

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT ARUSHA**

DC. CIVIL APPEAL NO. 20 OF 2017

*(Originating from Civil Case No. 6/2016 of District Magistrate Court of
Karatu)*

BILARI BUGHE @ ABDALLAH BUGHE.....APPELLANT

VERSUS

AMSI SHAURI.....RESPONDENT

JUDGMENT ON APPEAL

S.M. MAGHIMBI, J:

This appeal emanates from the decision of the District Court in Civil Case No. 6/2016 where the respondent herein claimed compensation of Tshs. 93,723,000/= being compensation of legitimate expectation which the Plaintiff would have obtained from cultivating his land had he not been interrupted by the defendant. After hearing the parties, the trial court granted the amount of Tshs 36,723,000/= to the respondent as compensation for legitimate expectation caused by the defendant to make the plaintiff use his land and general damages at the tune of Tshs. 10,000,000/=. Being aggrieved with the proceedings, judgment and decree of the District Court, the appellant appealed before this court basing on the following grounds;

1. That the District Court erred in in law and in procedure for failure to comply with the mandatory requirement of Order XIII Rule 4 of the Civil Procedure Code, [Cap. 33 R.E 2002].
2. That the District Court erred in law, procedure and in fact in admitting Exhibit P1 without complying with the mandatory requirements of Order XIII Rule 1 of the Civil Procedure Code, Cap. 33 R.E 2002.
3. That the District Court erred in law and in fact in admitting Exhibit P2 while denying the appellant right to be heard.
4. That the District Court erred in law and in fact for its failure to evaluate the evidence before it hence arriving at erroneous decision.
5. That the District Court erred in law and in fact in deciding in favour of the respondent despite insufficient and contradictory evidence adduced by the respondent.
6. That the District Court erred in law and in fact by failure to afford the appellant's a right to make rejoinder on whether to adjourn the case to afford the defendant to bring his witness who was in Babati, hence denying the appellant his constitutional rights to be hear.

Before this court, the appellant was represented by Mr. Gwakisa Sambo learned Advocate while the respondent was represented by Richard.... learned Advocate. This court ordered this appeal to be disposed by way of written submission and both parties complied with the scheduled order.

In arguing the appeal, Mr. Sambo argued the first and the second grounds of appeal jointly where he submitted that, it is now a settled principle in our jurisdiction that, failure of the trial magistrate or judge to comply with the mandatory requirements of Order XIII Rule 4 of the Civil Procedure Code, Cap 33 R.E. 2002 (The CPC) render the entire proceedings after admission and endorsement of Exhibit P-1 nullity. He contended that, the law is very clear that, in admitting the Exhibits in Court, Order XIII Rule 4 of the CPC must be complied with. Order XIII Rule 4 (1) of the Civil Procedure Code (supra) provides that;

"4 (1) Subject to the provisions of the sub-rule (2), There shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

- a) the number and title of the suit;*
- b) the name of the person producing the documents;*
- c) the date on which it was produced; and*
- d) A statement of its having been so admitted; and the endorsement shall be signed or initialed by the judge or magistrate."*

He further referred this court to the Authors, S.C. Sakar and Prabhas C. Sarkar in their book, "***Sakar The Law Of Civil Procedure Code***", 9th Edition, 2000 at page 1159 and 1160 where the authors, while giving the meaning and interpretation of the order XIII Rule 4 of the Indian Civil Procedure Code Act Number V of 1908, which is

pari materia to our order XIII Rule 4 of cap 33 R.E 2002, had this to say,

"Documents admitted on the record without making endorsement prescribed by this rule cannot be regarded as being legally before the court. The importance of strict compliance with the procedure laid down was emphasized by judicial committee and it was held that the appellate court may refuse to read or permit to be used any document not endorsed in the manner required."

He further cited the author, **J.M Shelat**, in his book "**Mulla on the law of Civil Procedure Code**", 14th Edition, Volume II, at page 1190 while giving the meaning and interpretation of the order XIII Rule 4 of the Indian Civil Procedure Code Act Number V of 1908, which is *pari materia* to our order XIII Rule 4 of the CPC, had this to say,

"Shall be endorsed, the rules as to endorsements admitted in evidence must be strictly followed."

Mr. Sambo contended that, in both books the learned authors have cemented that, compliance with Order XIII Rule 4 of the CPC is mandatory and must be strictly complied with. He further referred this court to the decisions of the Court of Appeal at Mwanza in the case of **A.A.R. Insurance (T) Ltd vs Beatus Kisusi, Civil Appeal No.67/2015**, CAT at Mwanza (unreported) where the Court stated that;

"once exhibit is admitted, if it is admitted, if it is in civil proceedings it must be endorsed as provided under Order XIII Rule 4 of the CPC and that the need to endorse is to do away with tempering with admitted documentary exhibits."

He further cited the case of **Ally Omari Abdi vs Amina Khalil Ally Hildid, Civil Appeal No. 103 of 2016**, (Unreported) the Court stated that;

As correctly submitted: by the learned counsel for the appellant and for the respondent, the documents on pages 148 to 154 (marked on page 148 as "Exp1") were admitted without complying with the provisions of paragraphs (a), (b), (c) and (d) of Order XIII Rule 4 in so far as the (Land Case No. 9 of 2013); the name of the person producing the document (Amina Kalile Ally); date on which it was produced (06/01/2015); and statement of this document having been so admitted - were not endorsed on the exhibit.

We think, centrality of the documents falling under Exhibit P-1 in establishing who the real administrator of the estate of the deceased called for strict compliance with provisions of Order XIII Rule 4 of the CPC."

He contended that, the Court at page 20 of the judgment went on to invoke its power under section 4 (2) of the Appellate Jurisdiction Act and quashed and set aside all the proceedings in Land Case No.9 of

2013 which followed after the framing of issues right up to and including the judgment and decree of the High Court.

Mr. Sambo submitted further that, on the 5th day of September, 2017 via their letter dated 5th September, 2017 with reference number **PLCCA/BILAURI/VOL.4/1/2017** the appellants requested to be formally supplied with exhibits tendered in the lower court and to peruse the lower court file. Via exchequer receipt number 15879253, they perused the lower court file and they were supplied with the requested exhibits. That upon careful perusal of the said records in Civil Case Number 6 of 2016, subject of this appeal, they find that the trial Magistrate erred in law in admitting Exhibit P1, P2, P3 and P4 in non-compliance of mandatory requirement of Order XIII Rule 4 of the CPC. He thus contended that, the trial Magistrate erred in law by failure to endorse Exhibit P-1, P-2, P-3 and P-4 as required by Order XIII Rule 4 of the CPC as in admitting Exhibit P1, the trial magistrate omitted to endorse the number and title to the suit, the name of the person producing the document and the statement of its having been so admitted on the document so admitted.

He submitted further that the fatal defect applies also to Exhibit P2, P3 and P4 which all suffers from being not endorsed as required by Order XIII Rule 4 (1) (a), (b), (d) and (e) of the CPC and the failure to comply is fatal to all proceedings after the admission and endorsement of exhibit P1. He argued that the remedy for the

Exhibits which were admitted in proceedings without being endorsed as dictated by Order XIII Rule 4 (1) of the CPC were stated by the Court of Appeal of Tanzania in the case of **Ally Omari Abdi** which quashed and set aside the proceeds in Land Case No. 9 of 2013 which followed after the framing of the issues right up to the including judgments and decree of the high court.

Mr. Sambo therefore prayed that this court quash and set aside all the proceedings after framing of issues, including quashing and setting aside the judgment and decree in Civil Case No.6/2016 with costs.

On his part, with regard to the first and the second grounds of appeal, Mr. Richard admitted on the legal positions established by the authorities cited by Mr. Sambo. He however submitted that these are mere legal technicalities which in anyway cannot prejudice a substantive right of the respondent. He contended that, the alleged procedural irregularities were not caused by the respondent and in fact cannot, in any way, affect cogent evidence placed by the respondent before the trial court. He referred this court to Article **107A (2) (e)** of the Constitution of United Republic of Tanzania of 1997 (as amended from time to time) and the decision of Court of Appeal in the case of **Nimrod Mkono vs State Travel (1992) TLR 24** where the Court of Appeal stated categorically that justice should always be done without undue regard to technicalities. Her hence prayed that these grounds of appeal is of no any merit whatsoever.

Just as how the parties did it, I will dispose the first and the second grounds of appeal jointly. The issue is on the failure of the trial Magistrate to comply with the provisions of Order XIII Rule 4 of the CPC in admitting exhibits tendered before it. The Order XIII Rule 4 (1) provides that;

"Subject to the provisions of the subrule (2), there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely –

a) the number and title of the suit;

b) the name of the person producing the document.

c) the date on which it was produced; and

d) a statement of its having been so admitted;

and the endorsement shall be signed or initialed by the judge or magistrate. "

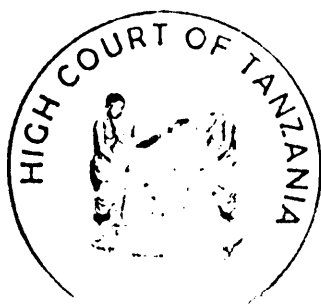
The provision cited makes a mandatory requirement that the document admitted as evidence during a civil trial must be endorsed in accordance with the Order. Particularly the number and title of the suit, the name of the person producing the document, date on which it was produced and statement of the document having been so admitted; and the endorsement shall be signed or initialed by the judge or Magistrate. However, having gone through the records of the trial court, I agree with Mr. Sambo that exhibits P1, P2, P3 and P4 did not comply with Order XIII Rule 4 (1) as the same does not provide the particulars; the number and title of the suit, the name of

the person producing the document and the statement of its having been so admitted. The essence of complying with Order XIII Rue 4 of the CPC as has been stated by the Court of Appeal, in the cited cases of A.A.R Insurance (T) Ltd (Supra) and the case of Ally Omari Abdi (Supra), is to insure the genuiness of documents which parties tender in support of their respective case.

Going through the judgment of the trial court, the trial Magistrate in his judgment relied on those documents in proving the nature and extent of loss suffered. However, the documents called for strictly compliance with the provisions of Order XIII Rule 4 of the CPC which they did not. As clearly stated in the cited authorities, failure to comply with Order XIII Rule 4 (1) of the CPC is fatal and renders the proceedings which led to admission of unendorsed exhibits null and void.

Having made those observations and findings, I hereby invoke my revisional powers and quash and set aside the proceedings in Civil Case No. 6/2016 which followed after the framing of issues to the end together including the judgment and decree of so passed therefrom. I order that the case be remitted back to the trial court to proceed with hearing from the time the issues were framed. The hearing should however proceed before another Magistrate. The appellant shall have his costs.

Dated at Arusha this 03rd day of July, 2018




S.M. MAGHIMBI
JUDGE