

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MTWARA AT MTWARA**

**PC CIVIL APPEAL NO. 10 OF 2023**

*(Arising from Masasi District Court decision in Civil Appeal No. 14 of 2021 dated 16<sup>th</sup> March 2022 originating from the Decision of Lisekese primary court in civil case no 71 of 2021)*

**CHAMA CHA MSINGI MSHIKAMANO.....APPELLANT**

**VERSUS**

**AZIZI HAKIKA KATANI.....RESPONDENT**

**RULING**

*13<sup>th</sup> & 14<sup>th</sup> February, 2024*

**DING'OHI, J;**

The Respondent, **AZIZI HAKIKA KATANI** successfully sued **CHAMA CHA MSINGI MSHIKAMANO**, the appellant herein, in the primary court of Lisekese in civil case No. 71 of 2021 for payment of Tsh. 21,050,016/=.

Aggrieved by the said decision the appellant appealed to the District Court of Masasi where he lost. Still aggrieved, the appellant came to this court with this second appeal on the following three grounds:

1. *That, both the trial court and first Appellate Court grossly erred both in law and fact to nullify Exhibit KLU 1 on the ground that the Respondent had no free will by the time he wrote and present the same.*
2. *That, both the trial and the first Appellate Court grossly erred both in law and fact and consequently occasioned injustice for relying on the Respondent's "blanketed" fear with no any cogent evidence to establish the basis of the fear.*
3. *That, both the trial and the first Appellate Court grossly erred both in law and fact by acting on extraneous issues and assumptions which were not on court records.*

On 13<sup>th</sup> February 2024, when this appeal came on for hearing before me, **Mr. Robert Dadaya**, learned advocate appeared for the appellant whereas **Mr. Stephen Lekey**, learned advocate stood for the respondent.

In the course of the hearing, Mr. Stephen Lekey, interrupted, of course with the leave of the court. He raised a preliminary objection to the effect that this appeal is not properly before the court. His ground of objection was to the effect that the appellant in the appeal filed in the District Court had never been a party in the original case in the trial court. He argued that the parties

in the original case were **Azizi Hakika Katani** as the plaintiff (now the respondent), and **Chama Cha Msingi Mshikamano** as the defendant (now the appellant). According to the learned advocate adding the name of **Hamisi Sefu Mbinga (Chama Cha Msingi Mshikamano)** in the District court as the appellant was completely improper.

Mr. Lekey cited the decision in the case of **Salim Amur Diwani v Vice Chancellor Nelson Mandela African Institution of Science Technology and another**, Civil Application no. 116 of 2021, to support his arguments. He submitted that since the appellant in the District Court of Masasi was not a party to the original proceedings, he implored this court to invoke its revisional powers conferred under the provision of section 44 (1) (b) of the Magistrates' Courts Act CAP. 11 R.E. 2019 to revise and nullify the proceedings and judgment of the District Court of Masasi by impleading party (Appellant) who has never been a part in the trial court. The learned counsel prays that this appeal be struck out with costs.

In reply, Mr. Dadaya, for the appellant conceded to the objection raised. He was of the firm view that as the officer of the court, he's duty bound to assist the court in dispensing justice. He however prayed that for the interest of justice and since he conceded to the preliminary objection, his client who

was not represented when preparing an appeal in the first appellate court should not be subjected to the payment of costs.

I have carefully considered the oral submissions by learned advocates for both parties. Since, as properly conceded by the Advocate for the appellant the appeal in the district court was made in the name of the wrong appellant who was not a party in the proceedings of the trial court, the proceedings in that district court were a nullity. In the case of **Salimu Amour Diwani**(supra). The Court of Appeal had the following to say under the akin situation:

*"We observed that, parties in the proceedings should at any given time appear as they did in the previous proceedings unless there is a reason for not observing that".*

Under the circumstances and in exercising my revisional powers under section 44 (1) (b) of the Magistrates' Courts Act CAP 11 R: E 2019 I hereby quash and set aside the proceedings and the judgment of the District Court of Masasi in civil appeal No. 14 of 2021.

As to costs, I have heard and considered submissions by the advocates for both sides. I am aware that the matter of awarding costs in civil cases is at


the discretion of the court. The fact that a party conceded to the case or appeal, in my view, is not a ground for avoiding costs incurred by the opposite party.

In the upshot, the appeal is struck out. Respondent shall have his costs.

Order accordingly.

**Dated at Mtwara** this 14<sup>th</sup> February, 2024.



  
**S.R. Ding'ohi**  
**Judge**

**Court:** Rulling delivered this 14<sup>th</sup> day of February, 2024 in the presence of Mr. Stephen Lekey for the Respondent who also held belief of Mr. Robert Dadaya for the Appellant.



  
**S.R. Ding'ohi**  
**Judge**  
**14/02/2024**