

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA**

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

(DC) CIVIL APPEAL No. 12 OF 2017

[Arising from Civil Case No. 9 of 2016 of the District Court of Tanga at
Tanga]

BETWEEN

WAZIR HASSAN.....APPELLANT

VERSUS

ARAFA BAKARI.....RESPONDENT

JUDGMENT

MRUMA, J.

The appeal arises from the decision of the District Court of Tanga at Tanga in Civil Case No. 9 of 2016. In its decision the District Court decreed the Appellant to refund to the Respondent T.shs 19,000,000/=which he had received from the Respondent and T.shs 3,000,000/= being compensation for breach of contract.The Judgment which is the subject matter of this appeal was delivered on 31st July 2017.

The Appellant was aggrieved and has raised four grounds of appeal namely:-

1. That the Learned Trial Magistrate erred in law to decide a case while the court had no jurisdiction;
2. That the Learned Trial Magistrate erred in law and fact to enter judgment in favour of the Respondent basing on insufficient evidence;
3. That the Learned Trial Magistrate erred in law and fact when he held that the Appellant is liable while there was ample evidence to support that the liability (if any) was on the party of the third party Abdi Musa Athman;
4. That the learned trial Magistrate erred in law and in fact by misinterpreting the principle on extent of liability between the defendant and third part

At the hearing the Appellant was represented by Mr. Egbert learned advocate while the Respondent was represented by Mr. Kyariro, learned advocate.

Submitting in support of the first ground, Mr. Egbert contended that looking at the plaint filed in the court the Respondent was claiming T.shs 19,000,000/= which amount ought to have been claimed in a Primary Court in terms of Section 18 of the Magistrates Courts Act [Cap 11 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments Act) 2016 (Act No.3). According to the learned counsel, the said amendment which came into force on 8th July 2016 raised the jurisdiction of the District Court from T.shs 3,000,000/= to

T.shs 30,000,000/= thus, on 15th July, 2016 when the plaint was presented for filing the District Court had ceased to have pecuniary jurisdiction over the matter. To cement his stance the learned counsel referred this court to its own decision in the case of **DENJA JOHN BOTTO & 2 OTHERS VERSUS UMOJA WA WAFANYA BIASHARA NDOGONDOGO MAILI MOJA Civil Appeal No 157 of 2018 (unreported)**, where it was held that it was wrong to institute a matter in a court which has no pecuniary jurisdiction.

Submitting in support of the third ground, the learned counsel argued that the evidence on record showed that one Abdi Musa Atman was the person who was responsible to pay the amount claimed and not the Appellant. He said that the evidence on record had established that the Appellant's role was to negotiate the for the loan on behalf of the said Abdi Musa Athman who was joined as a third party and who admitted liability, therefore the trial court erred in law and in fact in holding the Appellant liable for the said loan.

On the second ground, the learned counsel contended that the evidence adduced was not sufficient to hold the Appellant liable as there was no evidence to prove that the Appellant received any money from the Respondent. To the contrary, there was evidence to the effect that the Respondent went to Iringa to claim her money from Abdi Musa Athman which indicated that Abdi Musa was the person responsible for the debt.

Responding to Mr. Egbert's submissions, Mr. Kyariro learned counsel for the Respondent contended that initially the dispute between the parties was referred to the Primary Court on 30th July, 2015 for mediation and it was mediated and settled. The Appellant agreed to refund T.shs 30,000,000/= to the Respondent and that it was only after the Appellant refused to honour the terms of settlement that the matter was instituted in the District Court.

Further to that the learned counsel submitted that the nature of the matter shows that it was a commercial transaction and in terms of section 40 (3) (b) of the Magistrates Courts' Act as amended by the Written Laws Miscellaneous Amendment Act No. 4, a District Court has jurisdiction to determine a commercial claim which is below T.shs 30,000,000/=. He said that the case of DENJA (supra) cited by the counsel for the Appellant is distinguishable on that ground. He referred this court to its own decision in the case of **NKERENGA HORERA RASHID Versus ABDUL MBONDE** where it was held that a District Court has concurrent jurisdiction with the primary court.

