

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

(CORAM: MKUYE, J.A., MWANDAMBO, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 501 OF 2022

**NATIONAL BANK OF COMMERCE LIMITED APPELLANT
VERSUS**

MAISHA MUSSA ULEDI (LIFE BUSINESS CENTRE) RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania,
Mtwara District Registry at Mtwara)**

(Twaib, J)

dated the 24th day of August, 2017

in

Civil Appeal No. 3 of 2017

.....

JUDGMENT OF THE COURT

17th & 29th March, 2023

MKUYE, J.A.:

This is a second appeal. The appellant, National Bank of Commerce Ltd, has appealed against the judgment and decree of the High Court dated 24th August 2017 handed down by Twaib, J. (as he then was) in Civil Appeal No. 3 of 2017.

The brief facts of the case leading to this appeal are that:

The appellant and the respondent, Maisha Mussa Uledi (Life Business Centre), had a business relationship which existed for about three years. On 28th July, 2011, the respondent was extended by the appellant an overdraft facility of Tshs. 30,000,000/= which was to expire on 15th August, 2012. Later, on 4th March 2015, upon mutual consent of the parties, the existing overdraft facility was converted into a twelve months term loan of the same amount of Tshs. 30,000,000/=. The said term loan was secured by the respondent's landed property situated on Plot No. 342 Block "A" at Chikongola Area, within Mtwara Municipality.

However, it seems that the respondent was not able to service the loan as agreed and, hence, on 26th June, 2015 he was served with a notice to repay the whole outstanding loan amounting to Tshs. 26,145,256/= within twenty-one days. The notice to the respondent made it clear that in case he failed to pay as demanded, the mortgaged property would be sold. The respondent heeded to the demand notice and therefore, he in various intervals within the specified period, repaid the total sum owing.

After having discharged the loan, on 30th March, 2016, he requested the appellant in writing to return to him his Certificate of Title but the appellant did not heed to his demands and Certificate of Title was not returned. Worse enough, the appellant did not even respond to his

several letters requesting for the same. This resulted into the institution of the suit before the Resident Magistrates' Court of Mtwara (the RM's Court) in which the respondent claimed for the following reliefs:

- (a) That the defendant be ordered to compensate the plaintiff Tshs. 70,000,000/= being specific damages suffered for unlawfully withholding the Certificate of Right of Occupancy of the plaintiff.*
- (b) General damages.*
- (c) Payment of 30% of principal sum from the institution of the suit to the full payment of the total amount so claimed.*
- (d) Costs of this suit.*
- (e) Any other and further reliefs which this Court may deem fit and proper to grant.*

Upon a full trial, the trial court found that the appellant was not justified in the continued withholding of the respondent's Certificate of Title and it awarded the respondent general damages to the tune of Tshs. 60,000,000/=.

Aggrieved by the outcome of the trial court, the appellant appealed to the High Court basically challenging the award of general damages to the respondent. Upon hearing of the appeal, the High Court observed that the same were awarded on a wrong principle and it reduced to Tshs. 20,000,000/= on what the appellate judge considered to be the

appropriate principle.

Still undaunted, the appellant has instituted the instant appeal predicated upon four grounds of appeal which can be extracted as follows:

- 1. The mediation was not conducted according to the law.*
- 2. The subordinate court had no pecuniary jurisdiction to entertain Civil Case No. 28 of 2016 which was later registered as Civil Appeal No. 3 of 2017 as the case was commercial in nature with a claim of more than thirty million which was over and above the pecuniary jurisdiction of subordinate court.*
- 3. The High Court erred in granting the respondent general damages notwithstanding the respondent's failure to prove his claim for specific damages.*
- 4. In the alternative, the amount of Tshs. 20,000,000/= awarded as general damages to the respondent as general damages was in high side.*

At the hearing of the appeal, the learned counsel for the appellant prayed and was granted leave to bring an additional ground of appeal to the effect that:

"The High Court erred in awarding interest of 12% per annum in contravention of Order XX rule 21 (1) of the Civil Procedure Code (the CPC) without assigning reasons."

When the appeal was called on for hearing, the appellant was represented by Mr. John Ignace Laswai, learned advocate whereas the respondent appeared in person without any representation.

On being invited to amplify his grounds of appeal, Mr. Laswai in the first place, prayed and was granted leave to abandon the 1st ground of appeal. He then adopted the written submission filed earlier on and made clarification on all grounds at length. However, having gone through the grounds of appeal, we find that the 2nd ground is capable of disposing of the entire appeal without necessarily discussing the other grounds of appeal.

