IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 107 OF 2023

(From Judgment and Decree of the Court of Resident Magistrate of Dar es Salaam at Kisutu in Civil Case No.25 of 2017 dated 14th December 2017 as per Hon.Mashauri,PRM)

AJAY HANSRAJ ASHER.....APPELLANT

VERSUS

TRIUMPH IMPEX LIMITED.....RESPONDENT

JUDGMENT

Date of last Order: 26/10/2023

Date of Judgment: 10/11/ 2023

GONZI,J.;

In the Court of Resident Magistrate of Dar es salaam at Kisutu, the Respondent instituted a summary suit against the Plaintiff which was registered as Civil Case No.25/2017. In the suit, the Respondent claimed for payment of Tshs.54,000,000/= (Tshs. Fifty Four Million Only) being the amount due because of dishonoured cheques; general damages at the tune of Tshs.200,000,000/= and interest at the commercial rate of 26% per annum from 16th September 2016.

The Appellant as the Defendant in the above-named summary suit, filed an application for leave to appear and defend the suit by way of chamber summons and an affidavit. His application was registered as Misc. Civil Application No.49 of 2017. The Civil Application No.49 of 2017 was struck out by the Court on 26th October 2017 when the affidavits therein were found to be fatally defective. Hence Civil Case No.25 of 2017 proceeded with hearing as a summary suit to the exclusion of the Appellant herein.

In its Judgment dated 14th December 2017, the trial Court delivered Judgment and Decree in favour of the Respondent by granting Tshs.54,000,000/= being amount due because of dishonoured cheques and interest thereon at the commercial rate of 26% per annum from 16th September to the date of payment; Tshs.50,000,000/= as general damages for loss of business, customers and embarrassments. The Appellant was also condemned to pay costs of the suit.

After delivery of the Judgment, the Appellant made several attempts by filing about 6 applications in the trial court to extend time within which to file an application for leave to appear and defend the summary suit, but his applications were struck out or dismissed. Finally, he lodged an application in the High Court seeking for an extension of time to file an appeal against

the summary Judgment. That application for leave was Misc. Civil Application No.212 of 2022 and the same was granted on 31st May 2023. He was granted an extension of time for 30 days from the date of the Ruling to file this appeal. Pursuant to the order of the High Court extending time, the Appellant has filed the present appeal.

The Appeal is premised on 5 grounds of appeal as follows:

1. That the Honorable Resident Magistrate Grossly erred in law and in fact by his failure to find that the suit fell outside summary procedure.
2. That the honourable Principal Resident Magistrate grossly erred in law and in fact by denying the Appellant automatic right to defend the suit.
3. That the Honourable Principal Resident Magistrate grossly erred in law and in fact by granting reliefs inconsistent with the reliefs reserved under summary procedure.
4. That the Principal Resident Magistrate grossly erred in law and in fact for improper analysis of evidence and thus arrived to a wrong and unfair decision.

5. That the Principal Resident Magistrate grossly erred in law and fact by entering summary judgment on 14th December 2017 in Civil Case No.25 of 2017 without notice to the Appellant on the date which Judgment was to be delivered as required by the law.

The appeal was disposed of by way of written submissions as directed by the Court. Both sides complied with the schedule given. Mr.Jerome Msemwa, learned Advocate, represented the Appellant while the Respondent enjoyed the services of Ms Mariam Salehe Msean, learned Advocate.

In respect of the first and second grounds of appeal, the Appellant submitted that the Civil Case No.25 of 2017 fell outside the scope of summary procedure and that the Appellant was illegally denied the automatic right to defend the suit. The appellant argued that under paragraph 4 of the Plaint in the suit, the suit was based on an oral contract and that the award of Tshs 50 million for loss of business, customers and embarrassment, are matters unknown in the law of summary procedure. He argued that enforcement of an oral contract is a matter of an ordinary suit and that specific and general damages are governed by different laws hence it was wrong for the learned trial

Magistrate to grant them both. The Counsel referred this Court to the case of **Urafiki Trading Agencies Limited Smart Rental Car Limited versus Abbasali Aunali Kassam and another,** Commercial case No.59 of 2010 (unreported) and the case of **Peter Joseph Kilibika and another Versus Aloyce Mlingi**, Civil Appeal No.7 of 2009. He argued that these cases underscore the need for specific damages to be proved strictly whereas general damages are presumed to follow from the type of wrong complained of and do not need to be specifically proved.

