

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 222 OF 2019**

(Arising from Civil Revision No. 15 of 2014 of Temeke District Court and Originating Civil Case No.101 of 2013 of Mbagala Primary Court)

**SAID MUSSA MAKOLELA .....APPELLANT**

**VERSUS**

**LILIAN JOHN MOSHA.....1<sup>st</sup> RESPONDENT**

**SAMUL MOHAMED CHALLA.....2<sup>nd</sup> RESPONDENT**

**FLAMINGO AUCTION MART & COURT BROKER.....3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

**MRUMA,J.**

This is an appeal against the decision of the District Court of Temeke at Temeke in Civil Revision No.15 of 2014. In that Revision the present appellant Said Musa Makolela sought the Judgment and decree of Mbagala Primary Court in Civil Case No. 101 of 2013 be revised. On the ground that despite the fact that the matter was heard in his absence in his absence (and therefore ex- parte), but the records of proceedings showed that he was marked as present. Further to that the Appellant

complained that there were unjustifiable changes of dated of hearing from 2<sup>nd</sup> October 2013 which was scheduled on 6<sup>th</sup> September 2013 to 25<sup>th</sup> September 2013 when the matter was actually heard.

In its ruling dated 21.9.2015, the District Court admitted that there was a change of scheduled date from 2<sup>nd</sup> October 2013 which scheduled as date for mention to 25<sup>th</sup> September 2013 when it was heard, there was no prejudice because both parties were present. The Court went ahead to dismiss the Revision on the following words.

*“Finally, I would say I have gone through the file and I have not seen any procedural irregularly as argued by the appellant and so this appeal is hereby dismissed. Each party to bear the costs”*

The Appellant was aggrieved and has appealed to this court on the following grounds.

1. That the Honourable Magistrate erred in law and fact for failure to consider that the Primary Court heard the case of which legally it had no pecuniary jurisdiction to determine.

2. That the honourable Magistrate grossly erred in Law and fact for failure to consider that the primary court illegally ignored to inquire the meaning of satisfying the decision after pronouncing the Judgment.
3. That generally the honourable Magistrate failed to examine the covertness legality or propriety of the decision of the trial Court.

At the hearing of this appeal parties (ie the Appellant) and the 1<sup>st</sup> Respondent) Lilian John Mosha appeared in person. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents namely Samuli Mohamed Challar and Flamingo Auction Mart & Court Brokers did not enter appearance. The 2<sup>nd</sup> Respondent who had entered appearance on 29.6.2020 and informed the court that he was not a party to the proceedings because he was a mere bonafide purchaser, and the third Respondent who was by order this court dated 29.6.2022 served by substituted service by publication in Uhuru Newspaper of 9<sup>th</sup> July 2020 at page 22, were not present when the matter was called for hearing before me on 27.4.2022 and a scheduling order for presentation of written submissions was made. That notwithstanding the second Respondent filed a written submission drawn by Mr. Evarist Martine

learned advocate of Ess Creative and Legal Foundation. The 1<sup>st</sup> Respondent filed her submission through Women's Legal Aid centre [WLAC] and the Appellant was getting legal aid from the Juristic Assistance and Social Development Tanzania (JASODT) who filed written submissions in his behalf.

Submitting in support of his appeal the appellant contended that the learned District Resident Magistrate erred in law for his failure to find that the trial primary court had no jurisdiction to entertain the 1<sup>st</sup> Respondent's claim of Tshs 32,000,000/= as such the trial Primary Court entertained a matter without having jurisdiction.

The Respondents did not dispute the fact that the 1<sup>st</sup> Respondent's claim was Tsh 32,000,000/= (say Thirty two Million shillings) while pecuniary Jurisdiction of preliminary Court at the time this case was instituted, heard and determined was a Tshs 3,000,000/= according to section 18(1) (a) (iii) of the Magistrates Courts Act. However it is the 2<sup>nd</sup> Respondent's contention that general damages cannot and do not form the basis of determining the court's pecuniary jurisdiction. He added that substantive specific and /or liquidated damages do. He cited as authority the case **of Tanzania China Friend Ship and Textiles Co Limited Vs Our Lady of the Usambara Sisters Civil Appeal No. 84**

**of 2002 CAT** (unreported). The second Respondent conceded that from the plaint filed the Appellant's claims were in the form of general damages.

