

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

DC CIVIL APPEAL NO. 07 OF 2020

(Arising from Civil Case No. 01 of 2020 of Songea District Court)

94 SECURITY COMPANY LIMITED APPELLANT

VERSUS

**THE BOARD OF TRUSTEES OF ST. AUGUSTINE UNIVERSITY OF
TANZANIA (SAUTI)..... RESPONDENT**

JUDGMENT

Date of last hearing: 08/12/2020

Date of Order: 16/02/2020

BEFORE: S.C. MOSHI.:

This judgment is in respect of an appeal filed by the appellant challenging the decision made by Songea District Court in Civil Case No. 01 of 2017. The appellant sued the respondent for the following orders:- Declaratory order that defendant is in breach of contract, the trial court to order the respondent to pay the appellant a total of Tshs. 32,400,000/= being specific damages, the respondent be ordered to pay interest at commercial rate annually from the date of the breach of the contract to the date of judgment, to pay interest at court rate annually from the date of

judgment to the date of payment in full, to pay general damages of Tshs. 50,000,000/=, costs of the suit and any other relief the trial court deem fit and just to grant. The trial court did not hear the case on its merits following a preliminary objection raised by the respondent to the effect that the court has no jurisdiction to try the matter. The preliminary objection was sustained. Hence this appeal on the following grounds:-

- 1. That, the trial court erred in law to sustain the preliminary objection on a point that the trial court had no jurisdiction contrary to the submission which mainly based on privity to contract instead of court's jurisdiction.*
- 2. That the trial court erred in law to sustain the preliminary objection without considering the fact which was well pleaded in the plaint that, the Arch Bishop James University College known as AJUCO at Songea was a constituent college of the respondent herein and is now no longer existing entity.*
- 3. That the trial court erred in law not to agree that, the Archbishop James University College (AJUCO) without considering the fact which was well pleaded in the appellant's plaint that the said entity was no longer*

existing and was a constituent college of the respondent herein.

4. That, the trial court erred in law to sustain the preliminary objection without giving a clear legal remedy as to whether the suit was thus, dismissed or struck out.

The appellant was represented by Mr. Vincent Kassale, learned advocate whereas the respondent appeared through Mr. Richard Mlekwa, Manager of the respondent. The appeal was heard exparte and by way of written submissions.

In respect of the first ground of appeal, Mr. Kassale submitted that the trial court was wrong when it upheld the preliminary objection on point of law that the court had no jurisdiction to try the matter as presented. He said that the preliminary objection which was raised by the respondent based on the jurisdiction of the court to try the matter but going through the entire submission of the respondent, the respondent argued on privity to contract and not on jurisdiction.

He submitted further that the word jurisdiction as defined in Mulla's Code of Civil Procedure, 13th Edition, on page 125 means the extent of the authority of a court to administer justice not only with reference to the

subject matter of the suit but also to the local and pecuniary limits of its jurisdiction. That, looking at this definition the court cannot be said to lack jurisdiction basing on the parties to the suit but only to the subject matter of the suit or local limits and or pecuniary limits. He argued that, therefore the trial court was wrong when it upheld the preliminary objection.

In respect to ground 2, 3, and 4 of the appeal which were argued together, he said that the appellant ought to have sued a party whom he entered with into contract without considering that the college of which the appellant had entered into contract was a constituent college of the respondent herein and it is no longer existing after all its business at Songea were completely closed and nobody was assigned to take care of its business at Songea. He said that this was also pleaded in paragraph 4 of the plaint and paragraph 6 of the plaint and moreover even the contract which was attached to the plaint at the trial court as annexure P1, reads that Archbishop James University College AJUCO is a constituent College of ST. Augustine University of Tanzania -SAUT and their logos are well put together in that contract.

He said that word constituent, is defined by the Black's Law Dictionary 8th Edition to mean, a person who gives another authority to act

as a representative, a principal who appoints an agent. This being the definition, therefore there was a Principal- Agent relationship which in law is one of the exceptions to the principle of privity to contract as per section 178 of the Law of contract Act, Cap. 345 R.E 2019. Therefore, it was wrong when the trial court held that the respondent was not a proper party to be sued in law taking into account that Archbishop James University College - AJUCO is no longer in existence as he was an agent under the provisions of section 134 of the Law of contract Act Cap. 345 R.E 2019.

In respect of 5th ground he said that, the court was wrong when it failed to pronounce a clear legal remedy as to whether the suit was, dismissed or struck out, the ruling delivered by trial court does not show as to whether the suit was struck out or dismissed. He said this is a fatal irregularity as the two remedies have different legal implications, the first one affords a party to institute a fresh suit while the later may allow the party to institute a fresh suit if the dismissal is on legal point and may bar a party from instituting a fresh suit if the dismissal was after considering the merit of the suit.

He prayed the appeal to be allowed with costs.

The issue to be determined is whether this appeal has merit.

I have considered appellant's submission, the record and relevant laws.

I have decided to determine the first ground of appeal as it suffices to dispose off the entire appeal. The first ground of appeal reads thus:-

"that the trial court erred in law to sustain the Preliminary objection on a point of law that the trial court had no jurisdiction contrary to the submission which mainly based on privity to contract instead of court's jurisdiction."

In the respondent's (original defendant) written statement of defence he raised a preliminary objection relating to jurisdiction of the court, I hereunder reproduce it as written:-

"(a) That the court has no jurisdiction to try the matter for the parties as presented."

I at the outset subscribe what has been submitted by Mr. Kasale that the trial court erred in upholding the preliminary objection that it had no jurisdiction to determine the case while the respondent's submission regarding the preliminary objection based on the issue of parties to the

contract. Furthermore, it didn't pronounce at the end as to whether the suit was struck out or dismissed. Since the two terms have different implications as stated by Mr. Kasale.

It is common ground that jurisdiction is court's power to hear and decide a case, and it is a creature of the law. It should be underscored that the jurisdiction of any court must be expressly given, it cannot be implied and/or assumed. Where a decision of any court may be found to have been reached without jurisdiction, such a decision risks the danger of being declared invalid by a higher court. See **R vs. Farid Haji Ahmed and 21 others**, Criminal Appeal No. 59 of 2015 Court of Appeal at Dar es salaam (Unreported), **Melisho Sindiko vs Julius Kaaya**(1977) LRT n. 18 and **William Rajab Malya and Two others Vs R** (1991) TLR 83. Court's jurisdiction is restricted in three main ways namely; geographical location of the court, subject matter and the value of subject matter.

As submitted by appellant's counsel, the defendant's advocate submission did not show why the defendant thought the court had no jurisdiction. It is true that the submission did not support the preliminary objection which it raised rather it involved privity of contract the matter which ought to be dealt with after hearing evidence. A preliminary

objection must involve a pure point of law; see **Mukisa Biscuit Manufacturing Company Ltd V. West End Manufacturing Distributors Ltd** (1969) EA 696.

Even if she were of the view that they sued a wrong party, yet this alone doesn't defeat a suit as necessary action could be taken to amend the pleadings per Order 1 rule 9 of Criminal Procedure Code Cap 33 R.E 2019.

That said, I find that the appeal has merits. It is allowed. The ruling is reversed. The main suit to proceed on its merits.

Costs to be paid by the respondent.

Right of appeal explained.


S.C. MOSHI
JUDGE
16/02/2021

