

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.297 OF 2017**

*(Arising from the decision and ruling of the District Court of Kinondoni in Civil Case  
No. 21 of 2016 of 28<sup>th</sup> September 2017)*

**ANIMAL CARE COMPANY LIMITED ..... Appellant**

**Versus**

**ALLY MOHAMED ABDALLAH.....Respondent**

**JUDGEMENT**

*Date of Last order: 11.06.2020*

*Date of Ruling: 13.10.2020*

**Ebrahim, J.:**

This appeal emanates from the decision of the District Court of Kinondoni in the above-mentioned Civil Case where the trial magistrate sustained the preliminary objection raised by the Respondent/Defendant. The point of preliminary objection raised was that the trial court had no jurisdiction to entertain the matter before it as it was a labour case.

According to the record of proceedings, the Appellant sued the Respondent following a breach of contract they entered on 29<sup>th</sup> August 2014. The genesis of the said contract was that when the Respondent was employed by the Plaintiff, he occasioned loss amounting to TZS.

47,032, 500/-. One of the terms of the contract was that the Respondent shall pay the Appellant TZS. 1,000,000/- in 26 equal instalments until full payment of TZS. 26,000,000/- from September 2014 until October 2016. However, the Respondent managed to effect payment for 11 months only, hence the suit claiming the balance of TZS. 15,000,000/-. The suit was met with the objection on jurisdictional issue, hence the instant appeal.

Aggrieved, the Appellant has preferred the instant appeal raising three grounds of appeal mainly claiming the wrong dismissal of the suit on the basis of jurisdiction.

The appeal was argued by way of written submission.

Submitting in support of the appeal, the Appellant mainly argued that much as the appellant and the respondent had an employer and employee relationship; the nature of their contract exhibited in annexure **ACC1** is not subjected to any labour or employment claim. He contended that the claim between them is a civil claim emanating from a breach of contract. He contended further that the nature of the case required the trial magistrate to determine the matter on preponderance of evidence and the objection was not on point of law as per the spirit of the celebrated case of **Mukisa Biscuit Manufacturing**

**Limited V West End Distributors Ltd** [1969] EALR at pg. 701. He made further reference to **Section 7 of the Civil Procedure Code, Cap 33 RE 2002** in cementing his argument that the trial court had jurisdiction to try the civil suit.

Responding to the submission by the Appellant, the Respondent argued that the nature of the dispute between the parties is a labour dispute which arises from a breach of contract. Therefore, the applicable laws are the **Employment and Labour Relations Act, 2004 CAP 366** and its regulations which are; **Employment and Labour Relations (General Regulations), 2017 (G.N. No. 47 of 2017)**; and **The Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 (GN No. 67 of 2007)**.

He concluded therefore that the trial court had no jurisdiction to entertain the matter.

In rejoinder, the Appellant mainly reiterated what he submitted earlier. He added on the misconception and contradiction by the Respondent's submission in referring the case as a land matter.

I have carefully followed the submissions and thoroughly gone through records including annexure **ACC1**.

It is indisputable that the appellant and the respondent had an employer and employee relationship. The mishap occurred of which the

Respondent (employee) caused loss to the Appellant (employer). In the course of settling their dispute, the Respondent conspicuously admitted the claim and agreed in entering another agreement(contract) on how he is going to pay the loss; hence annexure **ACC1**.

It follows therefore that once they ventured into another agreement for repayment of the loss, parties resorted to another dispute resolution mechanism which is allowed by the law to allow amicable means of dispute resolution.

The Respondent is stressing that this is a labour case in terms of Employment and Labour Relations Act. However, he has not provided the court with a specific provision which caters for enforcement of the contract entered between parties in the course of reaching the agreement to resolve the matter. Indeed, as claimed by the Respondent that it is a breach of contract, yes it started as a breach of terms of employment after the Respondent caused loss to her employer. However, as intimated earlier the Respondent agreed into entering another contract (civil nature) and they turned the loss into a debt.

In the circumstances therefore, the Appellant had all the rights to institute civil case to claim against the Respondent on their agreed

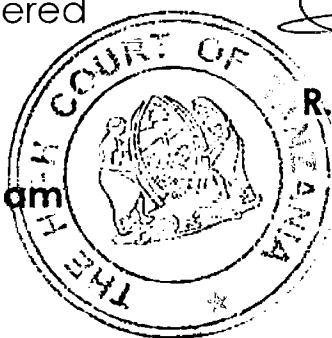
contract to repay the outstanding amount. Indeed, there is no law that prohibits the employer from claiming the outstanding amount against the employee in a Civil Suit.


All said and done, I agree with the Appellant that the trial magistrate erred in dismissing the claim by the Appellant on the basis that it was a labour matter. Respectfully it is not but rather it is a civil claim basing on the agreed terms and conditions of a contract.

Thus, I invoke the revisional powers of this court under **section 44(1)(b) of the Magistrate Court Act, Cap 11 RE 2019** to quash and set aside the decision of the District Court of Kinondoni in Civil Case No 21 of 2016 and its resultant orders. I further remit the file to the trial court with direction that the matter should proceed to be heard and determined on merits in accordance to the law and set procedure before another magistrate with competent jurisdiction. Costs shall follow the final outcome of the matter.

Accordingly ordered

Dar Es Salaam  
13.10.2020



  
R.A. Ebrahim  
Judge