

TANZANIA / JUDGMENT

Remigius Bruno

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB-REGISTRY OF SUMBAWANGA) AT SUMBAWANGA CIVIL APPEAL NO. 10220 OF 2024 (Originating from Civil Case No. 1234 of 2023 District Court of Sumbawanga at Sumbawanga) REMIGIUS BRUNO APPELLANT VERSUS JULIUS ERASMUS CHUWA..... RESPONDENT Last Order: 21# August 2024 Judgement: 12h September 2024

JUDGMENT

NANGELA, J.: This appeal arises from the decision of the District Magistrates' Court of Sumbawanga at Sumbawanga in Civil Appeal No.1234 of 2023. In that appeal, the respondent had appealed against a decision of the Primary Court of Sumbawanga at Sumbawanga in Civil Case No. 130/2022 dated 12/12/2023 (Hon. Kashaija, PCM). Before I proceed to the grounds raised in this appeal, I find it imperative to set the entire background in the perspective it deserves. Before the Primary Court of Sumbawanga at Sumbawanga was a claim by the respondent against the appellant herein which was filed as Civil case No. 130 of 2022. The respondent's claim was in respect of 245 bags of maize worth TZS Page 1 of 7 12,500,000/- which he claimed to have handed over to the Appellant. At first, when the matter was called for hearing, the suit got dismissed for non-appearance. Efforts to restore it were unfruitful and an appeal (Civil Appeal No. 09 of 2023), was subsequently preferred before the District Magistrates' Court of Sumbawanga at Sumbawanga. Pursuant to that appeal, an order was issued by that Court on the 31st of March 2023 to the effect that the main suit (i.e., Civil Case No.130 of 2022) should be heard *denovo* before another competent magistrate. Even so, the matter did not start *denovo* as ordered by the District Court. Instead, the application for restoration of the suit was re-heard before another Primary Court Magistrate who likewise rejected it on the grounds that it had failed to establish good cause. The respondent herein appealed once again to the District Court vide Civil Appeal No.1234 of 2023 which was decided in his favour and the District Court made an order that the matter (i.e., Civil Case No.130 of 2022) should be restored and be heard as from the stage where it was before its dismissal. The appellant herein was aggrieved and, hence, appealed to this court against the decision of the District Court. The appellant herein has raised two grounds, to wit, that:

1. The learned magistrate erred in law and fact by delivering a judgement of another case different from the case which was heard and determined by the same court.

2. The learned magistrate erred in law and in fact by entertaining scandalous procedures and abusing Page 2 of 7 the court process, hence arriving at an unjust decision. The parties appeared represented by their advocates. On the one hand, Advocate Frederick Nyamoga, appeared for the appellant while Mr. Samwel Kipsha, learned Advocate, appeared for the respondent. He also filed his written submission. On the 21st of August 2024, the appellant prayed to file rejoinder submission. I will look at the submissions filed by the parties. In his submission the appellant's counsel submitted that, on the 6th of February 2024, the District Court of Sumbawanga at Sumbawanga issued a summons for Civil Appeal No. 1234 of 2024 which, to the surprise of the appellant, ended up with the Judgment of another case referred to as Civil Case .No.1234 of 2023 between the same parties. He contended that the original Civil Appeal was No. 1234/2024 filed on January 23rd, 2024. He submitted that on the 24th of January 2024 the respondent received a call from a Primary Court's officer where the name of the respondent was referred to as Remigus Bruno instead of Remigius Bruno which is his correct name. He contended that, on the 06th of February 2024 the appellant informed the court that he had no case since the name Remigus Bruno which appeared on the Petition of Appeal and summons served to him was not his name. He submitted that in March 2024 the appellant received a copy of an amended a copy of an amended petition of appeal. His argued, however, that, according to the Court's records Civil Appeal No. 1234 of 2024 which has not been finally determined Page 3 of 7 until this moment because the judgment delivered on 22nd March 2024 by Hon. William, SRM is for Civil Appeal No. 1234/2023 and not Civil Appeal No. 1234/2024. He contended that the appellant herein objected to the amended petition of appeal and that, what he knew was that the appeal was already overdue by 79 days when he was served. Mr. Nyamoga submitted that, as the records show, in Civil Appeal No.09 of 2023, the District Court had granted the appeal ordering that the Civil Case No.130/2022 be tried de novo, a fact which was complied with by Hon. Kashaija who dismissed the matter for non-appearance. He contended that this was the decision challenged by way of appeal No. 1234/2024 whose judgment reads as Civil Case No. 1234 of 2023, hence this appeal. He contended, for that matter, that, there is, therefore, no judgment in respect of Civil Appeal No. 1234 of 2024 as what was issued by the Court was a nullity. Mr. Nyamoga contended that the learned Primary Court Magistrate had dismissed the Civil Case No. 130/2022 due to non-appearance of the respondent and the records would show that there were even recorded other different occasions of non- appearance, He therefore urged this court to allow the appeal in the interest of justice. For his part, Mr. Kipsha made a very brief submission. He contended that this appeal lacks merits. He contended that, the first ground is not worth of attention by this court since the difference between the citing of Civil Case No. 1234 of 2023 and the Civil Case No. 1234 of 2024 is a mere typographical error, a Page 4 of 7 simple slip of the pen which is curable as it does not affect the merits of the case. He contended that it could be cured under the overriding objective principle. He contended that the complaints on the amended petition which was filed on the 13/03/2024 are baseless since the amendments were pursuant to an order dated 12/03/2024 after the objection which the appellant had raised concerning mistake appearing in his mane and the court allowed the parties to amend the petition. He contended further that the first appellate court did

