vary or rescind an order that was earlier made by the trial court, nor did the resultant order from the application rescind or vary the order of the trial court in any manner whatsoever.

The Respondent submitted that by the position clarified, it is her opinion that the misc civil application no 01 of 2022 did not seek for an

appointment of a new administrator or the amendment of the inventory, hence it cannot be said that the court was functus officio.

For a court to become functus officio, the application before it must be similar to the one that has been conclusively determined by it (the same court). This is the view elucidated in **John Mgaya & Four Others vs Edimundi Mjengwa & Six Others, Criminal Appeal No. 8 (a) of 1997** (CAT-Unreported) cited with authority in **John Mtawali Kitundu vs Asia Haji Kimbunga, PC Civil Appeal 36 of 2021**, High Court of Tanzania at Dar es Salaam (Unreported) where it was held that for a court to be functus officio, the two applications must be similar.

The respondent proceeded that in the case of **SCOLASTICA BENEDICT (SUPRA)** as cited by the appellant is distinguishable to the present case. She said, in the said case the appellant had sought to challenge the administration of the estate of her deceased husband, while the present matter is not about challenging the acts of the administrator of the deceased's estates, rather an act of an heir refusing use/enjoyment of a property entrusted to him for the use of other siblings.

Submitting against the third ground of appeal, the respondent stated that, the assertion that the trial court raised new issues is far

fetches and not supported by records. She submitted that, with leave of this honourable court, her side wishes to quote the second ground of Appeal as appearing on the Petition of Appeal in **Civil Appeal No. 15 of 2022** to wit:

*"That, the trial court magistrate erred at law and fact by determining a **Miscellaneous Application** without a proper case before it because the Probate Cause No. 26 of 1995 was already close (sic) had already been closed following the distribution on 26/02/1996, therefore a trial court was **functus officio**"*

(emphasis is hers)

The respondent then insisted further that, the above quoted ground of appeal had two parts, one was the issue of functus officio, and the other was the impropriety of the miscellaneous application. That, it is evident that the trial court dealt with the said ground by first determining the issue of functus officio, then determining the latter part of miscellaneous application.

That, the trial court having determined the issue of functus officio, it went on determining the other issue raised in the ground of appeal by

the appellant. The respondent hinted me to see page 5 of the typed judgment, where the court stated;

*"Having seen so, **the other part to be seen** is it was improper for the respondent to open the miscellaneous application regarding the distributed property"*

*(emphasis is hers)*

As the matter of fact, the respondent insists that from the above extract it is evident that the trial magistrate was determining the other part of the second ground of Appeal, and not raising a new issue as suggested by the appellant.

It was the respondent submission that, before arguing against the 1<sup>st</sup> ground of appeal, she wishes to draw the attention of this honourable court to the contents of paragraph 3 of page 6 and the entire contents of page 7 of the appellants written submission as being alien matters to this appeal. That, it is either that the contents mistakenly found their way in the submission or that the appellant is trying to introduce a new ground of appeal without seeking leave of this honourable court. Either way, she prays this: honourable court to disregard the contents of the paragraph 3 of page 6 and the entire contents of page 7 of the Appellants written submission.

Submitting against the first ground of appeal, that in determining the grounds of Appeal before it, an appellate court is not bound to discuss the grounds one after the other, it may only discuss the decisive ground of appeal only as it seems fit. That, this position is backed in the case of **Malmo Montagekonsult AB Tanzania Branch vs Margaret Gama, Civil Appeal no 86 of 2001, CAT at Dar es Salaam (Unreported)** where it was held that:

*"An appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is, however, expected to address the grounds of appeal before it. **Even then, it does not have to deal seriatim with the grounds as listed in the memorandum of appeal. It may, if convenient, address the grounds generally or address the decisive ground of appeal only or discuss each ground separately"***

*(emphasis is hers)*

She then submitted that, the appellate court is therefore not duty bound to deal seriatim with the grounds of appeal as listed on the petition of appeal and it may address the decisive ground of appeal only, as it was in this case. That, the case of **Mwajuma Bakari vs Julita**

**Semgeni & another** (supra) cited by the appellant is distinguishable to the present case. In **Mwajuma Bakari case (supra)**, where the high court did not at all decide the grounds of appeal presented before it and it instead decided the appeal on the basis of the point of law which was not sufficiently canvassed by parties (pg 8) while in the present scenario, the appellate court dealt with the decisive ground of appeal. That being the case, the respondent submits that the present appeal is baseless and as such she prays for the same to be dismissed with costs.

