

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL APPEAL NO. 16/2020

(Arising from RM's Court Bukoba in Civil Case No. 25/2018)

OLAM TANZANIA LTD.....APPELLANT
VERSUS
BASHIRU ABDALLAH KABYEMELA.....RESPONDENT

JUDGMENT

09th April & 11th May 2021

Kilekamajenga, J.

In this case, the appellant was a business company dealing with buying cherry and clean coffee within Kagera region. In 2015, the appellant and respondent entered into the contract where the respondent was commissioned as an agent of buying the coffee for the appellant within Karagwe and Kyerwa Districts. The respondent was supposed to deliver the coffee to the appellant at the agreed destination. To enable the respondent buy the coffee, the appellant advanced money and paid the commission and costs after delivery of the coffee. According to the contract, the appellant agreed to pay Tshs. 50/= for each kilogram of coffee as transport costs and a commission of Tshs. 100/= per each delivered kilogram of coffee. The contract was signed on 4th June, 2015 which was expected to last for six months. Therefore, the contract was scheduled to end on 1st November, 2015. Both parties signed the contract signifying that they would abide to the terms of the contract. However, the contract did not end as it was expected because it was terminated in August,

2015 (i.e two months after the commencement of the contract). The respondent contended that the appellant breached the contract before its expiry date. On the other hand, the respondent alleged that the appellant terminated the contract due to shortage of stores as that season had bumper harvest. The appellant however argued that there was shortage of coffee hence the respondent failed to deliver the coffee as agreed. The contention between the appellant and respondent moved the respondent to file a case on 4th October, 2018 at the Resident Magistrates' Court of Bukoba. The respondent claimed against the appellant an amount of Tshs. 255,069,500/= as specific damages. The appellant lost the case hence appealed to this Court challenging the decision of the trial court. Before this Court, the appellant challenged the trial court's decision with eight (8) grounds of appeal and prayed to quash and set aside the judgment and decree of the trial court. The appellant further prayed for the counter-claim be allowed.

When the appeal was called for hearing, the appellant was represented by the learned advocate, Mr. Innocent Bernard whereas the respondent enjoyed the service of the learned advocate, Mr. Aaron Kabunga. In his submission, the counsel for the appellant argued the 1st ground separately; the 2nd, 3rd and 8th were argued simultaneously, the 4th ground was argued separately and finally the 5th and 7th grounds were argued together.

In arguing the 1st ground, Mr. Bernard contended that this ground hints on the jurisdiction of the trial court. He submitted that the trial court's jurisdiction in claims originating from movable property should not exceed Tshs. 200,000,000/=. However, the specific damages claimed by the respondent which was Tshs. 255,690,500/= exceeded the pecuniary jurisdiction of the trial court. The counsel invited the court to consider this point of jurisdiction which may be raised at any stage. He supported his argument with the case of **Tanzania China Friendship Company Ltd v. Lady of Usambara Sisters [2006] TLR 70**. He urged the court to nullify the trial court's proceedings and set aside the decision for want of jurisdiction.

On the 2nd, 3rd and 8th grounds, the counsel for the appellant contended that the trial court misdirected itself in evaluating the evidence because the appellant's evidence was not taken into consideration and the respondent's case was not proved to the balance of probability. Mr. Bernard argued further that the appellant advanced to the respondent money amounting to Tshs. 639,709,140/=. However, the respondent delivered 394,320 kilograms of coffee which were valued at Tshs. 542,278,400/=. When the contract came to an end, the respondent still owed the appellant Tshs. 97,430,740/=. On the 5th and 7th grounds, Mr. Innocent argued that despite the fact that the appellant raised a counter-claim and became one of the issues for determination but the trial court gave no any order concerning that claim.

Finally, the counsel urged the court to set aside the judgment and the decree thereof and award the counter claim.

In response, the counsel for the respondent assailed the submissions by the counsel for the appellant on the point of jurisdiction arguing that the counsel represented the appellant in the trial court but he never raised the issue of jurisdiction. However, he contended that the respondent's claim for specific damages was within the jurisdiction of the trial court. When replying on the 2nd, 3rd and 8th grounds, Mr. Kabunga contended that the eleven exhibits tendered by the respondent proved the claim. He argued further that the appellant breached the contract because the same was expected to end on 1st November, 2015 but the appellant terminated it four months before the expiry date and without notice. Despite termination of the contract, the respondent continued to deliver the coffee to the appellant as indicate shown in the exhibits P4 and P5. Also, the respondent refunded the appellant Tshs. 40,532,000/=.

On the issue of counter-claim, the counsel for the respondent submitted that the appellant failed to prove the claim. The appellant failed to show the amount of coffee that was delivered by the respondent. That claim was therefore rejected by the trial court. Mr. Kabunga finally urged this court to

dismiss this appeal and uphold the decision and decree of the trial court because the case was proved to the required standard.

Mr. Innocent re-joined by reiterating the argument that the respondent's claim exceeded the jurisdiction of the trial court and there was a valid counter-claim against the respondent.

After hearing the submissions from the parties, it is evident that the submissions are centred on two issues. **First**, whether the trial court had jurisdiction to entertain the respondent's claim; second, whether the case was proved to the required standards. After going through the submissions and perusing the court file, I observed the following: It is not disputed that the parties entered into the contract for purchase of coffee. It is not contested that the appellant advanced money to the respondent for the purchase of the coffee. There is no doubt that the contract entered ended before its expiry.

The perusal of the respondent's plaint further reveals that the respondent prayed against the appellant for specific damages at the tune of Tshs. 255,069,500/=. He also claimed for general damages to be awarded at the discretion of the court. At the end, the trial court awarded to the respondent specific damages of Tshs. 255,069,500/= and Tshs. 10,000,000/= as general damages. Before this court, the counsel for the respondent argued that the trial court had jurisdiction over this matter because the claim for specific

damages stood at Tshs. 135,695,000/=. However, the counsel for the respondent did not prove his assertion. The perusal of the court file depicts that the allegation by the respondent's counsel was incorrect because the trial court awarded the general damages at the tune of Tshs. 10,000,000/=. The trial court was also satisfied that the respondent proved the specific damages of Tshs. 255,069,500/= that is where the issue of jurisdiction came into question. **Section 40 (2)(a) of the Magistrates Courts' Act Cap. 11 R.E 2019** confers original jurisdiction to the District Court and the Court of the Resident Magistrate. The section provides that:

***40 (2)** A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited-*

(a) N/A

*(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed **two hundred million shillings**.*

Based on the above provisions of the law, the trial court had no jurisdiction to determine this case because the respondent's claim was above two hundred million shillings. This matter of jurisdiction alone was sufficient to dispose of the appeal. I hereby allow the appeal, quash the proceedings and set aside the decision of the trial court. No order as to costs. It is so ordered.

Dated at Bukoba this day of 11th May, 2021.



Ntemi N. Kilekamajenga
Judge
11th May 2021

Court: Judgment delivered in the presence of the learned counsel for the respondent, Mr. Frank John (Advocate) and the appellant's principle officer.



Ntemi N. Kilekamajenga
Judge
11th May 2021