appreciate the evidence and came up with a finding that there were cogent reasons for the non- appearance of the respondent which was due to sickness. He contended that sickness is a good reason for the restoration of a matter in court. He supported his views by citing the Court of Appeal decision in the case of FINCA Tanzania Ltd vs. Hassan Lolpla, Civil Application No. 165/18 of 2021 (CAT)(unreported). He also relied on Rule 28 of the Magistrates Court (Civil Procedure in Primary Court) Rules. He urged this court to dismiss the appeal with costs. I have considered the rival submissions and the issue for my consideration is whether this appeal has any merit in it. The main contention as far as the first ground of appeal is that the Case number appearing on the judgment is Civil Case No.1234 of 2023 instead of Civil Case No. 1234 of 2024. Further, there was an argument that the name of the appellant was cited as "Remigus" instead of "Remigius" which is his proper name. In his submission/ Mr. Nyamonga urged this court to find that error as fatal and regard the whole judgment a nullity. Mr. Page 5 of 7 Kipesha thinks otherwise noting that, the difference between in one numerical number should be regarded as a slip of the pen or a typographical error which, under the overriding objective principle is curable. Having considered the learned counsel's submissions, I do support the submission made by Mr. Kipesha. As the Court of Appeal stated in the case of Victor Rweyamamu Binamungu vs. Geoffrey Kabaka and another, Civil Application No. 602/08 of 2017, there is no need to make a mountain out of a molehill. Such minor defects as a misspelling of names or recording of numbers are trivial and to them the deminimis rule would apply. The appellant's first ground of appeal is thus, as once stated by the Court of Appeal in the case of Patricia Mapangala and Another vs. Vincent K.D Lyimo, Civil Appeal No. 149 of 2020 (unreported), 'a weak arrow in the appellant's boW although fervently pursued. It is, with respect, without merits as there has been no miscarriage of justice. Courts of law are, and should always be, more mindful of substantive justice than mere technicalities. As regard the second ground, the learned counsel for the appellant failed to submit on it. Nowhere in his submission did he demonstrate how scandalous or abusive was the appellate court's magistrate of the process of the court. Essentially, an abuse of court process has been described as, "use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process." See, the case UK - Attorney General vs. Baker [2000] EWHC 453 Page 6 of 7 (Admin). See also the case of Starpeco Limited and 40thres vs. Azania Bank Ltd & Another, Misc. Commercial Application No.11 of 2021 (unreported); Dhirajlal Walji Ladwa & 20thers vs. Jitesh Katantilal Ladwa and Another, Misc. Comm. Application No. 62 of 2020 (unreported). Since the appellant did not address the second ground, I see no reasons why I should labour for nothing. In any case I see noting abusive or scandalous in the proceedings and the rendering of the judgment of the District Court. I therefore reject the ground as well. In the end, since the errors were of clerical nature and did not go to the roots of the matter before the first appellate court, they were therefore negligible. The orders and directives of the Court that the Civil Case No. 130 of 2022 should be restored and be heard from where they had stopped before being struck out is hereby maintained and this court so directs the Primary Court Magistrate to comply with it. This appeal is therefore without merits, and I hereby dismiss it. In the circumstances of this appeal, I make no

orders as to costs. It is so ordered. DATED AT SUMBAWANGA ON THIS 12th SEPTEMBER
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