Responding to the third ground fourth grounds, the learned counsel submitted that the Sale Agreement (Exhibit P1) was between the Appellant and the Respondent with no mention of the third party Abdi Musa Athman, therefore it is not correct to say that the said third party is responsible for the loan. The learned counsel contended further that although he

was summoned, the third party didn't enter appearance and he didn't therefore give any evidence.

Regarding the evidence adduced it is the submissions of the learned counsel that the evidence adduced before the trial court indicates that the agreement was between the Appellant and the Respondent (Exhibit P1) and that it is the Appellant who received the money (i.e. purchase price) and promised to supply timber but he didn't . He said that the fact that the Respondent went to Iringa to claim some payment from Abdi Musa Athman does not shift the liability to the third party.

In brief rejoinder, counsel for the Appellant submitted that the plaint filed in the District Court was filed as a normal civil suit and not as a commercial case therefore the District court had no pecuniary jurisdiction as claimed by the Respondent's counsel.

Regarding the evidence relied by the District Court, the learned counsel contended that the evidence on record shows that in receiving the money the Appellant was acting as a middleman between the Respondent and the third party Abdi Musa Athman.

I will resolve the two first grounds of the appeal together then will determine the other grounds of appeal seriatim.

The Appellant's Counsel referred this Court Section 18 (1) (iii) of the Magistrates Courts' Act [Cap 11 R.E. 2002], which provides:-

"A primary Court shall have and exercise jurisdiction in all proceedings of civil nature-

(iii) For the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed three million shillings and any proceedings by way of counter claim and set-off therein of the same nature not exceeding such value"

It is on this ground that Counsel for the Appellants argues this court to find that in view of the amendment done through Written Laws Miscellaneous Amendment Act (No.3), 2016 which increased pecuniary jurisdiction of Primary Courts from T.shs 3,000,000/= to T.shs 30,000,000/= the trial District Court did not have jurisdiction to entertain the subject matter relating to the claim value which was far below the pecuniary jurisdiction of that Court.

This is a point of law. Jurisdiction of Court can only be granted by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. This was the case in **Desai versus Warsaw (1967) EA 351**. Therefore any award or judgment arising from such proceedings of a Court without jurisdiction is also a *nullity*.

I note from the pleadings, evidence, Judgment of the District trial Court and from the submissions of both counsel that there was an agreement (Exhibit P1 and P2) between the Appellant Waziri Hassan and the Respondent Arafa Bakari under which the Appellant agreed to supply timber wood to the Respondent. Part of Exhibit P1 Reads:-

MAKABIDHIANO YA HELA ZA MBAO:

"Mimi

Arafa Bakar inimekabidhi Waziri Hassani Shilingiza Kitan
zania Zipatazo Milioni Kumi (10,000,000/=)
Sikuya Alhamisi Tarehe 6/2/2014 Mahali (Usagara),
Nyumbani Kwetu Kwa Ajili yakuni andalia Mzigowambao

"

On 12th April 2014 another agreement (Exhibit P2) was signed and it reads:-

"Mimi **ARAF A** **BAKARI**
Nimemkabidhi **WAZIRI HASSANI** Shs Milioni
20,000,000/= Kwa ajili yakuni patia Mbao....."

In the Respondent's submissions, Counsel has argued this court to find that this was a commercial transaction and the District Court has pecuniary jurisdiction to hear and determine it pursuant to the provisions of Section 40 (3) (b) of the Magistrates Courts Act as amended by the Written Laws Miscellaneous Amendment Act No. 4 of 2004 which conferred

jurisdiction to District Courts over commercial cases which the value of the subject matter is below T.shs 30,000,000/=.

Admittedly, under the provisions of Section 18(1) (iii) of the Magistrates Courts Act as amended by the Written Laws (Miscellaneous amendment) Act (No.3) of 2016 which raised the pecuniary jurisdiction of District Courts beyond T.shs 30,000,000/= District Courts have no jurisdiction to entertain a claim of civil debts which is below T.shs 30,000,000/=. However, under section 40(3) of the Magistrates Courts' Act as amended by the Written Laws (Miscellaneous Amendment) Act No. 4 of 2004, District Courts have pecuniary jurisdiction in relation to commercial cases in proceedings where the subject matter is capable of being estimated at a money value, to proceedings which doesn't exceed thirty Million.