Basically, the complaint in the 2nd ground of appeal is that, the trial court entertained the case which was commercial in nature with a claim of more than thirty million shillings which was over and above the pecuniary jurisdiction of the trial subordinate court. It was the appellant's contention that, it was not proper for the trial court to entertain the suit which was of commercial significance as it lacked the requisite pecuniary jurisdiction. Mr. Laswai submitted that, in terms of section 40 (2) (a) and (b) of the Magistrates Courts' Act (the MCA) as amended by the Written Laws (Miscellaneous Amendments) Act, 2002 (No. 25 of 2002) and the Written Laws (Miscellaneous Amendments) Act, 2004 (No. 4 of 2004), the

pecuniary jurisdiction of the District Court was Tshs. 30,000,000/= for a movable property and Tshs. 50,000,000/= for immovable property. It was argued that, at the time when the suit was instituted, the RM's court had no jurisdiction to entertain a claim of Tshs. 70,000,000/= as it exceeded its pecuniary jurisdiction of Tshs. 30,000,000/= in respect of such cases. It was argued further that, since the matter arose from a loan agreement in which the respondent retained the Certificate of Title after he had discharged the loan, then the matter at hand was commercial in nature.

On the adversary, the respondent through his written submission which he sought to adopt at the hearing of appeal, argued that the suit was not of commercial significance as it was a claim of compensation for unlawful withholding his Certificate of Right of Occupancy as shown at page 9 of the record of appeal. He pointed out that, even the testimony before the trial court shows that the center of dispute was after the contractual relationship between the appellant and respondent had ended. He argued that, it was wrong to interpret every claim against the Bank to be of commercial significance. He, thus, urged the Court to find that the RM's court had jurisdiction to entertain that matter.

We have considered the rival arguments and, we think, the issues for this Court's determination are **one**, whether or not the matter before

the RM's court was of commercial nature or significance; and **two**, if issue No. 1 is answered in the affirmative, whether the RM's had jurisdiction to entertain it.

The High Court Registries (Amendments) Rules, 1999 (G.N. No. 141 of 1999) (the High Court Registries Rules), which established the Commercial Division of the High Court defines the term "*commercial case*" to mean "*a civil case involving a matter considered to be of commercial significance, including but not limited to:*

- (a) the formation of business or commercial organization;*
- (b) the governance of a business or commercial organization;*
- (c) the contractual relationship of a business or commercial organization with other bodies or persons outside it;*
- (d) the liability of a commercial or business organization or its officials arising out of its commercial or business activities;*
- (e) the liabilities of a commercial or business person arising out of that person's commercial or business activities;*

(f) the restructuring or payment of commercial debts by or to business organization or person;

(g) the winding up or bankruptcy of a commercial or business or to business organization or person;

(h) the enforcement of commercial arbitrator award;

(i) the enforcement of awards of a regional court or tribunal of competent jurisdiction made in ...;

(j) admiralty proceedings;

(k) arbitration proceedings"

Section 2 of the MCA as amended through Act No. 4 of 2004, introduced the definition of the term "*commercial case.*" It was defined to mean "*a civil case involving a matter considered to be of commercial significance including, but not limited to:*

i. the formation of a business or commercial organization;

*ii. **the contractual relationship of a business or commercial organization with other bodies or person outside it;***

iii. the liabilities of a commercial or business organization or its official arising outside its commercial or business activities;

iv. the liabilities of a commercial or business person arising out of that person's commercial or business activities;

- v. *restructuring or payment of a commercial debt by or to business or commercial organization or person.*
- vi. *N/A*
- vii. *N/A*
- viii. *N/A*
- ix. *N/A*
- x. *N/A*
- xi. “[Emphasis added]”

Moreover, the High Court (Commercial Division) Procedure Rules, 2012 (G.N. No. 250 of 2012) defines a “commercial case” in the same manner as in the High Court Registries Rules, 1999.

In this case, in which the suit was instituted in 2016, the respondent’s claim was for a return of his Certificate of Right of Occupancy which had been retained by the appellant even after he had discharged or repaid the loan he was owed by the appellant. In his view, the suit was not of commercial significance because it was a claim for compensation for unlawful withholding of his Certificate of Right of Occupancy and that even the center of controversy in the trial court showed that the dispute arose after the contractual relationship between the appellant and respondent had ended. On the other hand, the appellant is of a view that the matter was of commercial significance.

