

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MBAROUK, J.A., MWARIJA, J. A. And LILA, J.A.)

CIVIL APPEAL NO. 94 OF 2011

**NATIONAL INSURANCE
CORPORATION OF (T) LIMITED.....APPELLANT**

VERSUS

JACKSON MAHALIRESPONDENT

**(Appeal from decision of the High Court of Tanzania
(Commercial Division) at Dar es Salaam)**

(Mruma, J.)

Dated 24th day of May, 2011

in

Commercial Case No. 39 of 2006

RULING OF THE COURT

14th & 23rd February, 2017

MBAROUK, J.A.:

When the appeal was called on for hearing, the Court wanted to satisfy itself as to whether the appeal was competent before it. That prompted us to allow the parties to address on the issue as to whether it was proper for a successor judge to take over the hearing of the suit without recording any reasons. The record of proceedings of the case shows that initially Mjasiri, J. (as she then was) heard the plaintiff's case up to 26th

November, 2007 when the case was adjourned to 13th March, 2008. On the 13th March, 2008 Mruma, J. took over and later proceeded to hear the defendant's case without reasons for transfer given.

Both, Mr. Samson Mbamba, learned advocate for the appellant and Mr. Serapius Mdamu assisted by Mr. John Kambo, learned advocates for the Respondent conceded to the defect raised by the Court *suo motu*.

In Civil matters, the provision governing the powers of a judge to take over and proceed to hear a suit from his/her predecessor judge is governed by Order XVIII r. 10(1) of the Civil Procedure Code, Cap. 33 R.E. 2002 (the CPC) which provides as follows:-

"10(1). Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the

said rules and may proceed with the suit from the stage at which his predecessor left it."

This Court in the case of **Kajoka Masanga v. The Attorney General and Principal Secretary Establishment**, Civil Appeal No. 153 of 2016 (unreported) cited this Court's decision in **Ms. Georges Centre Limited v. The Honorable Attorney General and Ms. Tanzania National Road Agency**, Civil Appeal No. 29 of 2016 (unreported) where it was held as follows:-

"The general premise that can be gathered from the above provision is that once the trial of the case has begun before one judicial officer that judicial officer has to bring it to completion unless for some reason he/she is unable to do that. The provision cited above imposes upon a successor judge or magistrate an obligation to put on record why he/she has to take up a case that is partly heard by another. There are a number of reasons why it is important that a trial started by one

judicial officer be completed by the same judicial officer unless it is not practicable to do so. For one thing, as suggested by Mr. Maro, the one who sees and hears the witness is in the best position to assess the witness's credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any case before a court of law. Furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised."

We are of the considered view that the purpose of Order XVII, Rule 10 (1) of the CPC concerning the requirement to give reasons for change of hands from one judge/magistrate to another is to promote transparency and minimize chaos in the administration of justice and thus enhance the integrity of judicial proceedings. (See **Emmanuel Malobo v. Republic**, Criminal Appeal No. 356 of 2015 (unreported)).

In the case of **Priscus Kimaro v. Republic**, Criminal Appeal No. 301 of 2013 (unreported) this Court put a caution

and raised its concern over the practice of a change of hands in a partly heard case from one judge/magistrate to another without reasons given, where it was said as follows:-

"..... where it is necessary to reassign a partly heard matter to another magistrate the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it may lead to chaos in the administration of justice. Anyone, for personal reasons could just pick up any file and deal with it to the detriment of justice. This must not be allowed."

Even if some of the cases cited above are Criminal where the provisions used are section 214(1) and 299 (1) of the Criminal Procedure Act, but basically its wording with Order XVII, rule 10 of the CPC is the same.

Considering the irregularity pointed herein above, we are constrained to vitiate and nullify all the proceedings, judgment and decree before the successor judge as he conducted those proceedings without jurisdiction.

In the circumstances, we invoke the powers of revision conferred upon us under section 4(2) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] and revise all the proceedings conducted by a successor judge including his judgment and decree and quash them. We further order the trial to begin afresh before another judge because Justice Mjasiri is no longer at the High Court. We make no order as to costs as the issue was raised by the Court *suo motu*.

DATED at **DAR ES SALAAM** this day of February, 2017.

M. S. MBAROUK
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

S.A. LILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL