

TANZANIA / JUDGMENT

tanzlii CIVIL APPEAL NO 20285 OF 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TEMEKE -SUB REGISTRY AT ONE STOP JUDICIAL CENTER CIVIL APPEAL NO. 20285 OF 2024 f/1/7 appeal originating from the decision of liaia District Court at Kinyerezi in Matrimonial cause No. 21/2021 delivered on the 19th July 2023 before Hon Mkamba, R.M) BERNARD NGURUMI.....
APPELLANT VERSUS SIFA URBAN NDUNGURU..... RESPONDENT

RULING

Date of last order: 13 / 11/ 2024 Date of Ruling: 15/11/2024 S.D MWAIPOPO J This matter was set for delivery of Judgement on 30th October 2024 whereby Mr. Kelvin Kasera, learned counsel for the Appellant appeared in court while the Respondent was absent on that day. Since the matter was set for judgement, I informed the learned counsel for the Appellant that in the course of composing the Judgement I noticed that the Decree of the trial court had some errors which had to be rectified before the Judgement is composed and delivered. The same was done in i recognition of the fact that the Decree constitutes part of the records of the court and has to be clear from errors. I thus ordered the parties to appear in court on 13/11/2024 and address it on the anomalies appearing on the Decree itself. Specifically, the Decree of the trial court was wrongly titled as follows; "DEGREE IN APPEAL" Further, the Petitioner was being referred as the Appellant instead of the Petitioner, in the contents of the Decree on the first paragraph which reads as follows; Wherefore the Appellant prays for the following orders: At the commencement of hearing on 13/11/ 2024 both parties were represented. The Appellant was represented by learned Advocate Kasera and the Respondent was represented by learned Advocate Ishengoma. The learned counsel for the Appellant was the first to address the court on the issue. He conceded to the fact that there are indeed some errors on the Decree, he was however quick to state that the Decree otherwise agrees with the provisions of the Order 20 Rule 6 and 7 of the CPC which require the contents of the Judgement and the date of the decree to match. He stated that since there are some defects in Decree he prayed for the same to be rectified based on section 3A and B of the CPC which provide for overriding objective principle which calls for courts to focus on substantive justice. He asked for the court to grant him time pursue the District Court of Temeke to do the necessary corrections on the Decree under section 96 of the CPC. So that he can be able to bring a clean copy which has been rectified as a subsequent document. He contended that this move was done in the Civil Appeal no. 245/2022 between Nassoro Abubakar Hamis against Wakfu and Trust Commission of Zanzibar whereby the CAT gave the Appellant the opportunity to rectify

the Decree and return it as a subsequent record. He thus prayed for the court to allow him to approach the District Court for rectification of the Decree and file it as a subsequent document. Submitting in rebuttal, the learned counsel for the Respondent expressed no objection with the position taken by the learned counsel for the Appellant but stated that he differed a bit on the appropriateness of the proceedings of the subordinate court. He contended that when the proceedings are not proper, the Appellant lacks mandate to take action on such proceedings. He was of the view that; the proceedings of the High Court which have been initiated by the Appellant with the proceedings of the subordinate court which are not proper, have to be nullified. He argued that the remedy in such a situation will be to strike out the appeal which contains some improper proceedings and allow the party to go to the subordinate court and clear all the errors and get all the proceedings proper and then initiate the appellate process again. He asserted that, going by the route initiated by the Appellant in the event of further appeal it will bring confusion of having two different decrees in the same proceedings. He contended that the title of the decree reads as "Degree in appeal". He expressed his hope that upon correction of errors the wrong title "Degree" will read as "Decree" as this is already part of the proceedings of the subordinate court. Further, he argued that following the route suggested by the Appellant the error cannot be expunged from the records of the trial court. He was thus of the view and humbly submitted that the overriding objective principle should not be applied for purposes of putting clear the court records. He submitted that the court be pleased to strike out the appeal and enable the Appellant to clear the records and if he so wishes file again the appeal. In rejoinder, the learned counsel for the Appellant submitted that the court directed the Appellant to address it on the irregularity of the Decree but he found the proceedings to be okay. He cited the provisions of section 73 of the CPC which states that no any case shall be denied on account of defect on the decree which does not go to root of the jurisdiction of the court and hence cannot affect the appeal. With regard to the issue raised by the Respondent on the appropriateness of the proceedings, it was his position that the Judgement and proceedings are okay. He however prayed to approach the District Court to rectify the Decree and then submit the corrected Decree as a subsequent document. He stated that he will do the necessary Application before the district court for rectification so that the amendment or rectification can be reflected in the proceedings therein that the decree will be filed after the rectification by the relevant court. Following the rejoinder submitted by the court, this court asked the learned counsel for the Respondent to specifically address it on the Court of Appeal case cited by the learned counsel for the Appellant, however he was quick to state he would wish to state anything about it. Having digested the rival submissions of parties, the central issue to be resolved is whether the appeal should be struck out as suggested by the learned counsel for the respondent or whether the Appellant should just be given the opportunity to pursue the corrections/ rectification on the Decree and file a corrected version of the same as suggested by the learned counsel for the Appellant. From the submissions of the parties above, I have observed that both parties are in consensus that the Decree contains some errors therein which have to be rectified however they differ in terms of the approach to be taken. While the learned counsel Appellant has implored this court to allow him to pursue the District Court for corrections and then file a corrected decree as a subsequent document pursuant to section 3A, 3B, 73 and 96 of the CPC and the case of Nassoro Abubakar Khamis vs

Azam Marine services (supra), the learned counsel for the Respondent has moved this court to strike out the appeal since it contains defective proceedings arising from the trial District court. I have perused the provisions of the CPC cited by the Appellant and observed the following; Order 20 Rule 6 and 7 of the CPC provide for contents of the Decree and state that it shall agree with the Judgement, it shall contain the number of the suit, the names of description of the parties and particulars of the claim and specify clearly the reliefs granted or other determination of the suit. Similarly under Rule 7 it is stated that the Decree shall bear the date on which the Judgement was issued and shall be signed by the Magistrate or Judge upon satisfaction that it tallies with

Judgement.

