

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CIVIL REVISION NO. 02 OF 2019

**(Originating from District Court of Monduli in Misc. Civil Application No. 14 of
2018 C/F Kissongo Primary Court Civil Case No. 20 of 2018)**

MKURUGENZI MTEI EXPRESS LIMITED.....APPLICANT

VERSUS

PETER SHAURI.....RESPONDENT

RULING

**13/12/2019 &
10/03/2020**

GWAE, J

Before me is an application for Revisional order made under section 43 (3) and Section 44 (1) (a) & (b) of the Magistrate's Courts Act Cap 11 R.E 2002 for the following orders;

1. That this Honourable Court be pleased to call the records, revise and set aside the Honourable Court's ruling as delivered on grounds that:-
 - a) The Ruling is unlawful and was acted with material irregularity.
 - b) The Ruling was improperly procured.

2. That cost of this application be paid by the respondent.

This application is supported by the sworn affidavit of the applicant one FELIX NDERASIO MTEI and countered by the sworn counter-affidavit of the respondent one PETER SHAUARI.

Hearing of this matter proceeded by way of oral submission, the applicant was represented by the learned counsel **Mr. Shedrack B. Mofulu** whereas the respondent stood unrepresented.

It is the applicant's prayer in his submission that his affidavit be adopted and the application be granted for the reasons that there are legal errors in the plaint where the applicant, **Director** Mtei Express has been wrongly sued.

The respondent on the other hand prayed this court to determine the matter on merit as it was the director who signed the plaint.

It is from the affidavit of the applicant that he filed an application to the District Court of Arusha seeking the transfer of the proceedings from the Primary Court of Kisongo to the District Court of Monduli seeking for Legal Representation from Mofulu Advocates so as to be able to address legal issues in dispute on ownership of Motor Vehicle, Misjoinder of party and the third party procedures. The District Court denied the application for the reason that it had no jurisdiction particularly on pecuniary jurisdiction pursuant to Section 20 (a) & (b) of the Written Laws Miscellaneous Amendment Act No 3 of 2016 and VII Rule 11(b) of the Civil Procedure Code Cap 33 R.E. 2002.

In determining this revision, I would like to begin by discussing the issue of Jurisdiction of both Primary Courts and the District Court in

matters of civil nature. Generally Primary Courts and District Courts when determining matters of civil nature are limited to Pecuniary and Territorial Jurisdiction. The Pecuniary Jurisdiction of the District Courts in Civil matters is provided under Section 40 (2) (a) &(b) of the Magistrates' Courts Act Cap 11 as amended by Section 22 of the Written Laws Miscellaneous Amendment Act No. 3 of 2016 where the jurisdiction for Immovable properties is Tshs. **300,000,000/=** and Tshs. **200,000,000/=** for movable properties.

Pecuniary Jurisdiction of the Primary Courts on the other hand is provided under section 18 (1) of the Magistrates' Courts Act Cap 11 as amended by Section 20 of the Written Laws Miscellaneous Amendment Act No. 3 of 2016 where the jurisdiction for Immovable properties is Tshs. 50,000,000/= and Tshs. 30,000,000/= for movable properties.

From the records of the court it is evident that the present matter originates from a claim of Tshs. 9,076,800/= by the respondent **Peter Shauri** being compensation for the loss of his livestock. It goes without saying that the competent court to try this matter as far as Pecuniary Jurisdiction is concerned is Kisongo Primary Court, bearing in mind that all the courts in Tanzania are created by statutes and their jurisdictions are purely statutory. It is elementary principle of the law that parties cannot by consent give a court jurisdiction which it does not possess. See **Shyan Thanki and others v. Palace Hotel (1971) EA at 202**. It was further held by **Amour J**, In the case of **Mkerenge Horera Rashid vs. Abdul Mbonde & 2 others (DC)**, Civil Appeal No.6 of 2017 that the District Court had no jurisdiction it presided over a case whose value was **Tshs.**

19,330,000/= which falls within the Pecuniary jurisdiction of the primary courts.

That being said, let me turn to the issue of Legal Representation which forms the basis of this Revision. The applicant herein above is seeking the transfer of his case from Kisongo Primary Court to Monduli District Court for him to enjoy the Legal Representation from Mofulu advocates an application which was denied by the district Court.

