IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., KEREFU, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 227 OF 2018

SAUDA JUMA URASSA.....APPELLANT

VERSUS

COCA-COLA KWANZA LIMITED.....RESPONDENT

(Appeal from the Ruling and Drawn Order of the High Court of Tanzania at Dar es Salaam)

(Munisi, J.)

dated the 2nd day of October, 2018
in
Civil Revision No. 13 of 2017

JUDGMENT OF THE COURT

10th & 20th May, 2022

KEREFU, J.A.:

The appellant, Sauda Juma Urassa, lodged this appeal on 12th October, 2018 challenging the decision of the High Court of Tanzania, at Dar es Salaam (Munisi, J.) dated 2nd October, 2018 in Civil Revision No. 13 of 2017.

The material facts leading to this appeal as found in the record of appeal are somewhat not complex and can briefly be stated as follows: In September, 2006, the appellant and the respondent entered into an agency

contract where it was agreed that the appellant would distribute respondent's products. The appellant alleged that she properly performed her duties under the contract to the extent of being found by the respondent, in 2008, that she deserved to be awarded TZS 355,900.00 as an incentive for a job well done. However, the said money was not physically given to her despite several reminders and attempts to obtain the same.

As things turned out, on 11th July, 2008, the appellant received two complaints from the respondent that; **one,** she was not entitled to the said incentive and **two,** she was selling products of competitors to the respondent. Although, the appellant denied the said allegations, the respondent stopped to supply her products to her claiming that she had breached the contract.

Subsequently, on 6th August, 2009, the appellant instituted a suit against the respondent in the District Court of Kinondoni (the trial court) vide Civil Case No. 94 of 2009 claiming for payment of TZS 39,584,900.00 being loss of business from July, 2008 to the date of judgment. The appellant also claimed for the payment of interest at the rate of 20% per

annum from the date of breach of the contract to the date of judgment and the costs of the suit.

It is on record that upon being served with the plaint, the respondent filed the written statement of defence disputing the appellant's claims and it also raised a counter claim against her. However, the respondent, though duly served, did not enter appearance to defend the suit and prosecute the counter claim, thus the suit proceeded *ex parte* against the respondent as its efforts to set aside the exparte order were unsuccessful. Having heard the evidence from the appellant's two witnesses, the trial court decided the case on 17th February, 2014 in favour of the appellant and the respondent was ordered to pay her a total sum of TZS 18,260,000.00 and the costs of the case.

Aggrieved, the respondent, on 1st July, 2014 filed Civil Appeal No. 71 of 2014 in the High Court. However, the said appeal was dismissed on 31st August, 2015 for want of prosecution.

It is also on record that on 13th February, 2015, while Civil Appeal No. 71 of 2014 was still pending for determination by the High Court, the appellant filed Misc. Civil Application No. 29 of 2015 at the trial court seeking correction of the arithmetic error in its judgment and decree under

Order XLII Rule 2 and sections 95, 96 and 97 of the Civil Procedure Code, [Cap. 33 R.E. 2019] (the CPC) in respect to the calculations made on the total sum of the money awarded to the appellant. The said application was not opposed by the respondent. Thus, having heard the parties, the trial court, in its decision dated 27th February, 2017, was satisfied that there was an arithmetic error and it ordered, under section 96 of the CPC, for the amendment of the judgment and decree to reflect the correct amount to be paid to the appellant.

The trial court's rectification order irritated the respondent and prompted it to file Civil Revision No. 13 of 2017 in the High Court to express its dissatisfaction. Among others, it was the argument of the counsel for the respondent before the High Court that Misc. Civil Application No. 29 of 2015 which was entertained by the trial court was filed out of time contrary to Item 3 Part III of the Schedule to the Law of Limitation Act, [Cap. 89 R.E. 2019]. That, the trial court did not have the requisite jurisdiction to entertain a time barred application. The respondent thus prayed for the application to be dismissed for want of jurisdiction.