Based on these provisions it is clear that the Decree has not complied with Order 20 Rule 6 of the CPC much as it complies with Rule 7 of the same, since the description or reference of the Petitioner as one of the parties in the trial court is not correct as described in the particulars of the Decree therein, Similarly, the title of the Decree itself is self-defeating. If the Decree is left the way it is it may bring confusion in the records of the court since it insinuates that the Decree of the trial court is the Decree in appeal while it is not and the Petitioner is being referred as the Appellant instead of the Petitioner. The Decree is supposed to make reference to the right parties and differentiate the trial and appellate proceedings conducted by courts to avoid any confusion that may arise in the court records for subsequent proceedings. Court records must always reflect what exactly transpired in the previous proceedings. Since both parties have also agree that the Decree is defective, then it is my position that it must be worked upon. In the case of Nassoro Khamis (supra) it was held that: If a Decree is defective, it may be amended and refiled Regarding the provisions of section 73 of the CPC, the Appellant has contended that Appeal should not be struck out since the defect on the Decree does not go to the root of jurisdiction. Taking the stance I have taken on Order 20 rule 6 above, I am of the position that such errors on the Decree need to be rectified since if they are left the way they are they would connote that the trial court sat as an appellate court and this court in terms of jurisdiction is sitting as a second appellate court, something which is not true. And also considering the importance of the Decree as an instrument which confer rights to the parties, It must therefore be free of any misleading errors. To that extent hold that the Decree does not agree with the Judgement of the trial court. Moving now to section 96 of the CPC, cited by the Appellant, it reads as follows; Clerical or arithmetical mistakes in Judgement, Decrees or orders or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties. I agree with this position. However as contended by the Respondent the issue would still be whether the Appeal should be struck out or the Appellant be allowed to pursue the corrections in the District court pursuant to the provisions of section 96 of the CPC. The Appellant in his submissions has cited the Court of Appeal case of Nassoro abubakar (supra) in which the Appellant was allowed to pursue the corrections in the lower court and go back to the Court of Appeal with a rectified Decree. With regard to whether the matter should be struck out or not; I have perused the cited case above cited by the Appellant and observed in the said case the Court of appeal made reference to various cases in which previously

the courts could render defective appeals incompetent and struck them out. See the case of Mantrac Tanzania Ltd vs Raymond Costa Civil Appeal No. 74/2014, Uniafrico Ltd and two others Vs Exim Bank Ltd Civil Appeal no 30 of 2006 unreported, Kapinga and company Advocates vs. NBC Ltd Civil Appeal no 42 of 2007, Robert Edward Hawkins and another vs Patrice P Mwaigomole Civil appeal no 48/2006 and Tanzania Motors Ltd vs Tantract Agencies, Civil Appeal No. 61 of 2007(unreported) and all cited in the case of Nassoro Abubakar. This was also the position taken by the learned counsel for the Respondent. Further, in the case of Nassoro abubakar (supra), the court held that: However, in the wake of the amendment which was made to the Appellate Jurisdiction Act Cap 141 RE 2019 by the Written Laws Misc. Amendments Act no. 8 of 2018, which introduced sections 3A and 3B, the court is enjoined to consider the prevailing circumstances of the respective defect and extent of prejudice caused to the parties for purpose of rendering substantive justice. Thus where there is defect on the decree which is essentially caused by the trial court, the respective party is granted leave to approach the maker of it for rectification or amendment.... parties should not be punished for the errors committed by the courts. The court went on to state that Besides, we are of the settled view that this approach is in recognition of the fact that in both the CPC and CPD, sections 96 and 130 respectively empower the trial courts which issue defective decree to correct clerical mistakes and errors apparent in the decree before execution is done. Therefore, guided by the approach taken by the CAT in the case cited by the learned counsel for the Appellant, and which was also not specifically distinguished by the learned counsel for the Respondent and also the novelty brought in by sections 3A and 3B of the CPC, RE 2019, I decline the prayer by the Respondent of having the appeal struck out. On the contrary, and without any hesitation, I grant leave to the Appellant to approach the District Court of Temeke at Temeke (One Stop Judicial Centre) pursuant to section 96 of the CPC to obtain a rectified Decree which will be in conformity with the Judgement of the trial court as far as references and descriptions to the Petitioner and also the title of the Decree itself are concerned, in line with the requirements of Order 20 Rule 6 of the CPC, in all material aspects of the Decree, to enable me finalize the composition of the Judgement in the instant appeal. In upshot I allow the Appellant to proceed with procedures for rectification of the Decree pursuant to section 96 of the Civil Procedure Code Cap 33 RE 2019 and order that the amended decree be filed within 21 days from the date of this ruling. I further fix the case for orders on 10/12/2024 at 11.00 hrs. Each party shall bear its own costs as the observation was raised by the court suo motto. It is ordered Dated at Temeke this 15th Day of November 2024 S. D. MWAIPOPO JUDGE 15/11/2024 12

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