In rejoinder, Ms. Amulike submitted that, the respondent started her reply by briefing the history of the dispute which she somewhere missed and misdirected herself, that as the estate of the late Hanja were distributed the house left by the late was distributed to three families, and one house which is subject to this case was given to the appellant who was supposed to live with his sibling who shared the same mother and not otherwise, that is why even the Certificate of occupancy of the said house is referred to four names only as the respondent was never a party to the house which is the subject to this Appeal.

Ms. Amulike proceeded that, before starting to reply to the submissions made by the respondent, her side wishes to reiterate what they have stated in their submission in chief, that it is the appellant's claim that the Primary Court was functus officio, hence did not have the

right and jurisdiction to open and determine the Miscellaneous Civil Application No. 01 of 2022 as the court had already determined the Probate Cause No. 26 of 1995 to its finality, as all the properties of the late Ernest Hanja were distributed before the same court, and nothing was left in relation to estate of Ernest Hanja the fact which even the respondent admitted in her submission.

Again, she added that the respondent in her submission did admit that the administrator of estate of Ernest Hanja one Evarist Hanja performed his duties as administrator and filed the inventory to the trial court. That, after admitting this, it means that the Trial court did not have any right to reopen a case which was closed in 1996 under the shield of "**Kutotekeleza mgao wa mirathi wa marehemu**", as entertaining this application it means opening and questioning the distribution which had already been filed and closed in 1996 almost 27 years.

The learned counsel submitted further that, as the distribution was done and closed in 1996, the primary court was *functus officio* to entertain it and if the respondent was aggrieved as she claims that she wanted to be re-given two rooms which she claims to be given by the trial court in 1996, she was supposed to open the land dispute in the land courts not in Primary Court as the Primary Court first, lacks

jurisdiction to entertain it as per **Section 18** of the Magistrate Courts Act, that also in this case it was *functus officio* as the distribution and claim regarding estate of late Ernest Hanja was closed in 1996. Therefore there was no any property which can be considered as property of Ernest Hanja as all of his estate properties had already been distributed by that time. That, what the Primary Court did was making an order relating to the estate of Ernest Hanja without a proper case before it and in that, without jurisdiction thus the court was *functus officio* as all orders related to estate of Ernest Hanja were closed and a new case related to land cannot be entertained by the Primary court.

Ms. Amulike then distinguished the case of **John Mgaya & Four Other** (supra), as cited by the respondent that it is different with the circumstance of the case at hand, and therefore irrelevant, as in the said case, there was different applications whereas, one was an application for extension of time within which to file appeal and the other was extension of time within which to file revision, and the lower court claimed that the applications were similar the fact which was wrong that is why the higher court overturned the same.

The counsel for the appellant did not end there, she proceeded that in the case at hand, the case before the Primary Court which was instituted as Misc. Civil Application No, 01 of 2022 and the Probate case

No. 26 of 1995 were similar, and Misc. Civil Application No. 01 of 2022 wanted to alter and claim something related, based and decided in Probate Cause No. 26 of 1995. She added that her side is in agreement with the case of **Cipex Company Limited** (Supra) as submitted by the respondent, especially at page 6 of the same which High Court Judge honourable Masabo stated and she quoted;

*"...it is crystal clear that the issue of functus officio is jurisdictions issue.."*

Thereafter, she submitted that from, the above quotation it can be concluded that, the Mpanda urban Primary Court had no jurisdiction to determine the Misc.Civil Application No 01 of 2022 as it was functus officio and that, it lacked jurisdiction as per Section 18 of the Magistrate Courts Act.

Ms. Amulike then summed up by submitting that, the court raised a new issue for determination, without according the parties their right to argue and discuss on the same. That, the appellant wishes to reiterate what was stated in his submission in chief, and that the law requires all grounds of appeal to be determined, either separately or jointly as per the case of **Mwajuma Bakari** (Supra) in which its holding is related and fits in the circumstance of the case at hand. Whereas, the

first Appellate court did not discuss or determine other grounds of Appeal which were ground No. 3 and 4 of the petition of Appeal. Ms. Amulike then distinguished the case of **Malmo Mantagekonsult AB Tanzania Branch** as quoted by the respondent, to be irrelevant to the scenario at hand. That, in the case at hand the first Appellate court failed to determine all grounds of appeal contrary to the law as stated in the case of Mwajuma Bakari (Supra).

With the above submissions, Ms. Amulike insisted that the Appellant prays for judgment in his favor, the decision of the Mpanda urban Primary Court in Misc. Civil Application No. 01 of 2022 as well as the decision of District Court of Mpanda in Civil Appeal No. 15 of 2022 be quashed and set aside, Costs of the Appeal and any other relief this Court may deem fit and proper to grant.

Having considered the grounds of appeal as submitted by the learned advocate for the appellant as well the reply to the grounds of appeal as submitted by the respondent. The issue before this court worth for consideration is ***whether the present appeal has merit.***

I will address each ground of appeal as filed in the petition of appeal in disposing of this appeal. As I begin with the 1<sup>st</sup> ground of appeal, it is trite law that the court is enjoined to consider the grounds

of appeal presented to it either generally or one after another, and failure to consider the grounds is fatal to the decision. However, the appellate court is bound to consider the grounds of appeal presented before it and in so doing, need not discuss all of them where only a few will be sufficient to dispose of the appeal but it is bound to address and resolve the complaints of the appellant either separately or jointly depending on the circumstance of each appeal. In this appeal, both camps rightly cited the cases of **Mwajuma Bakari vs Julita Semgeni & Another** (supra) and **Malmo Montagekonsult AB Tanzania Branch vs Margaret Gama** (supra) in which the clarifications above were well discussed.

It is my holding that the first appellate Magistrate rightfully determined the grounds that were sufficient to dispose of the appeal before her, and in keen perusal of the records, it is evident that the submissions made by the appellant's counsel helped the appellate court in determining which ground is sufficient to resolve the matter amicably. I therefore find no merits in this ground and proceed to dismiss it.

Coming to the second ground of appeal, without blinking my eyes a court becomes functus officio when it disposes of a matter first and then reopens it. In this matter at hand, the Primary Court in question had disposed the Probate Cause No. 26 of 1995 by granting the letters

of Administration of the estate of late Ernest Hanja to one Evarist Hanja Usiga, and in that, there was distribution of the properties of the deceased person whereas, the appellant herein as a custodian was given the house located on plot No. 81 Block "Q" to live with his mother and his siblings in which it is unfortunate that the names of the siblings were nowhere to be seen in the records of the appeal before me.

Meanwhile, the respondent as I believe is one of the siblings had inquired the appellant to divide a place at the house to wit two rooms as she has attained the age of majority and she is entitled to inheritance as a beneficiary recognized by the decision of the court in Probate Cause No. 26 of 1995. From the records, the Probate Cause was not reopened, but rather a distinct application was made by the respondent and in so doing, the court was not at all functus officio. See the cases of **Ally Rashid & Others vs Permanent Secretary, Ministry of Industry & Trade & Another (Civil Appeal 71 of 2018) [2021] TZCA 460 (6 September 2021)** and **International Airlines of The United Arab Emirates vs Nassor Nassor (Civil Appeal 379 of 2019) [2022] TZCA 685 (8 November 2022)** (all unreported). Again, I dismiss this ground for it too has no merits.

Determining the last ground of appeal, it is in the records that the appellant had submitted about the filing of the Application No. 01 of

2022 by the respondent. See pages 5 and 6 of the typed proceedings of the first appellate court. It is my belief that the first appellate Magistrate had to deal with matter as it was discussed by the appellant himself. I feel compelled, at this point, to restate the time-honoured principle of law that parties are bound by their own pleadings. See **James Funke Ngwagilo vs Attorney General [2004] T.L.R. 161**. See also **Lawrence Surumbu Tara vs Hon. Attorney General and 2 Others, Civil Appeal No. 56 of 2012**; and **Charles Richard Kombe t/a Building vs Evarani Mtungi and 3 Others, Civil Appeal No. 38 of 2012** (both unreported). I find this ground also to be meritless, and so it is dismissed.

Having dismissed all the grounds of appeal, the present appeal lacks a pillar to lean on and therefore I proceed to dismiss it for want of merit. Costs to follow the event.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 31<sup>st</sup> day of July, 2023.



  
**T. M. MWENEMPAZI**  
**JUDGE**