

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA DISTRICT REGISTRY)

AT KIGOMA

CIVIL REVISION NO. 3 OF 2019

(Original Kigoma District Court Civil Case No. 11 of 2019, before E.B. Mushi - RM)

DANIEL S/O MIRASHI.....APPLICANT

VERSUS

WILSON S/O KAKO.....RESPONDENT

R U L I N G

06/03/2020 & 06/03/2020

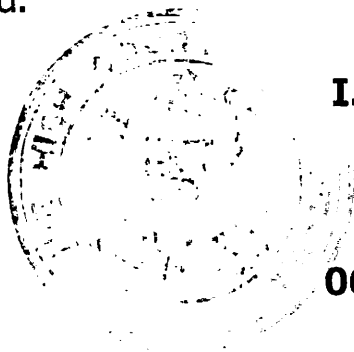
I.C. MUGETA, J

The applicant filed a case in the Primary Court of Kigoma District at Mwandiga, Civil Case No. 38/2019. Later he requested the same to be transferred to the District Court. By order of the District Court it was so transferred and Civil Case No. 11/2019 was opened. The subject matter has a value of Tshs 24,882,000/= therefore, on a Preliminary Objection being raised, the District Court found that it had no jurisdiction. Dissatisfied with this decision the applicant opened these proceedings in which the major complaint is that having agreed to transfer the case to it, the District Court erred to dismissal the plaint without orders that the case at the Primary Court should be resumed.

The applicant is represented by Damas Sogomba while the Respondent enjoys the professional service of Daniel Rumenyela, learned advocate.

On the hearing date Daniel Rumenyela acted professionally in that he conceded, for the interest of justice, the parties must have an avenue to be heard. On that account, he prayed the court to give necessary orders. Before I do so, I wish to remind those in charge of District Courts to act diligently when it comes to transfer of cases from primary court. It is always important, when deciding to do so, to consider the issue of jurisdiction of courts as nothing can confer to courts a jurisdiction it does not have except the law. In this case, the District Court was right to decide that it has no jurisdiction. However, instead of striking out the plaint it dismissed it. Dismissal orders are usually given when parties have been heard on merits. Further, since the transfer of the case was at the instance of the District Court's direction, an order for the trial to resume at the primary court was desirable. I hereby quash the order of the District Court dismissing the plaint and substitute it with an order striking it out. I proceed to order that the parties be heard at the primary court vide civil case No. 38/2019.

It is ordered.




I.C. Mugeta

Judge

06/03/2020

Court: Ruling delivered in chambers in presence of the applicant and the respondent in person and Damas Sogomba, advocate for the applicant and Daniel Rumenyela advocate for the respondent.

Sgd: I.C. Mugeta

Judge

06/03/2020