Mlay J, my learned brother in the case of **Ashura M. Masoud v. Salma Ahmad**, PC Civil Appeal No. 213 of 2004 gave a very good elaboration on this issue which I fully concur with and for sake of clarity part of the same is reproduced;

“The District Court does not acquire jurisdiction in probate and administration matters by reason that a party wishes to be represented by an advocate. Jurisdiction is conferred by the law and not by the wishes of a party.....The powers to transfer of cases under Section 47 (1) of the Magistrates’ Courts act Cap 11 can only be used to transfer a case from Primary court to district Court or a Court of the Resident Magistrate having Jurisdiction. The reason that the applicant wishes to engage an advocate, as I have stated, does not in itself confer jurisdiction upon the court.”

Another holding from my brother Mugeta J, in the case of **Denja John Botto & 2 others v. Umoja wa Wafanyabiashara Ndogondogo Mailimoja**, Civil Appeal No. 157 of 2018, this court at DSM (**Unreported**) was to the effect that “Jurisdiction of courts is conferred by statutes,

therefore engagement of an advocate cannot confer to a District court or a court of the Resident magistrate jurisdiction which it does not have..”

In the event I am of the considered view that since the competent court to try this matter is Kisongo primary court as already discussed above it follows therefore that the fact that the applicant wants to be represented cannot by itself oust the jurisdiction of the Primary court and automatically confer the district court with such powers which it does not have.

However, the applicant at paragraph 3 of his sworn affidavit stated that the application Civil Case No. 14 of 2018 was launched at District Court of Monduli purposely to seek the Legal Representation in order for an expert in law to address legal issues in dispute, on ownership of motor vehicle, misjoinder of party and the third party procedures. In one way or another applicant's wishes to legal representation is in line with determination of some legal issues which appears to be in dispute in this matter. The question then arises as to whether the Primary Court is a competent court to determine the legal issues raised?

Generally the law is very clear on the Jurisdiction and powers of Primary court in all proceedings of civil nature. Section 18 (1) (i) of the Magistrate's Courts Act Cap 11 specifically provides that; A Primary Court shall have and exercise Jurisdiction in all proceedings of a civil nature where the law applicable is **customary law** or **Islamic law**.

It follows that for the primary court to have jurisdiction to determine a matter of civil nature the law applicable must be customary law or Islamic law. Nature of the case filed by the respondent taking into account

of the alleged third party (Insurance Company Limited), does not follow in the customary torts but common law torts.

From the applicant's affidavit the issues in disputes to be determined are as follows; ownership of motor vehicle, misjoinder of party and the third party procedures. From these issues in dispute, particularly the issue of third party procedure appears to be governed by Order I Rule 14 of the Civil Procedure Code Cap 33 R.E. 2002 a law that is not applicable in Primary courts. More so, it is worth to note that a decree of the court must be effectual, in other words the decree of the court must be capable of being enforced. In **Oysterbay properties and another v. Kinondoni Municipal Council and others**, (2011) 2 EA 315 where it was held among other things that only parties to the proceedings should be made parties to applications for executions.

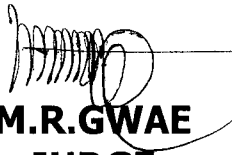
In the respondent's suit, if one looks at the nature of the case, must come with a conclusion that the nature of the respondent's suit where a need may arise of joining a third party as earlier explained.

Despite the fact that I am alive of the enunciated principles governing transfer of cases, yet in this particular matter in order to enable the case to be heard and determined in its finality, it is more preferable to have the matter transferred from Primary Court to District Court of Monduli.

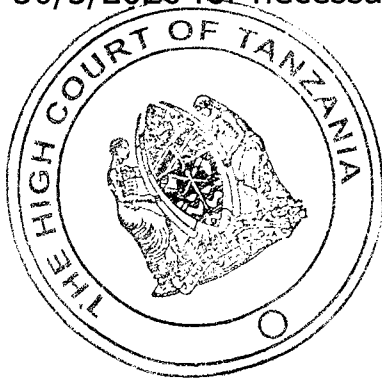
To this exposition, the decision of the District Court is revised to the above extent, it is my considered view that for the interest of justice to both parties let the matter be transferred to the District Court of Monduli


and be heard and determined expeditiously. Costs of the case shall be in due course.

It is so ordered.


M.R.GWAE
JUDGE
10/03/2020

Order: Parties shall appear before District Court of Monduli at Monduli on 30/3/2020 for necessary order (s)




M.R.GWAE
JUDGE
10/03/2020