

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

**IN THE DISTRICT REGISTRY OF KIGOMA**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(PC) CIVIL APPEAL NO. 12 OF 2020**

(Arising from Civil Appeal No. 7 of 2020 of Kasulu District Court Before: Hon. M.M. Majula, RM and Originating from Civil Case No. 8 /2020 of Manyovu Primary Court Before: F.J. Mtega, RM).

**RICHARD KASOGOTA KIBILI.....APPELLANT**

**VERSUS**

**RAPHAEL KURUBONE MILIMO & 8 OTHERS.....RESPONDENTS**

**JUDGMENT**

18/12/2020 & 19/02/2021

**A. MATUMA, J**

The appellant sued the respondents in the Primary Court of Manyovu for payment of **Tshs 27,000,000/=** being **Tshs 15,000,000/=** as contractual amount and **Tshs 12,000,000/=** as general damages for breach of contract.

The trial Primary Court ruled to have no jurisdiction over the matter as it involved ***Contract and Breach of Contract.***

The appellant was aggrieved of the decision, he appealed to the District Court which found out that the trial Court erred to rule out that it had no jurisdiction over the matter.

The District Court however went on to satisfy whether there was a lawful contract between the parties capable of being litigated by the parties. In its considered judgment, the District Court held that the Contract between the parties which is subject to this matter was illegal and that the appellant contravened the provisions of section 41, 42 and 43 (1) of the Advocate Act, Cap. 341 R.E 2019. The appellant was further aggrieved hence this appeal with 4 grounds, all of which tends to guard the contract in question as a legal one.

The brief facts leading to the current matter is that the respondents had their claim relating to land against Mnanila Village Council.

The appellant entered into contractual agreement to act for the respondents in the suit before the District Land and Housing Tribunal. In their respective agreement they agreed that if the suit at the tribunal will end in their favour for 100%, the appellant will be paid  $\frac{1}{3}$  of the total amount decreed and if the suit shall end in their favour but not 100% then the respondents shall pay him  $\frac{1}{10}$  of the total amount to be compensated, i.e the decretal sum.

At the end of the suit the respondents won the case but not 100% and it is when the appellant claimed his dues at the rate of  $\frac{1}{10}$  which he calculated to amount at Tshs 15,000,000/=. The appellant alleged that the respondents breached the contract for not paying his as they had agreed hence the instant dispute as herein above stated.

At the hearing of this appeal, the appellant appeared in person while the respondents were represented by advocate Abdulkher Ahmad.

Both parties argued extensively for and against the appeal but in my view the whole appeal centers on the legality of the contract allegedly was entered between the parties.

The appellant submitted that the contract was legal because section 30 of the Land Courts Act Cap. 216 R.E 2019 allows representation of the parties in the District Land and Housing Tribunal. He argued that he followed the due process to represent the respondents who introduced him as their representative before the tribunal.

He also argued that it was wrong to interpret the Advocate Act into the matter as the said law is all about advocates in Court but on his party, he didn't represent the respondents in Court but in the Tribunal, which is not a Court.

The appellant further argued that the District Court had no jurisdiction to question the legality of the contract in question because the same was



entered in respect of a land matter and therefore only the District Land and Housing Tribunal could question such contract. He went on that questioning the legality of the contract would mean questioning the proceedings and judgment which emanated from his representation on the same contract.

The appellant referred me to what he alleged to be Waha customary law; ***"Ukubhulanila"*** in which the elite represents others on payment basis. He finally cited the provisions of the Constitution of the United Republic of Tanzania for the right to remuneration when one has been engaged for a work.

Mr. Abdulkher Ahmad learned advocate on his party opposed the appeal and submitted that the Contract at hand was illegal and the District Court was right to declare it as such. He argued that the appellant could not be allowed to benefit from an illegal contract.

On my party, I agree with Mr. Abdulkher Ahmad learned advocate that the District Court was right to invoke its powers to determine the legality of the alleged contract because it is such contract which formed the basis of all problems between the parties.

Despite the fact that the respondents categorically denied any recognition of the contract itself, on the face of it, it is illegal on two aspects.

**One**, it is as it was held by the District Court that the appellant was not an advocate to enjoy remuneration for representation of the parties in the suit. Only advocates can charge fees to the parties for their service of legal representations.

Any other party who may by whatever means be allowed to represent another is not entitled to remuneration for the service. He might be entitled to costs and the like just as it would be if the party has represented himself.

What the appellant did was illegal and he is nobody but **a bush lawyer**. Now the bush lawyer is seeking to enforce the contract which he illegally procured. That is not accepted at all.

He has even attached to his claims at the Primary Court "**Kielelezo No. X8**" which is another contract for the same illegal transactions in which he endorsed to have received **Tshs 1,000,000/=** from one Daudi Mbeleko Bujenjedeli as a result of his representation (Advocacy) in Land Case No. 43/2009 and 35 of 2009.

I have also attended Misc. Land Application No. 53 of 2020 in which he wrote a complaint letter explaining to represent one Kobali Mlongo against such application. So, this man is completely a bush lawyer in the Region and he should stop such habit Immediately.

Failure to stop such habit he shall suffer legal consequences.

With all these, the District Court was right in its decision to intervene and determine the legality of the contract before it could order a trial on it.

Parties should not be allowed to litigate on the contract which by itself is illegal.

With these observations I see no need to dwell into other grounds as they would serve no useful purpose.

This appeal has been brought without any sufficient cause.

The same is hereby dismissed in its entirety with costs. Right of further appeal to the Court of appeal of Tanzania subject to the relevant laws is explained.

It is so ordered.



**A. MATUMA**

**JUDGE**

**19/2/2021**