

THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 11 OF 2023

(Originating from Judgment and Decree in Civil Appeal No.07of 2022 at Bagamoyo District Court delivered on 21st October 2022 as per Hon. M.B.Mmanyanya -RM originating from the Primary Court of Miono in Civil Case No.4 of 2022)

Between

SIWATU OMARI.....APPELLANT

VERSUS

RAMADHANI SEIF.....RESPONDENT

JUDGMENT

Date of last Order: 31/10/2023

Date of Judgment: 22/11/ 2023

GONZI,J.;

The genesis of the case is in the Primary Court of Miono in Bagamoyo District whereby the Respondent was the Plaintiff in a suit for breach of an oral contract. He and won the case against the Appellant. The Appellant was ordered to pay the Respondent Tshs. 1,830,000/= as the agreed contractual sum payable to the Respondent for the task of supervising the Appellant's farm in a year and one month. While the Respondent sued for unpaid sum, the Appellant claimed that she had already paid the

Respondent the agreed amount. The Trial Court found that the Appellant had not paid the respondent the agreed amount.

Aggrieved with the decision of the Primary Court, the Appellant lodged an appeal in the District Court challenging the Judgment and Decree of the Primary Court. The District Court upheld the judgment and decree of the Primary Court on the basis that the Appellant failed to prove that she had paid the Respondent the agreed amount and thus she failed to discharge her burden of proof on the balance of probabilities.

Aggrieved further with the judgment and decree of the District Court, the appellant has filed the present appeal on the following grounds of appeal:

1. That the learned Magistrate sitting on the first appellate Court erred in law and facts by issuing a Judgment which was not signed by him not sealed with the official court seal.
2. That the learned Magistrate sitting on the first appellate Court erred in law and facts by entertaining a labour dispute over which he had no jurisdiction thereof as its jurisdiction is vested upon the CMA.
3. That the learned Magistrate sitting on the first appellate Court erred in law and facts by failure to analyse the evidence before him.

4. That the learned Magistrate sitting on the first appellate Court erred in law and facts by using irrelevant precedents to the case before him.

The Appellant therefore prayed for the appeal to be allowed with costs.

When the appeal came for hearing, the Respondent was not traceable by the Appellant. Therefore the Appellant prayed to issue substituted service to the Respondent via advertisement in Newspaper and the Court granted her the permission to issue a substituted service upon the Respondent on 18th September 2023. She advertised in Uhuru Newspaper on 6th October 2023. After continued absenteeism by the Respondent, the Appellant prayed to proceed with hearing of the appeal *ex parte* and by way of written submissions. The court granted the prayers on 31st October 2023.

In the written submissions, Ms Agatha Fabian represented the Appellant. She submitted in respect of all the 4 grounds of appeal. I will refer to her arguments in the course of disposing of the grounds of appeal.

In the first ground of appeal, the Appellant has challenged the validity of the judgment issued by the District Court that it offended the provisions of

Order XX Rule 3 of the Civil Procedure Code, Cap 33 of the Laws of Tanzania which requires a Judgment to be signed, as among the requirements for a valid judgment. Upon reading ground No.1 of appeal and the submissions by the Counsel for the Appellant, I decided to look at the original records of the Trial court. Indeed, the original "Judgment" purportedly delivered by the District Court of Bagamoyo on 6th October 2022 by Hon. Mmanya, RM is not signed by the trial Magistrate. Equally the certified copies of this unsigned Judgment are the ones which were issued to the parties to the case and one such copy is the one that the Appellant has attached to his memorandum of appeal. Surprisingly, the decree is duly signed by the Presiding Magistrate and stamped by the District Court. Only the judgment is not signed.

What are the consequences of a judgment not being signed by the presiding Magistrate? Ms. Agatha submitted that under Order XX Rule 3 of the Civil Procedure Code, that Judgment is defective. The learned counsel did not address herself properly in that the present appeal originates from the Primary Court and that the district Court was exercising appellate jurisdiction. Hence the Civil Procedure Code, is not applicable as appeals in proceedings originating from the Primary court are regulated by the Civil

Procedure (Appeals in Proceedings Originating in Primary Courts) Rules G.N. No. 312 of 1964 as well as the Magistrates' Courts Act Cap 11 of the Law of Tanzania. Further the learned counsel did not submit as to the consequences of the judgment not being signed and what should this court do. Equally she did not address this court as to the resulting consequences to this appeal for being accompanied by an unsigned copy of the judgment sought to be challenged. I was thus left alone to fend for myself.

