

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: MBAROUK, J.A., MWAMBEGELE, J.A. And KWARIKO, J.A.)**

**CIVIL APPEAL NO. 238 OF 2017**

**EX-C6070 D/CPL SABATO KATONDO ..... APPELLANT**

**VERSUS**

**1. THE INSPECTOR GENERAL OF POLICE }  
2. THE ATTORNEY GENERAL } ..... RESPONDENTS**  
**(Appeal from decision of the High Court of Tanzania  
at Mwanza)**

**(De-Mello, J.)**

**dated the 31<sup>st</sup> day of January, 2017**

**in**

**Civil Case No. 11 of 2003**

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**JUDGMENT OF THE COURT**

1<sup>st</sup> & 5<sup>th</sup> April, 2019

**KWARIKO, J.A.:-**

This case has had a chequered history. It has been in the court corridors since 1995. The appellant who was a police officer was dismissed from employment for misconduct, filed a suit in the High Court of Tanzania at Mwanza, Civil Case No. 53 of 1995 against the Regional Police Commander – Mwanza (RPC), Inspector General of Police (IGP), Alikadi Mambo and the Attorney General (AG) hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively. He claimed Tshs. 2,000,000/= from the 3<sup>rd</sup> defendant for malicious prosecution, Tshs. 5,000,000/= against the 2<sup>nd</sup>

defendant being general damages for breach of employment contract, a total of Tshs. 260,000/= being costs incurred during follow-up of the matter to the 2<sup>nd</sup> defendant, Tshs. 20,000/= being lawyer's fees in Criminal Case No. 296 of 1992, Tshs. 1,729,000/= being salary arrears from the 1<sup>st</sup> and 2<sup>nd</sup> defendants and costs of the suit.

In response thereto, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants filed a written statement of defence and raised a preliminary objection to the suit on the ground of misjoinder of causes of action and prayed for the same to be dismissed. The trial court by the late Mrema, J. sustained the objections and held that the suit suffered from multifariousness and or misjoinder of suit and misjoinder of parties. The Court held that the suit against the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants which was in relation to the breach of contract of employment was filed in the wrong forum and it was thus struck out.

As for the 3<sup>rd</sup> defendant, the High Court found that there was a misjoinder of parties on a cause of action. It was advised that, if the plaintiff had sufficient grounds against the 3<sup>rd</sup> defendant he was at liberty to file a separate suit on a tort of malicious prosecution.

Following that decision, the appellant filed Civil Case No. 11 of 2003 against the 2<sup>nd</sup> and 4<sup>th</sup> respondents (now the 1<sup>st</sup> and 2<sup>nd</sup> respondents) before the High Court of Tanzania at Mwanza which is the subject of this appeal. He claimed against the respondents a total of Tshs. 18,381,000/= being general damages, salary arrears,

arrears of meal allowances, travelling costs, arrears of detective allowance and costs of the suit. This suit was dismissed on 4/3/3014 by De-Mello, J. for the reason that the court lacked jurisdiction to entertain it, because the appellant had not exhausted available remedies as per section 9 (2) of the Police Force and Prisons Service Commission Act No. 8 of 1990 and the Regulations thereto.

Having been aggrieved by that decision, undaunted, the appellant filed an appeal before this Court; Civil Appeal No. 42 of 2015. This Court declared the High Court judgment a nullity for the reason that, the parties were not heard on the issue of jurisdiction upon which the Court based its dismissal of the suit. The Court remitted the record to the trial Court for the same Judge to re-summon the parties and hear them on the issue which led to the dismissal of the suit and proceed to compose a fresh judgment. The trial court complied with this Court's order and in the end, it struck out the suit for the reason that the court lacked pecuniary jurisdiction to entertain it.

Upon being aggrieved by the trial court's decision, the appellant has come before this Court on appeal. In his memorandum of appeal, the appellant raised the following three grounds of appeal;

- 1. That, the learned trial Judge erred in law to confine her judgment to the issue of jurisdiction only, without dealing with other issues on merits which were intact on the record;*

2. *That, the learned trial Judge erred in law to hold that the High Court had no pecuniary jurisdiction over the appellant's claims; and*
3. *That, the learned trial Judge erred in law to hold that the High Court had no jurisdiction over the appellant's claims because of the exclusivity nature of the same claims.*

Also, on 9/11/2017 the appellant filed written submission in support of his grounds of appeal.

At the hearing of the appeal on 01/4/2019, the appellant appeared in person, unrepresented, while Mr. Julius Merumba, learned State Attorney, appeared for both respondents.

Arguing his appeal, the appellant did not have much to say. He only prayed to adopt the grounds of appeal and the supporting written submission which he filed on 9/11/2017 to form part of his oral submission.

In reply to the foregoing, Mr. Merumba expressed his stance that he was not supporting the appeal. In relation to the first ground of appeal, he contended that the trial court rightly decided the suit on the issue of jurisdiction as it was directed by this Court. That, even if the court decided other issues, the appellant's claims could not have succeeded because they related to re-

instatement to employment in which the High Court had no jurisdiction. Also, the issues did not correlate with the appellant's claims.

The learned counsel argued further that, the issue of jurisdiction of the trial court was decided by the late Mrema, J. in Civil Case No. 53 of 1995. He then repeated what was decided in that case as highlighted earlier in this judgment. Mr. Merumba contended that because it was decided that the case against the respondents was incompetent and the appellant did not appeal against that decision, it was not legally correct for him to have filed the case subject matter of the appeal against same parties in Civil Case No. 11 of 2003. He urged the Court to find the proceedings in that case a nullity and implored us to invoke revisional powers under section 4 (2) of the Appellate Jurisdiction Act [CAP. 141 R.E. 2002] (the AJA) to quash them. He argued that the appellant is precluded from suing the respondents under normal suit, instead may proceed against them by way of judicial review. For the foregoing, Mr. Merumba found that dealing with other grounds of appeal could be an exercise in futility.

In his rejoinder, the appellant contended that the late Mrema, J. held that there was misjoinder of parties, in that, Alikadi Mambo ought not to have been sued together with the respondents. Hence, when he filed the impugned case, he was not wrong.

We have dispassionately considered this appeal and we are positive that, the appellant ought to have followed the direction given in Civil Case 53 of 1995. The court said at page 13 as follows: -

*"There is no provision from the Act (i.e No. 8), or any other law empowering a police officer to look for remedies against injuries resulted from breach of contract of employment. The only remedy available to him, as I attempted to conceive above, is by this Court's Prerogative Orders (writs) for mandamus and certiorari, if at all the plaintiff has sufficient and legal grounds to support his application. This court has therefore to adhere to the pleadings before it and no more."*

The court then concluded thus: -

*".....as far as the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants are concerned, the suit against them, alleging breach of contract of employment, is in no doubt incompetent, it having been filed in the wrong forum. The suit against them is thus struck out."*

We are of the considered view that the appellant was at liberty, either to follow those directives or appeal against that decision but not to file the same suit against the same parties, save for Alikadi Mambo.

As Mr. Merumba rightly urged us to hold, Civil Case No. 11 of 2003 was a nullity and by this Court's revisional powers under section 4 (2) of the AJA, those

proceedings are quashed and all orders thereto set aside. Having nullified the impugned proceedings, this appeal lacks legs upon which to stand in Court, it is hereby struck out. Given the circumstances of this case we order that, each party to bear its own costs.

**DATED at MWANZA** this 4<sup>th</sup> day of April, 2019.

M. S. MBAROUK  
**JUSTICE OF APPEAL**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

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



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**