Mr. Msemwa submitted that in order for a suit to fall under summary procedure there are six conditions. These conditions have been established through case law. He pointed out that the fist condition is that the demand must be liquidated. That is it must be in the nature of a debt or specific sum of money due and payable under or by virtue of a contract. On this condition, he referred the court to the case of **Knight vs Abbott** (1982)10 QBD 11. The second condition is that a claim for interest cannot fall within summary suit unless it was agreed upon in the original contract. He referred the court to the case of Kasule versus Kanesa (1957) EA 611, on the second condition. The third condition is

that where the Defendant in a summary suit deponed an affidavit disputing interest, the case would cease to be a summary suit as the claim would thereby become uncertain. He referred the court to the case of **Cooperative Bank versus Kasiko (1983**) HCD 72. The fourth condition is that the liquidated sum must be contractual certain or ascertainable by calculation, and where it incorporates a claim of interest, such claim must be based on an agreement in the document sued on. He referred to the case of **Uganda Transport Co. v Pasture (1954)21 EACA.** The fifth condition is that interest can only be claimed in summary suit if the claim is based on an agreement for interest in the document sued upon or by statute. For this he referred to the case of **Cornwell versus Desai (1941) 6 ULR 103**. The sixth condition is that damages cannot be claimed in summary suit. He referred the court to the case of **Kasule versus Kawesa (1957) EA 64.**

It was the argument by the Appellant's Counsel that the plaint in civil case No.25/ 2017 that was instituted as summary suit offended those principles. It was not founded on contract; it claimed interest and claimed damages. Those futures made the case at the trial court not of

ascertainable liquidated sums and hence it was wrong for the court to continue with it as a summary suit thereby and deny the appellant the right to be heard.

In the 3rd ground of appeal, the learned counsel for appellant argued that it was wrong for the learned trial Principal Resident Magistrate to grant reliefs which were inconsistent with reliefs reserved under summary procedure. He submitted that at page 4 of the Judgment of the trial Court the Court granted Tshs.54 million being amount due from dishonoured cheques; Tshs.50 million as general damages for loss of business, customers and embarrassment and interest at the commercial rate of 26% per annum from 16th September 2016 in respect of the Tshs.54 million. The Appellant argued that since the civil case No.25/2017 was based on oral contract as seen under paragraph 4 of the Plaint, then the reliefs sought and awarded went outside the scope of summary suit under Order XXXV Rule 1 of the Civil Procedure Code Cap 33 of the Laws of Tanzania (RE 2019). It was submitted that the relief of interest at the commercial rate fell outside the scope of reliefs which one could bring to claim under summary suit.

On the 4th ground of appeal, the Appellant submitted that the learned trial Principal resident Magistrate failed to make a proper analysis of evidence and therefore ended with a wrong decision. He submitted that the trial Court relied on oral agreement the particulars of which were not given. Also that there was record of existence of the alleged agreement of Mid October 2016 for Tshs,54 million which was pleaded under paragraph 5 of the plaint. Further that the 6 cheques relied upon by the court were pleaded under paragraph 6 of the plaint but there was no evidence as to why the said cheques were issued and how they related to the oral agreement in question. Further that the total sum under the cheques did not tally with the amount being claimed. Therefore, it was wrong for the trial Court to have granted the reliefs based on the evidence before it.

On the fifth ground of appeal, the Appellant submitted that the summary judgment was entered on the 14th December 2017 without notice to the Appellant to attend and receive judgment. The Appellant submitted that a judgment delivered in absence of a party, without notice, is a nullity and it could not be taken to have come into existence. He referred the court to the case of **Omary Shabani Nyambu versus**

DUWASA, Civil appeal No.303 of 2020, decided by the Court of Appeal of Tanzania at Dar es salaam where it was held that **"applying the principle in the above cited authority, we agree with both learned counsel that the purported judgment delivered in the absence of the parties was not effective, operative or valid judgment which could be appealed against. It was a nullity."**

The learned counsel prayed for the appeal to be allowed with costs.

In her reply submissions, the Counsel for the Respondent submitted as follows: with regard to the consolidated 1st and 2nd grounds of appeal, the Respondent's counsel replied that the Respondent's express claim can be seen in paragraphs 6, 7, 9,10 of the Plaint and that even the Judgment as well portrays Paragraphs 6 and 7 of the Plaint, and not as claimed by the Appellant, on the Oral Contract alone. She submitted that the Respondent's claim against the Appellant was premised on dishonored cheques, not on the oral Agreement as alleged by the Appellant. The respondent submitted that the said paragraphs 4 and 5 of the plaint only served as a narration of facts leading to the cause of action. She argued that paragraphs 6, 7 and 10 of the Plaint shows that the claim arises on the dishonored cheque and quoted that **:"The Plaintiff claims against the Defendant TZS**

54,000,000/= being an amount which was to be refunded to the Plaintiff because of dishonored cheques drawn in favor of the Plaintiff...."

Therefore, she submitted that under **Order XXXV Rule 1(a) of the Civil Procedure CAP 33 RE. 2019 summary suit is applicable in respect of** "suits upon bills of exchange **(including cheques)** or promissory notes". Therefore as the cause of action in the civil Case No.25/2017 was based on cheques, it fell within the ambit of summary procedure.

On the claims for specific and general damages being mixed in the same summary suit, hence making it not clear, the Respondent replied that failure by the Defendant to obtain leave to defend the summary suit deems the Plaintiff's claim as admitted. Hence the Appellant cannot be heard to complain now. The Respondent's counsel referred the court to the provision of **Order XXXV Rule 2(2) of the Civil Procedure Code CAP 33 R.E. 2019,** that "In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; **and in default of his obtaining such**

leave or his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted..."

The Respondent relied on the case of **Tristars Investment Company Ltd versus Citechem Group Tanzania Limited Commercial Case No. 132 of 2022 at pg. 5 where it was held that,**

> **"According to Order XXXV Rule 2(2) of the Civil Procedure Code CAP 33 R.E. 2019,** failure on the part of the Defendant to obtain leave to defend, make it possible for the allegations contained in the plaint to be deemed as having been admitted by the Defendant. In light of that, the Plaintiff is entitled to an appropriate decree as specified under Order XXXV Rule 2 (a)(b)(c) of the Civil Procedure Code, CAP 33 R.E. 2019"

With respect to impropriety of claiming for general damages in summary suit, the Respondent's counsel ,Ms Msean, submitted that it is trite law that general damages are awarded at the discretion of the trial court as stated in the case of **Joao Oliveira and Another versus IT Started in Africa Limited and Another Civil Appeal No. 186 of 2020.** She argued that

there is nothing limiting the trial court in awarding general damages in summary suit.

Regarding the 6 conditions for the Court to entertain a summary suit, Ms Msean submitted that these 6 conditions are never stipulated in case law based on Summary suits but rather these conditions are concocted by the Appellant compiling different case laws to mislead the court which is contrary to Order XXXV Rule 1 of the Civil Procedure Code CAP 33 RE 2019. She went ahead to submit that the cited case of **Knight vs. Abbot 1982 [10QBD11],** the effect that the demand must be liquidated, this condition is baseless as it even contradicts Order XXXV Rule 1 of the Civil Procedure Code Cap 33 R.E. 2019 which allows summary suits for mortgages and even suits for recovery of possession of immovable property. She submitted that there is no law restricting summary suits to liquidated demands. **The Respondent's counsel concluded that the other cases cited including Cooperative Bank vs. Kasiko (1983) HCD 72, Uganda Transport Co. vs. Pasture [1954] 21 EACA and Cornwell vs. Desai [1941] 6ULR** and **Kasule vs. Kanesa 1957 EA 611,** are inapplicable. They are not from our jurisdiction. She argued that the position of the law in our jurisdiction is that debts arising from business

transactions can attract interest as it was held in the case of **Yara Tanzania Limited versus Ikuwo General Enterprises Limited Civil Appeal No. 309 of 2019.**

On the third ground that there was denial of the Appellant's automatic right to defend, the Respondent's Counsel submitted that the nature of Summary suits is that the right of defence is not automatic. She referred this court to the case of **M/S Roko Investment Co. Ltd versus Tanzania Electric Supply Co. Ltd Civil Appeal No. 327 of 2019 pg 4-5**

> "It should be emphasized that, in suits filed under summary procedure, the defendant has no automatic right to enter appearance and file his written statement of defence. It is a mandatory requirement of the law that before the defendant appears and file his defence, he must first apply for leave to do so under Order XXXV rule 2 (2) of the CPC."

The learned counsel for Respondent submitted that the Appellant was served with the summons and went on to institute Misc. Civil Application 49

of 2017 as stated in page 1 of the Judgment. The same was struck out and the Appellant never took any measures thereafter to obtain leave as stated in page 2 of the trial court's judgment. She submitted that in the circumstances, the hearing which proceeded without affording the Appellant the right to defend was proper.

On the argument that the summary judgment granted reliefs which are incompatible with a summary suit, the Respondent submitted that there is no inconsistency in reliefs made; the suit was primarily for dishonored cheques arising from a business transaction.

She submitted that it is trite law that debts attract interest. She referred the court to the case of **Yara Tanzania Limited versus Ikuwo General Enterprises Limited Civil Appeal No. 309 of 2019, PG 19** that "The principle has since then been consistently followed in the subsequent decisions of the Court. For instance, in **Mollel Electrical Contractors Limited v. MANTRAC Tanzania Limited, Civil Appeal No. 394 of 2019.** She added that the law does not prohibit granting additional reliefs on summary suits such as general damages and interest. This Court has done so in a number of instances including **Olam Tanzania Ltd versus Kalpesh Yansinh Asher Civil Case No. 165 of 2016.**

On the fourth ground of appeal that the trial court failed to analyse evidence, Ms Msean submitted that there was evidence enough to prove each claim. Also, that the Appellant was given the right to defend through leave but he neglected to exercise his right. Therefore, the Appellant cannot claim on analysis of evidence in seeking to reverse the consequences of his negligence through this Appeal. She argued further that under Order XXXV Rule 2(1) and (2) of the Civil Procedure Code CAP 33 R.E. 2019 enjoins the Courts to enter summary judgment without proof upon the defendant's failure to obtain leave to appear and defend. So what was done by the trial court was proper. She referred this court to the case of **CRDB Bank Limited versus John Kagimbo Lwambagaza Commercial Case No. 110 of 2000 117 [TLR] 2002** which held as follows;

"Needless to say, the purpose of "Order XXXV: Summary Procedure" is to enable a plaintiff to obtain Judgment expeditiously where the defendant has in effect no substantial defence to the suit and to prevent such a defendant from employing delaying tactics and in the process, postpone the day of reckoning. I am of the settled view that Order XXXV is

self contained in so far as it relates to suits stipulated thereunder. If a defendant defaults in filing the defence after obtaining leave to appear and defend the suit, as was the case herein **then in terms of Order XXXV, rules 2(2); The allegations in the plaint shall be deemed to be admitted and the plaintiff shall be *entitled*...** According to **Black's Law Dictionary** (6 ed) the word "deem" means- ...to hold; consider; adjudge; believe; condemn; determine; treat as if; construe. This means that since the defendant defaulted in filing the defence, **the bank's allegations in the plaint shall be adjudged to be admitted and the bank will be entitled to Judgment. There will be no need for the Bank to prove the suit according to the standard required by law. Under the circumstances I do hereby enter judgment for the Bank as prayed with costs.** It is accordingly ordered."

With regard to the fifth ground of appeal that the Appellant was not given notice of the date of Judgment in the summary suit, the learned Counsel for the Respondent submitted that the Appellant was well aware of the proceedings. He instituted various Applications before Judgment was pronounced and even after. She argued further that, just after the judgment being delivered there were several Applications filed showing the

Appellant was fully aware of the Judgment date. To mention a few they included Miscellaneous Civil Application No. 49 of 2017, Civil Application No. 20 and 21 of 2018, Miscellaneous Application No. 142 of 2019 and Miscellaneous Application No. 174 of 2020 and many more all in abuse of the court process.

The Respondent's counsel further argued that the Appellant was duly served with the summons under Order XXXV and was aware of the implications of failure to obtain leave to appear and defend the suit, that is a summary Judgment would be entered. That in summary procedure, the law provides that when a defendant has been served with the summons and fails to obtain leave or fails to defend the suit after obtaining leave, the court is enjoined to enter summary judgment. She argued that this can be seen in **CRDB Bank Limited versus John Kagimbo Lwambagaza (supra).** She argued that there is no requirement of another summons; the summons itself informs the defendant that failure to obtain leave, a decision will be given against him, otherwise the words contained in the summons under Order XXXV would be nonsensical.

The Respondent's Counsel concluded that, in alternative, the Appellant has not shown anything to prove that he was not notified of the date of

judgment. The quoted excerpt just shows that he was absent which was of the Appellant's own fault as he was aware of the ongoing Judgment as he was duly served and sought to obtain leave but neglected to prosecute the same. The Respondent therefore prayed for dismissal of the appeal with costs.

By way of rejoinder, the Appellant raised a new issue of jurisdiction of the trial Court that since the case was filed by a limited liability company, it required a board of directors resolution to institute the case. He relied on the case of **Jomo Kenyatta Traders Limited and 5 Others versus National Bank of Commerce Limited,** Civil appeal No.48 of 2016, Court of Appeal of Tanzania at Dar es Salaam. The Appellant's counsel relied on the same case on Jomo Kenyatta Traders Limited to insist that the commercial transactions in the trial court did not fit within the ambit of summary suit. The rest of the rejoinder submissions were essentially reiterations of the points in submissions in chief.

I should hasten to say that the issue of non-filing board resolution is a new issue being raised belatedly by Appellant's counsel at the stage of rejoinder submissions to which the Respondent will have no opportunity to respond. And in my view, it does not even go to jurisdiction of the court,

rather to the competency the suit before the trial court. I will not consider the newly raised issue as such in my decision for not being raised timely in the submissions in chief or reply submissions where the other party would have a chance to be heard on it as well.

After going through the records of the trial court as well as the arguments made by both parties together with their accompanying authorities, I am now in a position to determine the appeal before the court. I will start with the last ground of appeal. This is crucial because it alleges that the entire judgment of the trial court was a nullity for failure by the trial Court to notify the Appellant, who was the defendant in the trial court, to attend on the date of judgment. If this ground succeeds, it disposes of the entire appeal automatically. If it does not succeed, then it gives the court the basis of going on with the rest of the grounds of appeal.

The major complaint levelled by the Appellant against the judgment of the trial Court in the Civil Case No.25 of 2017, which was an undefended summary suit, is that he was not notified by the trial Court of the date of judgment. The appellant relied on the case of **Omary Shabani Nyambu versus DUWASA,** Civil appeal No.303 of 2020, decided by the Court of Appeal of Tanzania at Dar es salaam where it was held at page 6 thereof

that that : ***"applying the principle in the above cited authority, we agree with both learned counsel that the purported judgment delivered in the absence of the parties was not effective, operative or valid judgment which could be appealed against. It was a nullity".***

The Respondent's Counsel has responded that by its very nature summary suit is exclusionary of the other side. When the Appellant was denied leave to defend, he knew that judgment would be passed against him. She submitted that actually the Appellant had the requisite knowledge of the delivery of judgment and that is why immediately after the delivery thereof he embarked upon a series of applications in an attempt to challenge the summary judgment. The Respondent's counsel submitted that absence of the Appellant was his own fault as he was aware of the ongoing Judgment. He cannot benefit from his own mistake.

The starting point is to ask whether or not there is a mandatory requirement for the trial court to notify the parties of the date of delivery of judgment? If there is such a requirement then the next question will be whether in the present case such requirement was met? And if it was not

met, then it would follow as to whether there are exceptions to the requirement of being notified of the date of judgment especial where a party has been judiciously and consciously excluded from taking part in the proceedings in the trial court. The cases conducted one sided such as in summary procedure and exparte hearings necessarily exclude one part. From there, where there is con conformity with the law, the consequences of non-compliance will assessed and their implications to the present appeal.

The Civil Procedure Code, Cap 33 of the Laws of Tanzania stipulates under Order XX Rule 1 **"The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates."**

It is plain that the court shall give due notice of the date of Judgment to the parties to the case or their advocates. This order is phrased in an imperative manner. That it is mandatory for the court when it fixes the date of Judgment, the same shall be notified to the parties.

Was that requirement complied with by the trial Court? The records of the trial Court will answer this question. According to the proceedings of the trial Court dated 28th November 2017, the Advocate for the Respondent herein appeared in court that day while the Appellant was absent. The order made by the trial Court was that "Judgment on 14th December 2017". That was the last order in the proceedings. There was no order for the Defendant in the case to be served or notified of the date of Judgment. Looking at page 4 of the summary judgment, it is again apparent that indeed the Summary Judgment was entered on 14th December 2017 in absence of the Defendant. Only the Plaintiff in that case was in attendance. It is after delivery of the Judgment that the Court made an order, as part of the Judgment, that the Defendant be notified of the outcome. Therefore, the records of the trial Court are straight that the Appellant who was the Defendant in Civil Case No.25/2017, was not notified to attend the date of delivery of the summary judgment.

