

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

(APPELLATE JURISDICTION)

(DC) CIVIL APPEAL NO. 16 OF 2016

*(Arising from the decision in Civil Case No. 34 of 2015 of
the Singida District Court at Singida)*

DANIEL DAVID NTANDU.....APPELLANT

VERSUS

ABEL SHABAN MKOTYA..... RESPONDENT

JUDGMENT

02/12/2016 & 27/2/2017

KWARIKO, J.

The claim and evidence on record by the respondent show that the respondent herein bought a house from the appellant herein on 28/8/2014 at a purchase price of Tshs. 7,500,000/= but paid Tshs. 6,000,000/= where remainder was to be paid later. However, due to unavoidable circumstances the parties agreed to terminate the contract on condition that the appellant would refund the amount paid to him.

When the appellant failed to honour the promise to repay Tshs. 6,000,000/= the respondent filed a suit before the District Court of Singida claiming for specific performance, costs of the suit with interest at commercial rate.

On his part the appellant had filed written statement of defence where he did not deny to have sold the house as alleged but he said that the respondent had vandalized the same after he took occupation of the same and is receiving rents hence he was not ready to refund the amount paid. However, he had raised a preliminary objection citing that the dispute related to land matter hence the district court had no jurisdiction to entertain it.

At the end of hearing of the preliminary objection the trial court overruled the same for reason that the matter related to enforcement of an agreement reached on 22/12/2014 hence it had jurisdiction to entertain it.

The appellant's evidence in court echoed his written defence.

In the end of the trial the respondent herein won the case where the appellant was ordered to comply to pay Tshs. 6,000,000/= as specific performance, interest on that amount at 6% at commercial rate (sic) from the date it fell due till payment in full and costs of the suit.

Having been aggrieved by the trial court's decision the appellant filed this appeal upon the following four grounds of appeal;

- 1. That, the Trial Court erred in law and fact to decide the Respondent to be paid or perform his obligation of paying back the amount received from the contract of sale of a house which the respondent caused it to be broken unreasonably.*

2. *That, the Trial Court erred in law and fact by not recording properly the statement produced by the Appellant's witness as the Trial Magistrate wrote that the witness only knows the Appellant as the house owner who sold the same to the Respondent while such witness told the court that after the Respondent bought the house from the Appellant he enjoyed the same for a period of time and gained mesne profits thereto.*

3. *That, the Trial Court erred in law and fact to order the contract of breach be respected and the Appellant to pay back the amount received while ignoring to order the respondent to hand over the house which the Appellant left under the Respondent's custody after the sale.*

4. *That, the Trial Court erred in law to admit, entertain and decide the matter in favour of the Respondent which is not within its jurisdiction as the matter arose out of sale of house and boundary conflicts.*

The respondent resisted this appeal and the parties were duly heard where their submissions will be referred in the course of this judgment whenever need arises.

Henceforth, this court is required to decide an issue whether the appeal has merit. To decide this issue this court will start with the fourth ground of appeal which concerns jurisdiction of the trial court to entertain this case, since, if decided in the affirmative will dispose of the appeal.

The issue of jurisdiction of the trial court was first raised at the trial court but the same was overruled. Again, before this court the appellant still insists that the trial court had no jurisdiction to determine this matter as it relates to land dispute. The respondent insisted also that the matter related to contract hence availed the trial court with jurisdiction to decide it.

This court has gone through the pleading filed by the parties and especially that of the respondent and found that the dispute arose out of a contract of sale of landed property, a house, which contract went sour. Hence, even if there was contract between the parties but the subject matter of that contract was landed property. If that is the case the dispute ought to be filed before land court.

The foregoing view is backed by law where it is provided under **section 3(1) of the Land Disputes Courts Act [CAP 216 R.E. 2002]** that,

Subject to section 167 of the Land Act, 1999, and section 62 of the Village Land Act, 1999, every dispute or complaint concerning land shall be instituted in the court having jurisdiction to determine land disputes in a given area.

And the courts having jurisdiction to entertain land disputes are mentioned under **subsection (2) of section 3** referred above as follows;

a) The Village Land Council;

- b) The Ward Tribunal;*
- c) The District Land and Housing Tribunal;*
- d) The High Court;*
- e) The Court of Appeal of Tanzania.*

Therefore, among the courts having jurisdiction over land disputes the district court is not among them. However, the law continues to provide under **section 4 (1)** thus,

Unless otherwise provided by the Land Act, 1999, no magistrates' courts established by the Magistrates' Courts Act, 1984 shall have civil jurisdiction in any matter under the Land Act, 1999 and the Village Land Act, 1999.

However, the magistrates courts have been availed with criminal jurisdiction under the Land Act, 1999 and the Village Land Act, 1999 as per **subsection (2) of section 4** referred above.

Owing to the foregoing, it is this court's considered view that the trial district court lacked jurisdiction to entertain this dispute which arose out of land related matter.

Consequently, by this court's revisional powers envisaged under **section 44 (1) (b) of the Magistrates' Courts Act [CAP 11 R.E. 2002]** the proceedings before the district court in respect of this case are hereby declared null and void and are quashed and all orders thereto set aside.

Now, having decided the fourth ground of appeal in the affirmative the rest die naturally.

Finally, the parties are advised, if they wish, to institute their dispute before land court having competent jurisdiction to entertain the same. This appeal thus succeeds and since the anomaly was contributed by the trial court each party to bear their own costs here and below.

It is ordered accordingly.

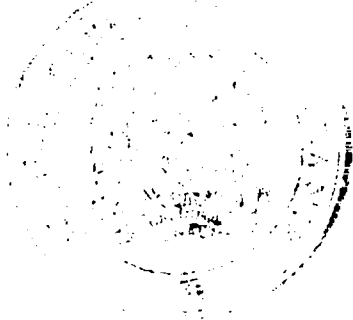


M.A. KWARIKO

JUDGE

27/2/2017

Judgment delivered in court today in the presence of the Respondent and Mr. Mahmoud Court Clerk.



M.A. KWARIKO

JUDGE

27/2/2017

Court: Right of Appeal Fully Explained.

M.A. KWARIKO

JUDGE

27/2/2017