On the other part, the counsel for the appellant contended that the respondent had no clean hands as it previously filed an appeal on the same

matter which was dismissed for want of prosecution. The learned counsel indicated that the application was not tenable in law. In terms of the arithmetic error, the learned counsel for the appellant argued that it was done in accordance with the order of the trial court. On the issue of limitation, the learned counsel argued that the application before the District Court was filed within time. Having considered the arguments advanced by the learned counsel for the parties, the High Court (Munisi, J.) was satisfied that Misc. Civil Application No. 29 of 2015 was filed out of time. Consequently, the learned High Court Judge quashed the trial court's proceedings on account of want of jurisdiction.

Aggrieved, the appellant preferred the current appeal which comprises two grounds of appeal. However, for reasons that will shortly come to light, we need not recite them herein.

When the appeal was placed before us for hearing, the appellant was represented by Ms. Lucy Paul Nambuo, learned counsel while the respondent had the services of Mr. Atlay Esao Thawe, learned counsel.

Before the hearing commenced, we wanted to satisfy ourselves on the propriety or otherwise of the appeal before us. We were so prompted by the issue as whether the decision of the High Court which is subject of

this appeal that originated from the proceedings of the trial court in Miscellaneous Application No. 29 of 2015 which was filed in the trial court during the pendency of Civil Appeal No. 71 of 2014 before the High Court was proper. We were further prompted because having been aggrieved by the decision of the trial court in respect of Civil Case No. 94 of 2001, the respondent preferred Civil Appeal No. 71 of 2014 in the High Court (Feleshi, J.) and then later, after the decision of the trial court in Misc. Application No. 29 of 2015, the respondent, again, filed Civil Revision No. 13 of 2017 in the same court (Munisi, J.). We therefore invited the learned counsel for the parties to address us on the said issue.

In response, Ms. Nambuo conceded that the appeal before us is incompetent because the trial court and the High Court did not follow the proper procedures to entertain the matters before them. She submitted that, it was not proper for the respondent to file Civil Appeal No. 71 of 2014 and then Civil Revision No. 13 of 2017 in the same court challenging decisions of the trial court emanating from the same case. She said that during the hearing of the Civil Revision No. 13 of 2017, she alerted the learned High Court Judge that the said application was untenable because the respondent had previously filed Civil Appeal No. 71 of 2014 before the

same court which was dismissed for want of prosecution, but, she said, her concern was not considered, as the learned High Court Judge proceeded with the hearing of the application and granted it. As for the way forward, Ms. Nambuo decided to leave that matter into the wisdom of the Court.

On his part, Mr. Thawe also conceded that the appeal is incompetent because, initially, the respondent preferred Civil Appeal No. 71 of 2014 against the decision of the trial court issued on 17th February, 2014 in favour of the appellant. However, before the determination of the said appeal, the appellant, unprocedurally, on 13th February, 2015 filed Miscellaneous Civil Application No. 29 of 2015 before the trial court seeking correction of an arithmetic error in the impugned decision, which was granted. He argued that, it was the said erroneous decision of the trial court which had prompted the respondent to file the Revision Application No. 13 of 2017 to correct the said irregularity. On that account, he argued that the proceedings before the trial court were a nullity as the trial court did not have the requisite jurisdiction to correct its impugned decision which was being challenged before the High Court. He further argued that, even the revisional proceedings before the High Court were also a nullity as they emanated from a nullity proceedings. Based on his submission, Mr.

Thawe beseeched us to invoke the revisional powers bestowed upon the Court to nullify the aforesaid proceedings, quash the decisions of both courts and set aside the subsequent orders thereto. He however decided to leave the issue of costs to the discretion of the Court.

In a brief rejoinder, Ms. Nambuo supported both prayers made by her learned friend. As regards the issue of costs, she emphasized that, since the pointed-out irregularities and omission were occasioned by both, the court and the parties, the parties should not be condemned to costs.

