IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

CIVIL APPEAL NO.51 OF 2019

(Arising from the District Court of Nyamagana in Civil Case No. 13 of 2018)

IGUNGA DISTRICT COUNCIL ..... APPELLANT

VERSUS

AFRILINE GENERAL TRANSPORT LIMITED ..... RESPONDENT

JUDGMENT

Last order: 25.05.2020

Judgment Date: 08.06.2020

A.Z.MGEYEKWA, J

The appellant appealed to this court following his dissatisfaction with the decision of the District Court of Nyamagana in Civil Case No.13 of 2018 which decided in favour of the respondent.

Aggrieved by the decision of the trial court the appellant knocked the gates of this court with four grounds of appeal as follows:-

1. *That, the honourable Senior Resident Magistrate erred in law and fact by ignoring the issue of limitation of time in respect of the twelve Respondent's claims worth of Tshs. 12047,128.00 out of Tshs. 18,353,046.00, while the Court's attention was drawn during hearing and in the appellant's final submission.*

2. *That the honourable Senior Resident Magistrate erred in law and fact by including in his award in the respondent, two claims of Tshs. 2,482,246.00, while the same were already paid by the responsible institution, Igunga Water Supply and Sanitation Authority, and the Respondent admitted the fact.*

3. *That, the honourable Senior Resident Magistrate erred in law and fact by not holding that two claims worth of Tshs. 3,823,672.00 were not justifiable for missing recipient signatures.*

4. *That, the honourable Senior Resident Magistrate erred in law and fact by failing to analyze evidence hence not holding that the respondent's claims were not justifiable*

The hearing was done by way of written submission whereas, the appellant filed the written submission as early as 14th May, 2020 and the respondent filed a reply as early as 19th May, 2020. Both parties complied with the court calendar.

The learned counsel for the appellant opted to abandon the second ground of appeal. Arguing in support of the first ground of appeal the learned counsel for the appellant lamented that the appellant had drawn

the attention of the District Court on the issue of limitation of time during the hearing but the trial Magistrate disregarded the issue of limitation of time. The learned counsel for the appellant continued to submit that the suit was instituted after six years since the cause of action and purported claims arose contrary to the requirement of the law of limitation. He further submitted that the trial Magistrate had no jurisdiction to entertain the said claims on merit that he was supposed to dismiss them.

He continued to argue that the law of limitation Act is applicable in the issue at hand regarding the time limit for instituting a suit. The relationship between the defendant and the plaintiff was commercial therefore all occasions and trade relationships can be recognized as a contractual relationship. To support his submission he referred this court to item No.7 of Part I of the Schedule to the Law of Limitation Act, Cap.89 [R.E 2019] that requires every suit founded on contract not otherwise specifically provided for, to be made within six years. He concluded by arguing that it is evident that the suit was filed out of time in relation to certain claims. He prays the court to quash the decision of the trial court regarding the said claims.

In respect to the third ground of appeal, Mr. Leopold, the learned counsel for the appellant submitted that all LPOs and delivery notes that were tendered by the respondent were not signed by the appellant to acknowledge receiving of goods or services. He went on to state that the format of the LPO requires the acknowledgment signature of the recipient upon receiving the goods delivered by the supplier and if the deliverer wishes they may issue a delivery note indicating the goods or services were delivered. It was his further submission that in the absence of the recipient's signature, it was unreasonable to believe that the purported orders of goods and services were received by the appellant. He prays this court to find that this ground is demerit.

Submitting on the fourth ground of appeal, Mr. Leopold submitted that the trial court erred in law and fact by failing to analyze evidence hence not holding that the respondent's claims were justifiable. He went on to state that the court failed to analyse the evidence which leads to a wrong and unjust decision.

In conclusion, Mr. Leopold insisted that the decision of the trial court was wrong, unjust, and violated the requirement of law. He prays this court to quash and set aside the whole proceedings, Judgment, and

decree of the District Court of Nyamangana in Civil case No.13 of 2018 with cost.

The respondent's rebuttal was spiritedly. He defended the trial court decision that it was sound and reasoned. Submitting on the first ground of appeal he argued that the suit was not time-barred for the reason that; firstly, the appellant was required to raise a preliminary objection at the trial court and not at the appellate court because it is not a preliminary objection on jurisdiction of which can be raised any time or even on appeal. Secondly, he argued that in accordance to the Plaint, the payment for repair and maintenance was proved, thus the respondent reminded the appellant several times and he issued a final demand notice, therefore, the issue of limitation of time cannot apply to outstanding claims of which the appellant promised to pay.

Thirdly, Mr. Katemi submitted that all exhibits tendered in court had no any legal effect leading them to be rejected. He added that although the notice had no signature the same cannot justify that such services were not rendered. He further argued that the appellant's Solicitor is using legal technicalities to justify his argument while it was proved that the services in which were issued invoices were rendered by the respondent

and delivered to the appellant. He prays this court to find that this ground demerit.

In respect to the fourth ground of appeal, the learned counsel for the respondent argued that the trial Magistrate properly analyzed the evidence on record. Thus he urged this court to find that the fourth ground of appeal has no merit and the same be dismissed.

