

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO.30 OF 2023

(Originating from Civil Case No.53 of 2019 Temeke District Court)

CRJE EAST AFRICA LIMITED.....APPELLANT

VERSUS

LORD M LEMA.....RESPONDENT

JUDGMENT

2/06/2023 & 04/09/2023

POMO, J

The Appellant, CRJE EAST AFRICA LIMITED, is a loser in Civil Case No. 53 of 2019 which was commenced by the Respondent against her and Temeke Municipal Council as defendants, the judgment of which was delivered on 14th December, 2021 Hon. K.T. Mushi, SRM. Both the defendants were aggrieved by the decision. Whereas Temeke Municipal Council preferred Civil Appeal No.53 of 2023 in this court, the Appellant filed the instant Civil Appeal No.30 of 2023. On 2nd June, 2023 the Appeal by

Temeke District Court was dismissed for want of prosecution, hence remaining with the appeal herein.

Briefly, the background to the appeal is as follows. On 3rd September, 2019 the Respondent filed Civil Case No. 53 of 2019 before Temeke District Court against Temeke District Council and the Appellant as the 1st and 2nd defendants respectively. He claimed against them for compensation to the tune of Tshs 18,984,620/-. The basis of his claim is that between April and May, 2019 the Appellant was engaged by Temeke Municipal Council, among other things, to construct and or rehabilitate drainage system and terraces within Temeke Municipal council. The drainage system which was constructed by the Appellant near the respondent's resident, house No.14 at Mtoni Kijichi in Temeke district within Dar es Salaam region, according to him, was below standard to the extent that during rain season his house, its wall fence and septic tanks became the centre of water accumulation from the said drainage system leading into his house wall cracking and the fence as well.

Having heard the parties, the trial court was satisfied that the Respondent have proved his case hence on 14th December, 2021 delivered its judgment Hon. K.T. Mushi, SRM in his favour which subsequently on 7th

February, 2023 rectified by issuing a new judgment termed as **"Corrected Judgment as per S.96 of CPC Cap. 33 R.E.2019"** Hon. A.H. Mbodjo, RM. Aggrieved, the Appellant has preferred this appeal fronting 7 grounds of appeal which grounds are: -

- 1. That, trial magistrate erred in law and in fact by issuing two judgments instead of a separate order correcting the clerical mistakes*
- 2. That, trial magistrate erred in law and in fact when she failed to observe that, there was evidence showing that the damage on the respondent house was a result of force majeure particularly floods of which even if the appellant had not conducted the construction the respondent's house would still be damaged by the floods*
- 3. That, trial magistrate erred in law and in fact for failure to consider the arguments of the parties to show reasons why the arguments by the parties have been disregarded*
- 4. That, trial magistrate erred in law and in fact for delivering contradictory judgment by stating that the Respondent had failed to prove his case and at the same time awarding him both specific and general damages*
- 5. That, trial magistrate erred in law and in fact when he failed to observe that, since the respondent's claim of Tshs 18,184,620/- was specifically*

pleaded it should have been strictly and adequately proved by the respondent

6. That, trial magistrate erred in law and in fact by failing to draw a line between specific damages and general damages

7. That, trial magistrate erred in law and in fact when he failed to provide reasons for granting General Damages amounting to Tanzania Shillings Fifteen Million (15,000,000/-)

When the appeal was called on for hearing on 2/6/2023 Ms. Louisa Msemembo, learned counsel appeared for the Appellant while Mr. Andrew Miraa, learned advocate appeared for the Respondent. I ordered the appeal be disposed by way of written submissions. I am grateful to the learned advocates for their commendable submissions for and against the appeal

Arguing the first ground of appeal, Ms. Msemembo submitted that the trial court issued two judgments in Civil Case No.53 of 2019. These are, firstly, the one delivered in favour of the Respondent without indicating whether the order is against both the Appellant and Temeke Municipal Council and , secondly, the one termed corrected judgement which was a result of the parties' request to the trial court to have the former judgment rectified to specify who is to pay the amount of Tshs 15,000,000/- awarded

to the Respondent. It is Ms. Msemembo's argument such procedure adopted by the trial court in creating two judgment contravened Order XX Rule 3 and Section 96 both of the Civil Procedure Code [Cap. 33 R.E.2019] (the CPC). In support, she referred to this court the case of **NIC Bank Tanzania Limited and Flamingo Auction Mart versus Samora Mchuma Co. Ltd**, Civil Appeal No.340 of 2020 CAT at Mwanza (Unreported).

In Response, Mr. Yesse Mtungi Rugaiya, learned counsel for the Respondent, while not faulting the cited Order XX Rule 3 and section 96 both of the CPC, argued that, as long the second judgment is endorsed with the provision of section 96 of the CPC by the trial magistrate, there is nothing to fault it because the legal requirement was complied with. That, the section so endorsed conferred the trial court to make corrections on clerical errors noted on the judgment after its delivery. In his further submission, Mr. Rugaiya argued that the second judgment which is dated 7th February, 2023 was endorsed with the above provision of law to indicate it as a correct version instead of the former one dated 14th December, 2021 delivered by Hon. K.T. Mushi, SRM.

On my part, I have considered the submissions by both parties in respect of the first ground of appeal herein. From their respective submissions,

parties are at one that the trial court issued two judgments in respect of Civil Case No. 53 of 2019. The first one was delivered on 14th December, 2021 Hon. K.T. Mushi, SRM while the second is dated 7th February, 2023 and is titled **"CORRECTED JUDGMENT AS PER S.96 OF CPC CAP 33 R.E 2019"**.

While the contention by the Appellant is that, existence of two judgements in Civil Case No. 53 of 2019 is against XX Rule 3 read together with section 96 both of the CPC, the respondent asserts that, as long the second judgment is endorsed with section 96 of the CPC which corrected the clerical errors in the former judgment, then the trial court can not be faulted for the two judgments because under section 96 (supra) the court is empowered to correct clerical errors and it is what it did by correcting the clerical errors found in the former judgment.

I will let the provisions of the law cited (supra) speak by themselves.

Order XX Rule 3 of the CPC reads thus: -

"Rule 3 - The judgment shall be written by, or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall be dated and signed by the presiding judge or magistrate

*as of the date on which it is pronounced in open court **and,**
when once signed, shall not afterwards be altered or
added to, save as provided by section 96 or on review”.*

And **section 96 of the CPC** provides: -

***"S.96 – Clerical or arithmetical mistakes in judgments,**
decrees or orders, or errors arising therein from any accident slip
or omission **may, at any time, be corrected by the court**
either of its own motion or the application of the parties”.*

As it can be observed, Order XX rule 3 of the CPC (supra) sets a condition that once a judgment is pronounced and signed it shall not afterward be altered or added to, save as provided under section 96 of the CPC. On the other hand, although section 96 of the CPC empowers the court at any time to correct clerical or arithmetical mistakes in judgments, decree or orders, yet it does not state in such a situation a new judgment containing rectified clerical or arithmetical errors has to be issued. Confronted with akin situation in **NIC Bank Tanzania Limited and Another versus Samora Mchuma Samora Co. Limited**, Civil Appeal No.340 of 2020 CAT at Mwanza

(Unreported) the court of appeal of Tanzania, at page 9 - 11, had this to state: -

*"Having considered the submissions made by the counsel for the appellants, we are at one with him that **the procedure which was adopted by the trial court to rectify the defect of variance between the judgment and the decree was, with respect, erroneous.** The rectification should not have been by formulating the second judgment as by so doing, **the effect was to have two judgments in one case; the original and the amended version of the judgment.** Under s.96 of the CPC, cited by the counsel for the appellants, a judgment may only be corrected if it contains clerical or arithmetical mistakes.*

Such correction may be done by way of a separate order, not by formulating a corrected version of the judgment".

Since in the instant case, the trial court formulated a corrected version of the judgment dated 7/2/2023 instead of issuing a separate order correcting clerical errors found in the judgment dated 14th December, 2021, such act resulted into erroneously having two

judgments in one case. Therefore, guided by the Court of Appeal decision in **NIC Bank Tanzania Limited and Another (supra)**, I find the Appellant's first ground of appeal merited. And, since the ground suffice to dispose the appeal, I find no need to determine the rest of the grounds of appeal to avoid dwelling into an academic exercise.

Consequently, I hereby order as follows: -

1. The **"corrected judgment as per s. 96 of CPC Cap.33 R.E.2019"** issued by on 7th February, 2023 by the trial court is hereby quashed and set aside.
2. Subsequently, I hereby order the trial court to abide the procedure laid in invoking section 96 of the Civil Procedure Code, Cap. 33 R.E.2022 in rectifying clerical errors found in the trial court judgment delivered on 14th December, 2021 Hon. K.T. Mushi, SRM in Civil Case No. 53 of 2019.
3. Appeal, if any, against Civil Case No.53 of 2019 by any aggrieved party should be preferred after rectification of the judgment dated 14th December, 2021 and shall be subject to the limitation of time.

4. I make no order as to costs.

It is so ordered

Right of Appeal explained

Dated at Dar es Salaam this 4th day of September, 2023



MUSA K. POMO

JUDGE

4/9/2023

Judgment delivered in chamber on this 4th September, 2023 in presence of Ms. Louisa Msemembo, learned counsel for the Appellant and also in presence of the Respondent and his advocate Mr. Andrew Miraa.



MUSA K. POMO

JUDGE

4/09/2023