Be it as it may, our examination of the record of appeal has revealed that the claim emanated from a contractual relationship based on the Overdraft Facility of TZs 30.0 million Agreement (Exh P1). Paragraph 3 of the said Agreement shows that the facility was secured by L/M over CT No. 2620 MTW, LO No. 298959, Plot No. 342, Block "A" Chikongola Area Mtwara Municipality i.n.o Maisha Mussa Uledi with market value of TZs. 80.0 million (Exh P1), the subject matter in the case at hand. Here, the parties entered into a business contractual relationship whereby the respondent obtained the loan being (business nature) secured by his Certificate of Title. To put it the other way round, the Certificate of Title was used as a collateral for the Bank loan facility that the respondent had obtained meaning that it had a direct connection with the business contractual relationship that was created by the parties. This in our view, goes in tandem with the meaning stipulated in item (ii) of the definition of the term "commercial case" under section 2 of the MCA. According to that definition a commercial case includes a contractual relationship of a commercial organization and a person outside it. Since the Certificate of Right of Occupancy was offered as security for the loan, it had a direct connection with the contractual relationship between the parties. The discharge thereof was still within the ambit of a commercial relationship.

In the circumstances, we are of the view that the matter by its nature had a commercial significance and not an ordinary matter as was held by the trial court when determining the preliminary objection that was raised concerning its jurisdiction. It is our settled view that the matter before the RM's court fell within the ambit of a commercial case as per section 2 of the MCA read together with paragraph 2 the High Court Registries Rules as well as paragraph 2 of the High Court (Commercial Division) Procedure Rules 2012. Thus, the first issue is answered in the affirmative.

Next is the issue relating to jurisdiction of the RM's Court. Our starting point would be to revisit the provisions providing for the jurisdiction of the court. In particular, section 40 (2) (a) (b) and (3) (a) (b) of the MCA is pertinent in this issue. This section, before the amendments which were effected in 2016 and when the cause of action in this matter arose, read as follows:

"(2) A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively

on some other court or courts but (subject to any express exception in any other law) such jurisdiction shall be limited:

- (a) in proceedings for recovery of possession of immovable property, to proceedings in which the value of the property does not exceed one hundred and fifty million shillings; and*
- (b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed one hundred million shillings.*

3. Notwithstanding subsection (2), the jurisdiction of the district court shall, in relation to commercial cases, be limited:

- (a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed fifty million shillings;*
- (b) in the proceedings where the subject matter is capable of being estimated at money value, to proceedings in which the value of the subject matter does not exceed thirty million shillings."*

Following the amendments of the MCA through the Written Laws (Miscellaneous Amendments) Act, 2016 (No. 3 of 2016), which came into effect on 8th July, 2016, the pecuniary jurisdiction was raised for the

District and Resident Magistrates' Courts from Tshs. 150,000,000/= to Tshs. 300,000,000/= for immovable property; and from Tshs. 100,000,000 to Tshs. 200,000,000/= for movable property. In relation to disputes of commercial nature, the value of the subject matter remained the same as introduced through Act No. 4 of 2004. It is also noteworthy that, although the above quoted provision seems to vest the jurisdiction to the district court, section 41 (1) of the MCA, it also vests the RM's Court the jurisdiction exercised by the district court.

It is notable that in this case, the respondent filed his suit on 2nd September, 2016 (see page 9 of the record of appeal). In his plaint, the respondent claimed among others, compensation of Tshs. 70,000,000/= as specific damages suffered because of the appellant's unlawful withholding the Certificate of Right of Occupancy. As we have ruled that the matter was of commercial significance, we agree with Mr. Laswai that the RM's Court lacked jurisdiction to entertain it as the value of the subject matter exceeded Tshs. 30,000,000/= at the time the suit was instituted in court. In this regard, we agree with Mr. Laswai that it was wrong for the RM's Court to entertain the matter whose value was Tshs. 70,000,000/= which was above its pecuniary jurisdiction. Therefore, this issue is answered in the affirmative.

In the event, based on what we have discussed in ground no. 2, we allow the appeal. Subsequently, we invoke our revisional powers under section 4(2) of the Appellate Jurisdiction Act, and nullify the proceedings and quash the judgments and decrees of the two courts below and order that the matter be tried afresh before a court with competent jurisdiction. Further to that, the appellant is awarded costs.

It is so ordered.

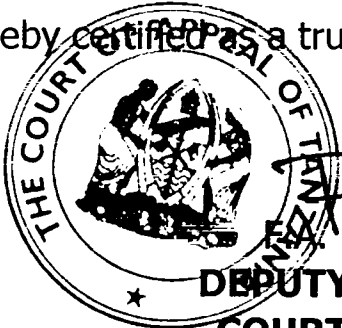
DATED at **MTWARA** this 28th day of March, 2023.

R.K. MKUYE
JUSTICE OF APPEAL

L.J.S. MWANDAMBO
JUSTICE OF APPEAL

S.M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 29th day of March, 2023 in the presence of Mr. Alex Msalenge counsel for the Appellant and Respondent present in person is hereby certified as a true copy of the original.

The seal of the Court of Appeal of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text 'THE COURT OF APPEAL OF TANZANIA' and a star at the bottom.
E.A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL