

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

PC. CIVIL APPEAL NO. 11 OF 2023

(Arising from Civil Appeal No. 1 of 2023 of Sikonge District Court and Originating from Civil Case No. 26 of 2023 of Sikonge Primary Court)

MOSHI RAMADHANI OMARIAPPELLANT

VERSUS

MOSES GABRIEL.....RESPONDENT

RULING

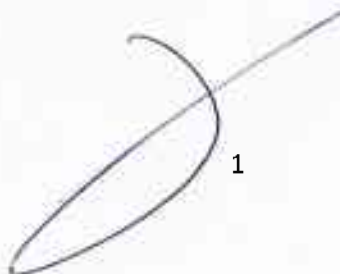
Date of Last Order: 06/09/2023

Date of Ruling: 07/09/2023

MATUMA, J.

When this appeal came for hearing the Court suo moto raised an issue and required the parties to address it before the appeal is heard on merit. The issue raised was;

In the circumstances that the 1st Appellate Court nullified the proceedings of the trial court, whether this court can legally and justifiably determine this appeal in the absence of any ground of appeal challenging such nullification.



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The brief facts leading to the raised issue supra is that the parties were members of a local social group in which the members therein were contributing money and give one of them by circling or rotation mode. The appellant alleged that after having made contributions half way she dropped out but by that time she was already entitled to Tshs. 738,000/= which she claimed to be paid back by the respondent who was the treasurer of the group. After a full trial, the trial court adjudged for the appellant whereas the respondent was ordered to pay Tshs. 540,000/= to the appellant.

The respondent was not satisfied with the said judgment hence appealed to the District court. The District Court having heard the appeal ended up nullifying the proceedings without any further directives to the parties. The said court in so doing ruled out;

"For the reasons stated above, the appeal is allowed, the proceedings of the trial court are nullified; decisions and orders emanate from the trial court are quashed and set aside."

Unfortunately, the so referred "**reasons stated above**" which lead to the nullification of the proceedings are not seen anywhere in the judgment. Instead the appellate Magistrate scrutinized the evidence on record and faulted the findings of the trial court. The appellant being aggrieved with the said decision of the 1st appellate court preferred this appeal with a total of five grounds all of which are centering on the weight of evidence between the parties.

It is upon this historical background I raised such an issue and invited the parties to address it.

At the hearing of this appeal the appellant was present in person and was represented by Mr. Lucas Ndanga learned advocate while the respondent was represented by Mr. Saikon Justin learned advocate.

Both advocates were in agreement that so long as the proceedings of the trial court were nullified by the District Court, this appeal cannot justifiably be determined. They blamed the learned appellate magistrate to nullify the proceedings without any complaint against it by either party and without assigning any reason for such nullification. The learned advocates further faulted the appellate magistrate for having not given any directives subsequent to the nullification of such proceedings.

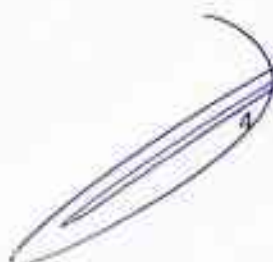
Mr. Saikon Justin learned advocate thus suggested that the judgment and proceedings of the District Court be set aside, that of the trial court be restored and an order for the rehearing of the appeal at the District Court be issued. Mr. Lucas Ndanga joined hands to the suggestions of his brethren.

I further wanted to hear from the parties on whether the cause of action by the appellant was against the Respondent in his individual capacity or against him as a group's representative. On this question the parties did not agree. While Mr. Lucas Ndanga argued that the cause of action was against the respondent in his individual capacity, Mr. Saikon Justin learned advocate on his party argued that the pleading in the statement of the claim is clearly disclosing that the cause of action upon which the claim was raised is against the group and the respondent was sued merely because he was the treasurer of the group. He therefore argued that it was wrong for the Appellant to sue the respondent in his individual capacity. He thus prayed

that the proceedings of the trial court having been restored be again nullified so that the Appellant if so wishes commences the suit afresh against all six members of the group because even if the Appellant would have a justifiable claim the same must be shared by all members of the group and not one of them. Mr. Lucas Ndanga learned advocate on his party maintained that the claim is against an individual respondent because he had admitted the claim.

Starting with the issue whether this appeal can be justifiably determined in the absence of the proceedings of the trial court which were nullified, I agree with both parties that this appeal cannot be determined in the absence of such proceedings. In law once the appellate court nullifies the proceedings of the trial court, there remains no records to be worked upon on appeal. That was held in a number of cases including that of ***Semeni Issa versus the Republic, criminal Appeal no. 156 of 2019, Richard Julius Rukambura versus Issack Ntwa Mwakajila and another, Civil Application no. 3 of 2004*** and that of ***Fanuel Mantiri Ng'unda versus Herman Mantiri & 20 others, Civil Appeal no. 8 of 1995***. In the case of ***Jantil Ernest versus Anna Prosper Bahha, PC. Civil Appeal no. 13 of 2022*** this Court at Tabora citing the herein court of appeal decisions held that;

"Once the appellate court nullifies the records of the trial court, it remains with no records before it which could be subject to scrutiny for subsequent orders. At that time the appellate court remains with no jurisdiction on the matter as the same is not before it. Whatever assumption of powers will be a nullity".



In the same way, in the instant appeal, once the learned appellate magistrate nullified the proceedings and judgment of the trial court there is no records before this court which can be acted upon to determine this appeal. And, since the appellant had not moved this court in any of his grounds of appeal to have the records of the trial court restored, this appeal was erroneously brought before this court.

This being an appeal, the records of the trial court are vital and necessary for a just determination of the appeal. Since the proceedings of this case has already been nullified by the 1st appellate court, the rights of the parties cannot be justifiably determined at this stage.

Being aware that the reasons for nullification of such proceedings are not apparent on record as rightly submitted by Mr. Saikon Justin, I was necessitated to revisit them to ascertain whether there is any justification for such nullification or else the said proceedings be restored and the appeal be heard on merit.

In the course of such perusal I noted that the respondent was sued in his individual capacity despite the fact that the claim in accordance to the statement of the claim in the pleading which instituted the suit indicated that the respondent was sued merely because he was the treasurer of the group and therefore the appellant's claim though instituted against an individual person it intended to affect all group members who benefited from the contributions made by the Appellant.

It is in that respect I am necessitated to agree with Mr. Saikon Justin learned advocate that it was wrong for the Appellant to sue the Respondent



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in his individual capacity because that would affect the respondent in person for the claim against many other. That in fact happened because at the end the trial court issued an order against the respondent in person;

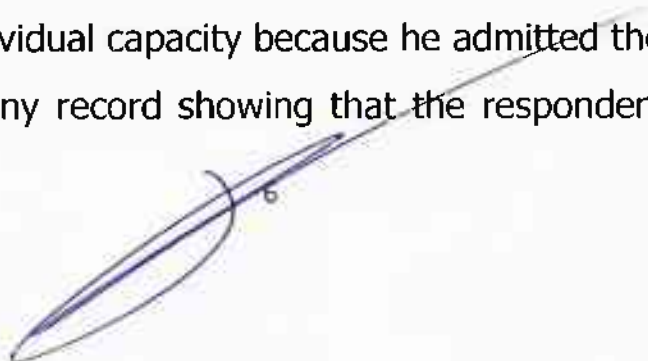
"Mdaiwa amlipe mdai pesa yake yote anayodai Tshs. 540,000/=."

This order has an effect of affecting the respondent's personal estate but the facts are against such an order because the respondent was a mere treasurer of the group which benefited from the contributions made by the appellant. I know that such order is already nullified by the District Court but I used it just to demonstrate the danger of an individual person being sued in his individual capacity in lieu of others.

I therefore find that the trial court having received the complaint of the appellant should have drafted the claim against the group in its name if any or against individual members who benefited from the contribution of the appellant as rightly argued by the learned advocate for the respondent so that each one in the group is heard for a just determination of the claim.

Therefore, all the six members of the group should have been arraigned to enter their respective defenses if at all they received the contribution of the appellant to the extent complained of.

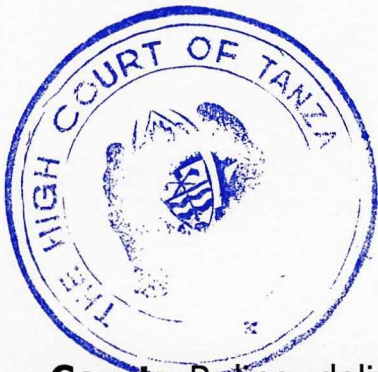
Although the District Court did not state clearly the grounds for nullification of such proceedings, I step into its shoes and maintain the order for the reason I have stated herein above. In that regard, I do not agree with Mr. Lucas Ndanga learned advocate that the suit should be against the respondent in his individual capacity because he admitted the claim. First of all we do not have any record showing that the respondent admitted the



claim. Most important is the against who the claim was founded. As I have said supra the claim was founded on the group transactions and not on an individual transaction.

I therefore having maintained the order nullifying the records of the trial court, I further step into the shoes of the first appellate Court and direct the appellant to reinstitute his claim against the proper party or parties so that if she obtains a decree then the same is justifiably executed. That being said, this appeal is struck out for having been brought without there being any records of the lower court. The appellant is at liberty to commence a suit afresh against the relevant parties.

In the circumstances of this case I order no costs to either party. Right of further appeal explained.



**MATUMA
JUDGE
07/09/2023**

Court: Ruling delivered in the presence of Mr. Saikon Justin, learned advocate for the respondent and in the absence of the appellant.



**MATUMA
JUDGE
07/09/2023**