Is there any exception of notice requirement where a party to the case is officially and legally excluded by a judicial process from taking part in the proceedings leading to the judgment? It is trite that there are instances in law such as exparte judgments and judgments in summary suits which

result from one sided hearing or proof of the case after the Defendant is excluded from taking part in the case. The question is whether despite being expressly excluded from the proceedings, still the excluded party should be notified of the date of judgment? This question has been answered by numerous decisions of the Court of Appeal of Tanzania. For example In **Cosmas Construction Co. Ltd v. Arrow Garments Ltd** (1992) T.L.R. 127 the Court of Appeal held that:

> " ***Dr.Lamwai has submitted before me that the High Court had no obligation to notify the applicant of the date when judgment was going to be delivered. With respect, that view cannot be correct. A party who fails to enter appearance disables himself from participating when the proceedings are consequently exparte; but that is the farthest extent he suffers . although the matter is therefore considered without any input by him he is entitled to know the final outcome. He has to be told when the judgment is delivered so that he may, if he wishes, attend to take it as certain consequences my follow. In the present matter the applicant was not***

present and there is no proof that he was served with a copy of notice of judgment dated 7th October 1991."

This precedent makes it imperative that even where proceedings were conducted exparte, still the trial Court should give notice to the excluded party to attend on the date of the Judgment and that there must be proof of service of such notice before a valid judgment can be delivered by the Court. In the Civil Case No.25/2017, as stated above, there was no order of notifying the Appellant who was the defendant in that case. There was no any proof of him being notified. Clearly the trial Court violated the mandatory provisions of Order XXI Rule 1 of the Civil Procedure Code Cap 33 of the Laws of Tanzania in delivering its judgment in absence of the appellant herein who was the Defendant in the trial court, without a prior notice being served upon him of the date of judgment.

The Respondent submitted that necessarily summary procedure is exclusionary in nature and that the Appellant had implied notice of the date of Judgment and that is why he was able to file several applications after delivery of the judgment. In my view, this is not a good argument. Court notices, directives and orders cannot be implied.

At any rate, if we were to consider the issue of implied notice, only the Appellant would be better placed to say whether or not he had the implied notice. But in law, the notice is required to be formal. There was no such formal notice of date of judgment to the Appellant given by the trial court to notify him of the date of Judgment. At any rate, the position of the law is already settled so far as the Court of Appeal of Tanzania that notice of date of judgment is mandatory even where there is a judgment emanating from summary procedure or exparte hearing.

In the case of **Integrated Property Investment (T)Limited and another versus the company for habitat and housing in Africa**, Civil Appeal No.187 of 2015,(unreported) the Court of Appeal held that a summary judgment is akin to exparte decision.

Therefore, in my view, the position of the law requiring notification of the defendant in exparte judgment is the same in respect of a defendant in summary judgment because in both the defendants are excluded from the proceedings, but they retain the right to appear and receive judgment for necessary steps. It was imperative for the trial

court, to notify the Appellant of the date of judgment of the summary judgment.

Now that the mandatory requirement of notifying the Appellant to attend the date of judgment was not complied with in the trial court, what are the consequences? **In Awadh Idd Kajass versus Mayfair Investment**, Civil Application No.281/17 of 2017 (unreported) the Court of Appeal had the following to say when a party to the case was not notified of the date to appear for judgment:

> **"we are inclined to agree with the learned advocates for both parties that the purported delivery of judgment was inoperative with the net effect that no valid judgment and decree came into existence".**

I therefore hold that the Judgment and decree in Civil Case No.25/2017 in a summary judgment delivered on the 14th day of December 2017 by the Court of Resident Magistrate of Dar es Salaam at Kisutu without giving a prior notice thereof to the Appellant herein, were a nullity, inoperative and of no effect.

With this finding and holding being made with respect to the fifth ground of appeal, I see no utility in determining the remaining grounds

of appeal as the result thereof will be inconsequential to the outcome of the case at hand. I allow this appeal with costs.

I do hereby quash and set aside the Judgment and Decree in Civil Case No. 25/2017 delivered on the 14th day of December 2017 by the Court of Resident Magistrate of Dar es Salaam at Kisutu. Right of Appeal explained.

A.H.Gonzi

JUDGE

10/11/2023

Judgment is delivered this 10th day of November 2023 in Court in the presence of Jerome Msemwa Advocate for Appellant and Mariam Msean Advocate to the Respondent.

A.H.Gonzi

JUDGE

10/11/2023