The first question for determination by this court is whether this matter is /was a commercial case. The term commercial case is not defined under the Magistrates Courts Act. However borrowing from Rule 5 of the High Court (Commercial Division) Procedure Rules of 2012 commercial case can be defined as a civil case involving a matter considered by the court to be of commercial significance.

I have no doubt that the sale agreement (Exhibits P1 & P2) between the Appellant and the Respondent under which the Appellant had agreed to supply timber wood to the Respondent at a consideration of T.shs 30,000,000/= was a

commercial transaction therefore a dispute that arises from that transaction is a commercial case.

The Appellant's counsel has submitted that in view of the amendment done by the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016 which amended section 18 of the Magistrates Courts Act and raised the jurisdiction of Primary Courts in civil cases to T.shs 30,000,000/= this matter ought to have instituted in a primary court.

With due respect to the learned counsel, I find this to be a misunderstanding of the letters of the law and procedure because although Section 18 (1) of the Magistrates Courts Act was amended and the pecuniary jurisdiction of the primary court in civil cases was raised to T.shs 30,000,000/= but the Parliament in its wisdom didn't see any reason to amend Section 40(3) of the same Act which is specifically geared towards commercial cases. It should be noted that while section 18 (3) of the Magistrates Courts Act as amended by the Written Laws (Miscellaneous amendment Act) No. 3 of 2016 confers to the primary courts general powers to deal with civil cases, section 40 (3) of the same Act as amended by Act No. 4 of 2004 deals specifically with civil cases of commercial significance.

The question that logically follow is did the District Court have jurisdiction in the matter?

As stated hereinbefore, the jurisdiction of the Magistrate's Courts in relation to Civil Cases of Commercial significance or simply Commercial Cases is laid down under Section 40(3) of the **Magistrate's Courts Act** as amended by **Act 4 of 2004**. The Act provided as follows:-

"40-(3) Notwithstanding sub-section (2), the jurisdiction of the District Court, shall in relation to commercial cases, be limited:-

- (a) [Not relevant]
- (b) In the 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 thirty million shillings".

Looking at the above quoted provisions of the law, one would realize that whereas section 18 (3) of the Magistrates Courts Act which deals with pecuniary jurisdiction of the Primary court sets an upper sealing or cap over which the jurisdiction is limited, section 40(3) of the same Act which prescribes pecuniary jurisdiction of the District Court in relation to Commercial Cases doesn't set any minimum cap or sealing below which a commercial matter has to be filed in a primary court. In other words it would appear that District courts has jurisdiction to hear any matter of commercial significance whose value doesn't exceed T.shs 30,000,000/= Thus, the

District Court had jurisdiction to hear and determine the matter in this appeal.

Regarding to grounds 3 and 4 of the Appellant's appeal which faults the trial court's findings on the liability of the Appellant, suffice to say that the Respondent's evidence was clear and straight forward. The Appellant didn't dispute the fact that he signed the sale agreement with the Appellant (Exhibit P1 & P2). He doesn't also dispute the fact that he made some payments in respect of the said agreement and that there are some payments which are outstanding. As rightly submitted by the counsel for the Respondent, the fact that the Respondent went to Iringa to follow some payments from the third party doesn't shift liability from the Appellant to that third part. Section 100 (1) of the Evidence Act [Cap 6 R.E. 2002], excludes oral evidence from documentary evidence. The law says:-

"When the terms of a contract, grant or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required b law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract.....except the document itself....."

In the instance case, the Respondent tendered in evidence a sale agreement (Exhibits P1 and P2) which is to the effect

that the agreement was between himself and the Appellant. The Appellant did neither challenge the admission nor contest the contents of exhibits P1 and P2. He cannot therefore be heard claiming that he was a mere go between in the transaction. Thus, on the evidence adduced it is the Appellant who is liable to pay the outstanding sum.

In view of the findings under the Appeal, that Court had jurisdiction and that on the evidence on record, the Appellant was the person liable to pay or refund the outstanding amount, the appeal is dismissed with costs.

Order accordingly.


A.R. Mruma,

Judge.

Dated at Tanga this 19th Day of February, 2020.

