

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

AT BUKOBA

CIVIL APPEAL No. 8 OF 2020

(Arising from the District Court of Karagwe at Kayanga in Civil Case No. 13 of 2018)

JOHN SECIE KABAHOZE ----- APPELLANT

Versus

DR. CLEOPHACE C. BUTOTO ----- RESPONDENT

JUDGMENT

16/06/2021 & 16/06/2021

Mtulya, J.:

A plaint was registered at the **District Court of Karagwe at Kayanga** (the district court) in **Civil Case No. 13 of 2018** (the case) to determine a civil dispute of recovery of debt arising from a contract of the value of money specifically stated in the plaint as Tanzanian Shillings Fifteen (15) Million. During the hearing of the case, evidence in Exhibit A.1 was registered to substantiate the specific claim of Dr. Cleoplace C. Butoto (the Respondent) against Mr. John Secie Kabahoze (the Appellant).

However, at some stage before the commencement of the hearing of the case, the Appellant cited a defect with regard to jurisdiction of the district court in terms of pecuniary mandate and

raised a whistle by way of preliminary objection. The complaint was turned down by the district court. After full hearing of the case and decision of the district court, the Appellant rushed to this court and filed **Civil Appeal No. 8 of 2020** attached with six (6) grounds of appeal.

Today evening when the appeal was scheduled in civil session cases hearing, learned counsel Ms. Pilly Hussein appeared for the Appellant and quickly cited section 13 of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) and section 18 (1) (a) (ii) & (iii) of the **Magistrates' Courts Act** [Cap. 11 R.E. 2019] (the Act) and precedent of the Court of Appeal in **Tanzania China Friendship Co. Ltd v. Our Lady of Usambara Sisters** [2006] TLR 70 arguing that civil suits should start at the court of lowest level of jurisdiction competent to try them.

According to Ms. Pilly, in the present appeal, the case emanated from the claim of Tanzanian Shillings Eleven (11) Million which was supposed to be registered in the primary court with jurisdiction of adjudicating up to a claim of Tanzanian Shillings Thirty (30) Million. This submission was received well without any protest with the Respondent's learned counsel Mr. Fahad Omary who briefly

submitted that the district court erred in law and fact in failing to consider section 18 (1) (a) (iii) of the Act hence he supported the appeal in favor of the law in the Act and advised the case be filed in a proper and competent forum to try it.

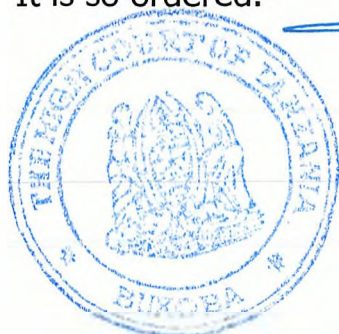
On my side, I agree with the learned minds. That is the law in the Code and Act. In the present appeal the record shows that on 18th September 2019 an Amended Complaint was filed in the district court and in its Fourth Paragraph displayed the value of money involved in the dispute being Tanzanian Shillings Eleven (11) Million. During the proceedings at the district court, a contract involving the parties signed on 29th December 2016 was admitted without any protest reflecting the value of the claim to be Tanzanian Shillings Eleven (11) Million.

The law in section 13 of the Code requires suits to be initiated at lowest court competent to try them and this law received the precedent in **Tanzania China Friendship Co. Ltd v. Our Lady of Usambara Sisters** (supra). As this dispute is on recovery of civil debt arising out of contract and the value of money is within Tanzanian Shillings Thirty (30) Million, it therefore falls within the law in section 18(i) (a) (iii) of the Act and was supposed to be registered and

determined at **Kayanga Primary Court at Kayanga**. It follows therefore that the district court erred in law to determine the dispute which is not in its jurisdiction.

Having said so, and considering the cited provisions of the statutes and precedent, this court decides to set aside proceedings, any orders and quash decision of the district court in the case. I award no costs in the present appeal as the Respondent's learned counsel supported the appeal and the dispute is not yet determined to its finality on the rights and wrongs of the parties. Each party shall bear its own costs.

It is so ordered.



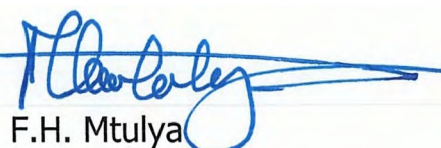

F.H. Mtulya

Judge

16.06.2021

This judgment was delivered in chambers under the seal by this court in presence of Ms. Pilly Hussein for the Appellant and Fahad Omary for the Respondent.




F.H. Mtulya

Judge

16.06.2021