Fortunately, this is not the first time in our jurisdiction that this kind of anomalies have happened. My brother Judge Kisanya, J., once encountered a similar situation like the one at hand. In **Robert Rwanda Nyadenda versus Godfrey Binaisa**, PC Criminal Appeal No.5 of 2021, High Court of Tanzania at Musoma, when delivering a judgment on appeal originating from the Primary Court, the Presiding Magistrate in the District Court omitted to sign and date the Judgment. The same was issued to parties and one of them appealed to the High Court attaching the undated and unsigned judgment to his petition of appeal. Hon. Kisanya, J., held that:

"in view of the above, I have no flicker of doubt that the Judgment of the District Court of Tarime in Criminal

Appeal No.58 of 2020 is a nullity for want of signature and the date on which it was pronounced or delivered. "

In reaching the above-named decision the Honourable Judge was guided by the decision of the Court of Appeal of Tanzania in **Patrick Boniphace versus R**, Criminal Appeal No.2/2017 where it was held that:

"in the matter at hand, since the judgment of the trial court was not signed and dated by the trial magistrate who conducted the trial, there was no judgment to be appealed against before the High Court."

In my view, although the above-named authorities were addressing a defective unsigned judgment in criminal cases, they equally apply with the same force to the case at hand which is of civil nature. The need for authenticity of court documents is essential in civil cases as well. I therefore find that the effect of the unsigned Judgment of the District Court of Bagamoyo, is to render it a nullity. I do hereby nullify the Judgment of the District Court of Bagamoyo in Civil Appeal No.07 of 2022 purportedly delivered on 21st October 2022 as per Hon. M. B. Mmanya -RM without being signed. The first ground of appeal therefore succeeds.

I would have proceeded to determine the 2nd, 3rd, and 4th grounds of appeal but then my holding in the first ground of appeal is sufficient to

dispose of the whole appeal before me. Also, my holding in the first ground of appeal has a rebound-ball effect with boomerang consequences to the continued survival of the present appeal. There is no competent appeal before me now as a result! Having found in the first ground of appeal that there is no valid judgment in Civil Appeal No.07 of 2022 made by the District Court of Bagamoyo delivered on 21st October 2022 as per Hon. M. B. Mmanyanya RM, that finding and holding have immediate effect on the present appeal. It boomerangs to strangle the present appeal for not being accompanied with a certified valid copy of the judgment which sought to be appealed against. In law, there is no judgment attached to the memorandum of appeal in this case, consequently the appeal at hand is thereby rendered incompetent.

Therefore, although the first ground of appeal succeeds, due to the defect established in ground No.1 thereof, I make the following orders:

1. I do hereby nullify the Judgment of the District Court of Bagamoyo in Civil Appeal No.07 of 2022 purportedly delivered on 21st October 2022 as per Hon. M. B. Mmanyanya -RM.

2. I strike-out the present appeal for being incompetent for not being accompanied with a certified copy of a valid judgment of the District Court.
3. I further order that the Presiding Magistrate or his successor in office should go ahead and compose and deliver a fresh Judgment in Civil Appeal No.07 of 2022 in the District Court of Bagamoyo.
4. I make no order as to costs.

Right of appeal explained.

It is so ordered.



A handwritten signature in black ink, appearing to read "A. H. Gonzi".

A. H. Gonzi

JUDGE

22/11/2023

Judgment is delivered in Court today 22nd day of November 2023 in the presence of Ms. Agatha Fabian Advocate for the Appellant and in absence of the Respondent who was notified of the date of Judgment by way of advertisement in Uhuru Newspaper dated 2nd November 2023 .



A handwritten signature in black ink, appearing to read "A. H. Gonzi".

A. H. Gonzi

JUDGE

17/11/2023