In conclusion, Mr. Katemi urged this court to dismiss the appeal save for second ground which has merit, he prays this court to quash the amount of Tshs. 18,353,046 and substituted it with Tshs. 15,870,800 which is justifiably proved.

Having considered the submission by both counsels for and against the appeal. In determining the appeal, the central issue is *whether the appellant had sufficient advanced reasons or grounds to warrant this court to overrule the findings of the District Court of Nyamagana*.

I have opted to start addressing the fourth ground of appeal and if this ground is answered in affirmative it will dispose of the whole appeal. The learned counsel for the appellant submitted that the trial court erred in law and fact by failing to analyse evidence on record, he prayed for this

court to find that the decision of the trial court is wrong, unjust and violates the requirement of law and prays this court to quash and set aside the whole proceedings, Judgment, and decree of the District Court of Nyamangana in Civil case No.13 of 2018.

I have gone through the trial court records and I fully subscribe to the appellant's contention on this ground. My scrupulous review of the Judgment takes me to the trial court proceedings specifically page 1 whereas, two issues are listed as having been framed to lead the trial proceedings. What is transpired in the Judgment is the summary of testimonies of PW1 and DW1, there is no analysis or discussion in respect of the two issues. What comes immediately after the summary of witnesses' testimonies is a conclusion, he concluded by stating that the plaintiff has genuine claims against the defendant and the claims have been proved on the balance of probability and he proceed to grant the reliefs as prayed.

In my firm opinion, every Magistrate or Judge has his style of composing a Judgment and I know that there is no Judgment which lacks errors as articulated in the case of **Chandrakant Josubhai Patel v R** Criminal Appeal No.8 of 2002. However, the court is required to observe

and abide to the format of writing a Judgment. As it was set under Oder XXXIX Rule 31 which provides that:-

"31 The Judgment of the Court shall be in writing and shall state:-

(a) The points for determination;

(b) The decision thereon;

(c) The reasons for the decision; and

(d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

In the instant case, important ingredients of Judgment are missing; the trial Magistrate narrated part of parties' submissions. Though the trial court did not consider and analysed the framed issues, and he did not state the reasons for his decision. He ought to analyse all framed issued and state reasons for his decision. Otherwise, *the Judgment is as good as no Judgment*.

Failure to consider material issues in a Judgment is not a mere slip. It is an intolerable omission which is a serious travesty of a Judgment that borders on an epic miscarriage of justice. In ***Stanislaus Rugaba Kasusura and the Attorney General v. Phares Kabuye*** [1982] TLR 338, the Court of Appeal had the following observation:-

> *"The Judgment is fatally defective; it leaves contested material issues of fact unresolved.* ***It is not a Judgment because it decided nothing in so far as material facts are concerned***

.... It is in fact a travesty of a Judgment.... ***The trial judge should have evaluated the evidence of each of the witnesses, assessed their credibility, and made a finding on the contended facts in issue****. He did not do so."*

Similarly, this firm position of the law was restated in **Lutter Symporian Nelson v. Attorney General and Ibrahim Said Msabaha**, Civil Appeal No. 24 of 1999 (unreported) the following finding was made:-

> *"A Judgment must convey some indication that the judge or magistrate has applied his mind to the evidence on the record. Though it may be reduced to a minimum, it must show that no material portion of the evidence laid before the court has been ignored. In* ***Anurali Ismail v. Regina*** *1 TLR 370 Abernethy J made some observations on the requirements of the Judgment. He said:*
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> > *A good Judgment is clear, systematic, and straightforward. Every Judgment should state the facts of the case, establishing each fact by reference to the particular evidence by which it is supported, and it should give sufficiently and plainly the reasons which justify the finding. It should state sufficient particulars to enable a court of appeal to know what facts are found and how." [Emphasis added]*

I find nothing in the impugned Judgment that comes anywhere close to what the Court of Appeal put as a threshold of a good Judgment in the just cited decision. The trial magistrate ignored, with impunity,

material issues that would drive him to a conclusion on whether the plaintiff's claim has any semblance of merit and make an appropriate finding that takes into consideration evidence adduced by the parties.

From the above findings and analysis, it is my view that the defects in the Judgment of the District Court of Nyamagana in Civil Case No.13 of 2018 is incurable and goes to the root of the appeal at hand. Therefore, for the interest of justice, I invoke the provision of section 43 of the Land Dispute Courts Act, Cap.216 [R.E 2019] which vests revisional powers to this court and proceed to revise the proceedings of the District Court in Civil Case No. 13 of 2018 in the following manner:-

(i) The proceedings and Judgment in Civil Case No. 13 of 2018 and the orders made thereof are hereby quashed and set aside.

(ii) The case file to be remitted back to the District Court of Nyamagana to be determined by another Magistrate.

(iii) No order as to costs.

Order accordingly.

Dated at Mwanza this date 8th day of June, 2020.

A.Z.MGEYEKWA

JUDGE

08.06.2020

Judgment delivered on 8th day of June, 2020 via audio teleconference, and both parties were remotely present.

A.Z.MGEYEKWA

JUDGE

08.06.2020