

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
HC CIVIL APPEAL NO. 72 OF 2020
(Arising from RM Civil Case No. 33 of 2018)**

**FELIX ISIDORY NGOWI1ST APPELLANT
FIN HOLDINGS LTD2ND APPELLAND
VERSUS
JOHN ALFRED RESPONDENT**

JUDGMENT

25/03/2021 & 22/04/2021

W. R. MASHAURI, J;

Aggrieved with the decision of this Resident Magistrates court of Geita at Geita, in Civil Case No. 33 of 2018, the appellants Felix Isdory and FIN Holdings Ltd have now come to this court with 6 grounds of appeal as follows: -

1. That the trial court erred in law and fact for failure to observe that it had no jurisdiction to determine the suit.

2. That the trial court erred in law and fact for failure to establish and find that the respondent had no cause of action against the appellant.
3. That the trial court erred in law and fact for failure to establish and hold that, the respondent's suit basing on partnership deed was untenable in law for being lodged pre-maturely contrary to the requirement of the law.
4. That, the trial erred in law and fact for failure to observe and hold that, the respondent had no locus and/or mandate to sue the 2nd appellant.
5. The trial court grossly erred in law and fact for holding that the respondent was entitled to be paid 30% out of 390,000 USD paid to the appellants being compensation.
6. That the trial court grossly erred in law and fact for failure to observe and find out that, the respondents' entitlements under the alleged partnership deed have already fully paid by the appellants and that he has no further claim against the appellants.

The appellants in this appeal are represented by Mr. Venance Kibulika learned counsel while the respondent is enjoying the services of Mr. Ernest Makene learned counsel.

In his submission in support of the appellants' grounds of appeal, Mr. Venance Kibulika learned counsel dropped ground 2 and remained with grounds No. 1, 3, 4, 5 and 6.

In support of the 1st ground of appeal, Mr. Venance Kibulika learned counsel objected the decision of the Resident Magistrates' court on the reason that the trial Resident Magistrate had no jurisdiction to entertain this matter.

That, as revealed in paragraph 4 of the amended plaint, the respondent's claim is USD 117,000/= and 390,000/=. The respondent was entitled to be paid USD 390,000/= the respondent was entitled to be paid 30% of 390,000/= USD being compensation.

For ground of appeal No. 6, the learned counsel declined to accept it on the reason that, the payment of Shs. 14,000,000/= made on 14/12/2018 labled as commission of partnership exh. PI has been mentioned as final payment of the respondent's share the allegation of which is not correct because under clause of the partnership deed (exh. PI is mentioned that, the partners would devide the profit and loss. That, payment of profit and

loss cannot be 30% payment of profit and loss. For the payment of profit and loss of USD. 390,000/=.

And through clause 6, the respondent was entitled to get compensation from the relevant partnership. On that regard, the trial magistrate was correct to award the respondent payment in the tune of USD 390,000.

Having so submitted, counsel for the respondent prayed this court to dismiss this appeal with costs upon upholding the decision of the Geita Resident Magistrates' court. That, clause 6 does not say and/or mention any circumstances that, in case of any event if happens they would have to invoke Section 215 of the law of contract Act by any party for not being satisfied by the courts decision.

That, the respondent's contention that he was not counsel for the respondent is correct and by so saying the learned counsel has gone astray to the trial court's decision as indicated at page 5 of its judgment.

Mr. Venance further submitted that, according to the 1st ground of appeal as argued by learned counsel that, this is a claim of money and not license. That is why that have opened a civil suit. If they were claiming for license,

they would have filed a land case as small licenses are concerned with all immovable properties.

The respondent however objected to equate this matter as landed property as had it been so, they were required to open a land case claiming recovery of the mining license in which he claims to have 30% share but he did not do so and instead, he filed a civil suit claiming the amount as they have stated above and that is why he says that this matter lies under section 40(2)(b) of the MCM Cap. II RE: 2019.

That, the issue of jurisdiction is fundamental and it is the court's duty to satisfy itself that when that section was amended that suit was yet filed in court as the amendment was done on 4/9/2019.

On that regard, since the suit is breach of partnership deed is a contract that's why they say the trial court had jurisdiction to entertain the suit.

That, the respondents are claiming 30% of their share in the partnership which goes to the mining license of the appellants.

For the 3rd ground of appeal he submitted that the trial magistrate misdirected himself to hold that the suit was filed prematurely before the court.

The issues for discussion and determination are: -

1. Whether this court had pecuniary jurisdiction to entertain this suit.
2. Whether this case was prematurely filed in court.

Starting with the 1st issue whether the trial court had jurisdiction to entertain this matter, and upon carefully followed the submission by Mr. Venance Kuibulika learned counsel for the appellants in support of ground of appeal No. 1 which is concerned with the jurisdiction of the court, and the reasons he gave in support thereof, I fully join hands with Mr. Venance Kibulika that, the court had no pecuniary jurisdiction to entertain this matter.

It is noted in this matter that, the respondent's claim was and still is 117,000/= USD which if converted to Tanzania shillings goes to the tune of Shs. 266,000,000/= million. And under section 40 (2)(b) of the magistrates' Court Act Cap II RE: 2019, the pecuniary jurisdiction of the Resident Magistrates' court is not more than Tanzania Shs 200,000,000/= million only. The value of the subject matter in this case is USD 117,000 which is equal

to Tshs 266,000,000/= million more than Shs 66,000,000/= million to the pecuniary jurisdiction of the district court which is 200,000,000/= Tz shillings.

In the case of *Agricola v/s Rashid Juma* (1991) TLR. I the court of Appeal of Tanzania held that: -

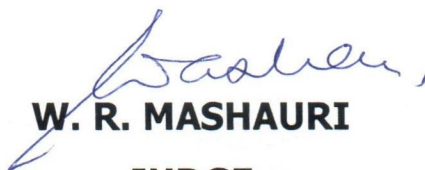
"Lack of jurisdiction in the presiding magistrate is a fundamental defect of which it is incurable."

In this matter, the trial court lacked jurisdiction to try the case. Having reached such verdict, I find it superfluous to deal with the remaining grounds of appeal as even in his submission in support of the remaining grounds of appeal the learned counsel failed to give reasons. For example, for the 2nd ground of appeal, the learned counsel failed to disclose why the respondent had no cause of action against the appellant. He did not say why the respondent had no locus what the learned counsel fully exhausted in his submission, of which I also have joined hands is that, the trial court had no jurisdiction to entertain this suit. That much I agree.

Having so agreed, then what is the remedy, when the trial court which tried the matter had no jurisdiction.

As I have said above, this matter was filed and tried by the court of no pecuniary jurisdiction. In the up short, I find that the irregularity for lack of jurisdiction is fatal and incurable at law, such fatality has therefore vitiated the proceedings and decision reached by the trial court. In the event, I declare the proceedings a nullity. The trial court's based on void proceedings is quashed in the event, I order a retrial of the matter before another court and magistrate of competent pecuniary jurisdiction. No any order as to costs is made.




W. R. MASHAURI
JUDGE

Date: 22/04/2021

Coram: Hon W.R. Mashauri, J.

Applicant: Present

Respondent: Absent

B/C: Elizabeth

Court:

Judgment delivered in presence of Mr. Venance Kibulika, learned counsel for the applicant and in absence of Mr. Makene, adv. for the respondent.




W.R. MASHAURI

JUDGE