From the above submissions of the learned counsel for the parties, it is clear that they are in agreement that, the appeal before us is incompetent. We respectfully, share similar views, because it is evident from the record of appeal that, having been aggrieved by the decision of the trial court issued on 17th February, 2014 in favour of the appellant in respect of Civil Case No. 94 of 2009, the respondent lodged Civil Appeal No. 71 of 2014 before the High Court. The said appeal was however dismissed by the High Court (Feleshi, J.) on 31st August, 2015 for want of prosecution.

Moreover, from the same record of appeal, it is evident that on 13th February, 2015, while Civil Appeal No. 71 of 2014 was still pending for

determination before the High Court, the appellant filed, in the trial court, Miscellaneous Civil Application No. 29 of 2015 seeking rectification of an arithmetic error in the trial court's impugned decision despite the fact that the said decision was, at the same time being challenged by the respondent before the High Court. Worse still, and without having jurisdiction to preside over the matter which was already before the High Court, the learned trial Magistrate, erroneously and unprocedurally, heard the parties, granted the application and ordered for the amendment of its decision to reflect the correct amount of money to be paid to the appellant, that is TZS 87,960,000.00 instead of TZS 18,260,000.00 which was initially awarded to her.

Subsequently, and upon being dissatisfied by that decision, the respondent, again, approached the High Court vide Revision Application No. 13 of 2017 challenging it vide Misc. Civil Application No. 29 of 2015. The High Court (Munisi, J.), despite being alerted by the counsel for the appellant that the revisional application before her was untenable because the High Court had already considered an appeal lodged by the respondent in respect of the same matter, it proceeded to determine the application and granted it on 2nd October, 2018, hence the current appeal.

On the chronological account of events narrated above, there is no doubt that the appeal before us is incompetent as we are decidedly of the view that the learned trial Magistrate did not have the requisite jurisdiction to entrain Misc. Civil Application No. 29 of 2015 and order for amendment of its decision which was being challenged by the respondent in Civil Appeal No. 71 of 2014 before the High Court. It is settled law in our jurisprudence that, once an appeal has been preferred to a superior court, the subordinate court lacks the prerequisite jurisdiction to entertain the same.

In the appeal at hand, it goes without saying that the above settled position is applicable to the appeal lodged in the High Court in respect of the decisions and orders of the subordinate courts, in this case, the District Court. Thus, once the appeal was lodged in the High Court, the District Court ceased to have jurisdiction over the matter. We therefore agree with the learned counsel for the parties that the learned trial Magistrate who presided over the proceedings did not have the requisite jurisdiction to entrain the appellant's application for amendment of its decision which was being challenged at the High Court. Unfortunately, this error skipped the attention of the learned High Court Judge though he was duly alerted by

the appellant's counsel as intimated above. Worse still the respondent who had earlier on lodged the appeal in the High Court to challenge the trial court's judgment and decree, unjustifiably participated in those proceedings contrary to the settled position alluded to above. We thus agree with both counsel that the entire proceedings before the trial court in respect of Miscellaneous Civil Application No. 29 of 2015 and the decision reached together with the subsequent order issued therefrom are absolutely a nullity. Since the proceedings before the trial court in Civil Application No. 29 of 2015 were a nullity, the High Court proceedings in Civil Revision No. 13 of 2017 is also a nullity as it emanated from nullity proceedings.

On the basis of the foregoing, we invoke revisional powers vested in this Court under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 and hereby nullify the entire proceedings, quash the decision and set aside the subsequent order issued by the trial court on 27th February, 2017 in respect of Miscellaneous Civil Application, No. 29 of 2015. Similarly, we nullify the entire High Court's proceedings, quash the decision and set aside the resultant order issued by the High Court on 2nd October, 2018 in respect of Civil Revision No. 13 of 2017 as they emanated

from nullity proceedings of the District Court of Kinondoni. Considering the circumstances involved herein, we order each party to bear its own costs.

DATED at **DAR ES SALAAM** this 17th day of May, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The judgment delivered this 20th day of May, 2022 in the presence of Ms. Lucy Paul Nambuo, learned counsel for the Appellant and Mr. Atlay Esao Thawe, learned counsel for the Respondent, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL