

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

PC. CIVIL APPEAL NO. 78 OF 2020

(Appeal from Civil Revision No. 18 of 2019 of Geita District Court at Geita, Originated
from Civil Case No. 79 of 2018 of Katoro Primary Court)

KIKUNDI CHA KUKOPESHANA APPELLANT

VERSUS

MATHIAS KIHINGA RESPONDENT

JUDGMENT

Date of last Order: 02.03.2021

Date of Judgment: 04.03.2021

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the Primary Court of Katoro in Civil Case No.79 of 2018 in which the appellant Kikundi cha Kukopeshana had filed a suit demanding the costs of the suits from the respondent. The costs include the suit which was before the Primary Court of Katoro in Civil Case No. 79 of 2018 and Civil Appeal No. 62 of 2017 which was before this

court. The trial court determined the matter and found that the appellant's claims were justifiable. The costs included accommodation, transport, food and other costs. This court decided that the appellant is entitled to be paid a total sum of Tshs. 2,290,000/=. Therefore the trial court decided in the favour of the appellant.

Aggrieved, the respondent filed a revision to the District Court for Geita at Geita in Revision No. 18 of 2019 seeking the first appellate court to determine the legality of the trial court decision and praying for the first appellate court to revise the proceedings thereof and quash the trial court proceedings and judgment. One of the issues which was determined by the District Court was the jurisdiction of the trial court. The first appellate court decided the matter in the favour of the respondent.

The decision of the first appellate court on revision irritated the appellant. He thus appealed to this court through Civil Appeal No. 78 of 2020 and he has raised four grounds of grievance, namely:

- 1. That, the trial Magistrate did misdirect himself on its Ruling for uses of provision of S. 19 (1) (b) of the MCA.*

2. *That, the trial court erred in both law and fact for not considering the evidence that the primary court has a pecuniary Jurisdiction to entertain the matter according to that costs of Tshs. 2,290,000/=.*
3. *That, the trial court erred in law and fact for not considering on its Ruling the nature of the case which is originated from the judgement of High Court of PC. Civil Appeal No. 62 of 2017 and not a bill of costs attached herewith a copy of that Judgement as annexure.*
4. *That the trial court erred in law and fact for delivering its Ruling for basing on a bill of costs and not appellants claims of awarded of Tshs. 2,290,000/= against the Respondent.*

When the appeal was placed before this court for hearing on 02nd March, 2021, the appellant appeared in person, unrepresented while Mr. Msalaba, learned advocate appeared for the respondent.

The appellant opted to submit generally, he argued that they won the case at the trial court on 12th April, 2018 and the respondent was ordered to pay the appellant. He went on to state that dissatisfied, the respondent filed an appeal at the District Court of Geita. The appellant further submitted that the appellant filed an appeal before this court and this court ordered the appellant to execute their award at the Primary court. The respondent

insisted that the primary court had jurisdiction to determine the matter since this court ordered the appellant to execute the decree.

In reply, Mr. Msalaba firmly contended that the amount of Tshs. 2,290,000/= originated from the High Court after the respondent lost his case. He went on to argue that thereafter the appellant proceeded to execute his award at the Primary Court. Mr. Msalaba stated that in accordance with Rule 2 of the Advocates Remuneration Act the matter was not required to be referred to the Primary Court but to the High Court. Mr. Msalaba valiantly argued that it was not correct for the appellant to execute their award at the Primary Court thus even the claims of Tshs. 2,900,000/= were not correct. Mr. Msalaba continued to state that section 18 of the Magistrate Court Act relates to pecuniary jurisdiction and the matter was related to the bill of costs.

On the strength of the above submission, Mr. Msalaba beckoned upon this court to dismiss the appeal with costs and other costs arising from the lower costs.

The appellant had nothing to rejoin and placed reliance on the decision made by this court and asked the Court to allow the appeal.

Having heard the submissions of both learned counsels for and against the appeal and after carefully going through the court records of the District Land and Housing Tribunal, I have to say that I will determine the issue *whether the appeal is meritorious*.

In my determination, I will consolidate the first and second grounds because they are intertwined. Equally related are the third and fourth grounds which I shall also determine them together. On the first and second grounds, the main issue is concerning the issue of the Primary Court pecuniary jurisdiction. The record reveals that the District Court in its findings observed that the trial court had no pecuniary jurisdiction to award costs originating from the District Court and High Court.

In my view, the first appellate court was right to cite section 19 (1) of the Magistrate Court Act, Cap. 11 [R.E 2019] which relates to jurisdiction of the Primary Court. The trial Magistrate cited section 19 (1) (b) of the Magistrate Court Act, Cap.11 [R.E 2019] specifically the Fourth Schedule of the Magistrate Court Act in order to justify that the Primary Court has power to award costs although it had no power to award costs originating from the District Court and the High Court. Therefore, I find these grounds are demerit.

On the third and fourth grounds, the appellant is claiming that the trial court erred in both law and fact for not considering the nature of the case which originated from the judgment of this court and not the bill of costs. I have perused the trial court records and the decision of this Court in Civil Appeal No. 62 of 2017 and found that this court decided in favour of the appellant. In course of implementing this court order, the appellant filed a Civil Cause No. 79 of 2018 at the Primary Court. The appellant claimed a total amount of Tshs. 2,290,000/= for accommodation, transport, food, and other costs to be paid by the respondent. The trial court ordered the respondent to pay the appellant the said amount. Underretted, the respondent filed a revision at the District Court praying for the first appellate court to revise the trial court decision on the basis of illegality.

The District Court in Civil Revision No. 18 of 2019 decided in favour of the respondent. In its finding, the first appellate court decided that the bill of costs/taxation are filed and entertained by the court which determined the matter as opposed to the execution. The first appellate court quashed the trial court decision and proceedings and ordered the restitution of money to the respondent.

From the above findings and after scrutinizing the trial court Judgment, I have found that the trial court based its decision on the bill of costs with a total amount of Tshs. 2, 290,000/=. The said bill of costs was appended in the trial court judgment, it comprises the costs of the primary Court, District Court and High Court. Therefore, it is not true that the bill of costs was not part of the trial court decision in Civil Case No. 79 of 2018 since the trial court was ordered to award the appellant as per the bill of costs.

I am in accord with the appellant that this court in Civil Appeal No. 62 of 2017 determined a different matter which is not related to the matter which was before the District Court of Geita in Revision No. 18 of 2019. Additionally, the same was not discussed by the first appellate court. Therefore, the appellant has raised a new ground which was not determined by the first appellate court in Revision No. 18 of 2019. In the case of **Juma v Manager PBZ Ltd and others** [2004] I EA 62 Court of Appeal Tanzania at Zanzibar, held that: -

"...the first appellate Judge, therefore, erred in deliberating and deciding upon an issue which was not pleaded in the first place".

Guided by the above authority, it is obvious that the appellate court cannot determine a new issue which is introduced by the appellant in this appeal. Therefore, these grounds of appeal are disregarded.

In consequence, I find that there is no merit in these grounds of grievance. That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with the District Court of Geita findings. Therefore, I proceed to dismiss the appeal without costs.

Order accordingly.

DATED at Mwanza this 04th March, 2021.




A.Z.MGEYEKWA

JUDGE

04.03.2021

Judgment delivered on 04th March, 2021 in the presence of the appellant and Mr. Msalaba, learned counsel for the respondent.


A.Z.MGEYEKWA

JUDGE

04.03.2021

Right to appeal fully explained.