



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

CIVIL APPEAL NO. 11 OF 2018

(Arising from RM's Court of Bukoba in Civil Case No. 5 of 2017)

KINYATTA TINDAMANYILE -----APPELLANT

VERSUS

**1. KAGERA SUGAR LTD } -----RESPONDENTS
2. LEBAHAT LEVORY }**

RULING.

6/10/2020 & 13/11/2020

KAIRO, J.

This matter which originates from the RM's court Bukoba was instituted as an appeal following the dissatisfaction by the Appellant in Civil Case No. 5 of 2017. When the parties were invited to make their oral submission to amplify the grounds of appeal for and against, Advocate Moses Kalua who was representing both Respondents raised a Preliminary point of objection which touched jurisdictional aspect. The Appellant was receiving legal representation of Advocate Chamani.

The raised P.O. was to the effect that the trial court had no pecuniary jurisdiction to determine the matter to its finality as it did. The point which was vehemently disputed by advocate Chamani.

It is trite law that a court before embarking on determining any matter must ascertain itself as to whether or not it is vested with the jurisdiction to do so and there is a plethora of authorities to this effect. [Refer the case of **Fanuel Mantiri Ngunde vrs Herman Mantiri Ng'unde & Others** [1995] TLR 155]. I am aware that this is an appeal and the Respondent's counsel is questioning the jurisdiction of the trial court. However it is the stance of the law that jurisdictional point can be questioned any time in the course of the proceedings including at the appellate stage as it goes to the very root of the authority of the court concerned to determine the matter in question.

Having all that in mind, the court invited the parties to address on the raised issue before proceeding with the appeal. The court further ordered the counsel to make their oral submissions for and against the grounds of appeal as well for expeditious determination of the case in the understanding that if the P.O would be upheld, the matter would end there, but if rejected the court will proceed to determine the appeal.



The main issue for determination therefore is whether the trial court had pecuniary jurisdiction to entertain and determine this case.

Advocate Kalua submitted that according to record, the substantive claim at the trial court was Tshs. 1,500,000/=. He argued that jurisdictional issue can be raised even at an appellate state and backed up his argument with the case of **TZ China Friendship Textile Ltd vrs Our Lady of Usambara Sisters** [2006] TLR 70 adding that the case also resolved that it was the substantive claim and not general damages which determines the pecuniary jurisdiction.

He went on that the case was filed on 22/2/2017 and at paragraph 3 of the plaint, the claim was indicated to be Tshs. 1,500,000/=. Further under paragraph 3 of the Plaintiff prayers of relief, the same amount of claim was reiterated.

Advocate Kalua argued that the pecuniary jurisdiction at the RM's and District Court is for the recovery of a subject matter having the value not exceeding Tshs. 300mln. for immovable property and Tshs. 200mln for movable properties as per the amendments done to section 40 of the Magistrate Court Act (MCA) Cap. 11 RE: 2002 by Misc. Amendment Act No. 3 of 2016; section 22.

Advocate Kalua further submitted that the Amendments Act No. 3 of 2016 also amended Section 18 (1) of the MCA (supra) Section 20 which



caters for the pecuniary jurisdiction of primary courts whereby the value of immovable is not to exceed Tshs. 50 mln and for recovery of a civil date, the value should not exceed 30mln. The Learned Counsel argued that according to the said amendment, the Primary Court can determine the claim of up to 30mln when the Appellant instituted his claim at the RM's Court.

Thus, it was not proper for the Appellant to institute the case in the said court without first giving the reason of so doing. He added that the Civil Procedure Code as amended by the Misc. Amendment Act No. 4 of 2016, each suit is required to be instituted at the lowest court competent to try it, as such the RM's Court wasn't competent to try it. He went further to argue that, jurisdiction being a creature of statute cannot be conferred to a court by a party. He cited the case of **Denja John Botto; Ernest Kisandu & Another vrs Umoja wa Wafanyabiashara Ndogondogo Maili Moja; Civil Appeal No. 157 of 2018 & Mkurugenzi Mtei Express Ltd vrs Peter Shauri; Civil Revision No. 2 of 2019 HC-Arusha** (both unreported) wherein the court when addressing a similar issue resolved that each case should be instituted at the lowest court competent to try it.



Advocate Kalua concluded by praying the court to find that the RM's court had no jurisdiction and thus order for the nullification of all of the trial court proceedings and the decision thereon with cost.

In his riposte, Advocate Chamani submitted that if the court would find that the RM's Court had no jurisdiction and that the court with jurisdiction is the Primary Court, then by implication the said finding and the decision thereon would be against the right of legal representation which is a constitutional right. Advocate Chamani went on that the right to legal representation has been determined in the case of **Agnes Simbambili Gabba vrs David Samson Gabba; Civil Appeal No. 26 of 2008** CAT Dsm at Page 10 which was quoted with approval in the case of **Ally Iddi Hapi vrs Kilonzo Godfrey Kallage** Pg. 7. He further argued that if the raised P.O would be sustained, then the Appellant's right to legal representation would be curtailed, adding that the right to legal representation overrides the value of the subject matter. He further argued that, the value of the subject matter wouldn't have warranted the case to be instituted at the Primary Court as the said court deals with Islamic and customary law which stance was given in the case of **Mkurugenzi Mtei Express Ltd** (supra) at Pg. 5.

Advocate Chamani further argued that Advocate Kalua has only based his argument on one prayer which stated Tshs. 1.5mln instead of the

totality of the case. On Advocate Kalua's argument that the Appellant instituted the matter at the RM's Court without giving the reason, advocate Chamani argued that the learned Advocate didn't back up his argument with any authority, which so stated. He added that such a procedure applies where the case was instituted at the Primary Court and one of the parties wishes to shift it to a higher court.

He rejected the cited cases by Advocate Kalua contending that they were distinguishable to the matter before the court for being overtaken by the case of **Agnes Simbambili Gabba (supra)**. He concluded that if the P.O raised by Advocate Kalua will be allowed, the principle requiring matters be decided expeditiously basing on substantive justice and while doing away with technicalities will be defeated. He thus prayed the P.O. be rejected and the court continues to determine the appeal on merit as was done by the trial court.

In his rejoinder, Advocate Kalua submitted that, in his view, the issue of jurisdiction doesn't fall under the oxygen principle being a creature of statute. He went on to distinguish both cases cited by advocate Chamani.

He clarified that in the case of **Ally Iddi Hapi (supra)** the court addressed on the issue of an application to transfer the case and not automatic jurisdictional issue. Further in the case of **Agnes Simbambili**

also there was an application by the Law Associate to transfer the matter to a higher court where legal representation was possible as such legal representation was the reason for the transfer of the case. He added that the court in the cited cases was moved to transfer it and not that the case was directly opened into court which the case was transferred to. Advocate Kalua insisted that the RM's Court had no jurisdiction to hear and determine this case.

Having heard the counsel's rival arguments, the main issue for determination is whether the RM's Court which was the trial court had pecuniary jurisdiction to determine this case.

There is no dispute that the claim at the RM's court was for the refund of Tshs. 1.5mln. It is further not in dispute that pecuniary jurisdiction of a Primary Court for immovable properties is Tshs. 50mln and Tshs. 30mln for movable properties. It goes therefore that, the claim of Tshs. 1,500.000/= falls under the jurisdiction of the Primary Court. It is also not disputed that a case is required by law to be instituted in the lowest court competent to try it. Essentially jurisdiction is a creature of statute as such it cannot be conferred on a court by a party. In the matter at hand, the case was instituted at the RM's Court. Advocate Chamani for the Plaintiff in justifying the move submitted that the same was necessitated by the need to have legal representation by the Appellant

being a constitutional right, citing the cases of **Agnes Simbambili Gabba and Ally Iddi Hapy** to support his argument. The begging question therefore is whether a party who wishes to engage an advocate can automatically confer on a court jurisdiction to entertain it. In the book of Richard Kuloba Titled *“Jurisdiction Hints on Civil Procedure; 2nd Ed. Law Africa Publishing Ltd Nairobi Kenya* at Pg. 65 it was stated and I wish to quote *“It is a well-established law that jurisdiction cannot be conferred on court by consent of parties...”*. I hasten to add, neither can the wish to engage an advocate can confer jurisdiction to a court as rightly argued by Advocate Kalua. The said stance was expressively given by my learned Brother Mugetta, J. in the case of **Denja John Botto & 2 Others (supra)** cited by the Advocate’s counsel.

I am alive that Advocate Chamani has cited the cases of **Agnes Simbambili Gabba & Ally Hapi (supra)** to support his argument, but with due respect I find the two cases distinguishable to the matter at hand. Both of the two cases dealt with a transfer of cases from the lowest court competent to try which was Primary Courts to the District Court so that the transferor could get legal representation. However in the matter at hand, the case was directly opened at the RM’s Court which was not the right/proper court jurisdictional wise. In other words, there was no question of transfer of the said case to the RM’s Court rather the Appellant instituted the case at the RM’s Court straight

away, the action which in my view amounted to conferring jurisdiction to the RM's Court, which is legally improper. It goes therefore that an engagement of an advocate by itself couldn't confer Jurisdiction to the RM's Court, which jurisdiction it did not had in the first place.

It would have been different if the matter would have been instituted at the Primary Court, then a transfer applied for the reason of legal representation.

Advocate Chamani also argued that the said matter couldn't have been instituted at the Primary Court as the said court only deals with Islamic and customary law, citing the case of **Mkurugenzi Mtei Express Ltd (supra)** to back up his argument. Legally the nature of the matters to be dealt/determined by the Primary court are stipulated in section 18 of the MCA Cap. 11 RE: 2002 (supra).

According to the relief sought by the Appellant under para (C), what is being sought is the refund of Tshs. 1.5mln by the Respondents as well as under paragraph 3 of his claim denotes that the dispute arose from tort whereby the Respondents claimed that the Appellant grazed his cattle into their land (trespass).

In my judicial interpretation the issue of trespass doesn't fall into common law torts which was the basis for the court to hold in favor of the Appellant in the cited case rather it was a simple customary tort

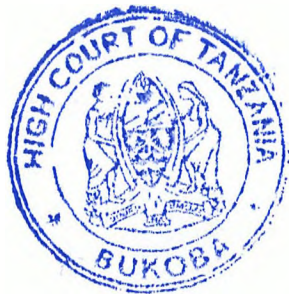
which the Primary Court had the jurisdiction to entertain it. Thus the cited case is distinguishable to the case at hand.

All in all, I found that the raised P.O has merit and accordingly sustain it. I further quash the proceedings and set aside orders of the trial court in Civil case No. 5 of 2017.

The Appellant is at liberty to institute the case in an appropriate court.

The appeal is struck out with no order to cost as the confusion has been partly contributed by the trial court.

It is so ordered.




L.G. Kairo
Judge

13/11/2020

R/A Explained




L.G. Kairo
Judge

13/11/2020

Date: 13/11/2020

Coram: L.G. Kairo, J.

Appellant: Advocate Seti

1st Respondent: } - Angetile Mwalyanje
2nd Respondent: }

B/C: Gosbert Rugaika

Court: The matter is fixed for ruling. The same is read over before the parties as per today's corm.




L.G. Kairo,

Judge

13/11/2020