

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

(PC) Civil Appeal No. 3 of 2021

*(Arising from Misc. Civil Application No. 19/2021 of Kigoma District Court
before K.M. Mutembei, DRM and originating from Mwandiga Primary
Court Civil Case No. 27/2020 before P. Ikolongo)*

VODKA S/O ROJAS.....APPELLANT

VERSUS

NTAKOBAGIRA S/O BALIBUSTARESPONDENT

R U L I N G

29th & 29/03/2021

A. MATUMA, J.

At Mwandiga primary Court, the Appellant Vodka Rojas sued the respondent for recovery of **Tshs 9,000,000/=** being value of shop commodities allegedly confiscated from a business stall by the Respondent without knowledge and or consent of the applicant.

The Respondent having been summoned at the primary court notified the court that he had intention to engage the service of an advocate and therefore prayed for stay of proceedings pending his necessary steps to have the matter transferred to the District Court where advocates are allowed to represent parties to suits unlike in primary courts.

The learned trial magistrate Hon. F.P. Ikorongo without much ado granted the prayer;

*'Shauri linaahirishwa hadi tarehe 10/06/2020 mdaiwa
akamilishe utaratibu ili jalada hili liitishwe mahakama ya
Wilaya'*

Then the Respondent initiated Misc. Civil Application No. 19 of 2020 in the District Court of Kigoma to have the matter transferred thereto as he wanted to engage the service of advocate and join Kigoma Municipal Council. His application faced objection on whether the District Court could have jurisdiction to try the matter particularly on its pecuniary claims, if the transfer is so ordered.

The District Court Hon. K. Mutembei (SRM) overruled the objection and granted the application thereby ordering the transfer of the suit from Mwandiga Primary Court to itself.

Such ruling is the subject of this appeal whereas the appellant laments that the District Court erred to order the transfer of the suit from the Primary Court to itself for want of pecuniary jurisdiction and that engagement of an advocate does not confer jurisdiction to the court.



At the hearing of this application Mr. Silvester Damas Sogomba learned advocate represented the appellant while Mr. Michael Mwangati learned Advocate represented the Respondent.

Before we could dwell into the merits or otherwise of the appeal, I required the parties to address me on the competence of this appeal regard being on the provisions of section 49 (3) of the magistrate Courts Act, Cap. 11 R.E. 2019.

Mr. Sogomba learned advocate for the Appellant stood firm that the appeal is properly before this Court as the provisions of section 49 (3) of the MCA supra should be regarded as repugnant to section 18 of the same law and section 13 of the Civil Procedure Code which requires Courts to entertain matters within their jurisdiction.

Mr. Mwangati learned advocate for the Respondent on his party had no more than submitting that appeals against orders made under the provisions of section 47 and 48 are not allowed. He thus asked this court to dismiss this appeal with cost.

I agree with Mr. Mwangati learned advocate that under the herein provision no appeal shall lie against any decision for an order transferring the suit or against an order refusing to transfer the same, under the provisions of section 47 or 48 of Cap. 11 supra.

It should be born in mind that right of appeal is a creature of a statute. One cannot appeal where such a right is curtailed by law, prohibited or restricted as such.

In this matter the respondent applied to the District Court for transfer of the suit from the Primary Court under the provisions of section 47 (1) (b) of the magistrate courts Act supra. The order of the District Court was then granted under such provision. Section 49 (3) of the same Act supra is very clear that;

'No appeal shall lie against the making of, or any refusal to make, an order under the provisions of section 47 or 48'.

Under the circumstances, it is obvious that this appeal contravenes such provision and cannot be heard and competently determined by this court. It is like an interlocutory order whose grievances are not appealable but are to be carried forward in an appeal against the decision of the main matter if any, after a full determination of the same at the trial.

I don't agree with Mr. Sogomba as his submissions are tending to challenge the propriety of the provisions of section 49 (3) supra arguing it to be repugnant to other provisions of the law. It is my firm finding that this is not the proper forum for the court to determine whether or not the

provision is repugnant as so alleged. The learned advocate should use the proper forum to challenge such provision.

I therefore dismiss this appeal for having been prematurely brought and or for being incompetent before this court. No orders as to costs as this appeal has been disposed off by the issue raised by the Court *suo motto*.

It is so ordered.




A. Matuma

Judge

29/03/2021

Court: Ruling delivered in chamber in the presence of the appellant in person and his Advocate Mr. Damas Sogomba and in the presence of the Respondent in person and his advocate Mr. Michael Mwangati.

Sgd: A. Matuma

Judge

29/03/2021