On his part the first Respondent submitted that he instituted a Civil suit (ie Civil Case No.101 of 2013) in the Primary Court of Mbagala for recovery of Tshs 34,000,000/= which arose from a contract entered for borrowing money between the him and the Appellant. He submitted to the effect that because the Appellant admitted to be indebted to the 1<sup>st</sup> Respondent he can not be heard complaining about pecuniary jurisdiction of the trial court.

Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties and pass judgment or order. Section 18(1) (a) (iii) of the Magistrates' Courts Act [cap 11 RE2019] provide that;

*A primary Court shall have and exercise jurisdiction in all proceedings of a Civil nature for recovery of any Civil debt arising of out of contract if the value of the subject matter of the suit does not exceed thirty million shillings and in any proceedings by way of counter – claim and set off therein of the same nature not exceeding such value."*

This is the current pecuniary jurisdiction of a primary court after the 2016 amendments. Pecuniary Jurisdiction of a court is a limitation powers of a court by the value of the subject matter issue.

Jurisdiction is key question for the court which goes to the root of the case and decide the fate of the matter either at preliminary state or on merits. If any order is passed without authority or jurisdiction it becomes a nullity and not enforceable by law.

In her claim lodged before Mbagala Primary Court the 1<sup>st</sup> Respondent claimed for Tshs 32,000,000/= being the outstanding amount on the account of a loan she gave to the Appellant. The record of the trial court indicates that when the matter was called before a Magistrate for the first time on 2.7.2013 court observed that:

*" Tarehe 2.7.2013*

*Mbele yangu: M Nangwalanya- Hakimu*

*Washauri : (1) Sijaona*

*: ( 2) Lilian*

*Mdai : Yupo*

*Mdaiwa : Hayupo*

*Amri: M. Tarehe 11.7.2013 kuitwa*

*shaurini itolewe kwa mdaiwa.*

*On. 11.7.2013 the matter was called as scheduled and this is what transpired:*

*Tarehe 11.7.2013*

*Mbele yangu: M. Nangwalanya – Hakim*

*Washauri : (1) Sijaona*

*: (2) Lilian*

*Mdai : Yupo*

*Mdaiwa: Yupo*

*DAI : Fedha Shs 32,000,000/=*

*MDAIWA: Amesomewa dai lake nae anajibu*

*ni kweli nadaiwa shs 32,000,000/=*

*Sahihi ya Mdaiwa.*

*MDAI: Ni kweli namdai shs 32,000,000/=*

*VIINI VYA MADAI*

*AMRI: M. 15.8.2013"*

The matter was called for hearing on 25.9.2013, though initially it was scheduled to come for mention on 2.10.2013 and no reason was recorded for the rescheduling and early hearing of the matter. On that day the 1<sup>st</sup> Respondent is on record telling the trial court thus;

*“ ..... Mdaiwa alimkopa fedha kwa ajili ya biashara tarehe 18.9.2012 Shs 32,000,000/= alichukua fedha hizo kwa awamu mbili na alichukua fedha hizo mbele ya wake zake wawili. Alivyo chukua fedha awamu ya kwanza alidai kuchukua mzigo lakini aliomba nimuongeze tena fedha shs 3,000,000/= Jumla ya fedha ninazomdai ni Shs 26,000,000/=hizo zimezaa kufikia shs 32,000,000/= Alinipa hati ya nyumba kwa maandishi alidai kuwa akishindwa kulipa nyumba iuzwe.”*

From the record of the trial court, it is clear that the 1<sup>st</sup> Respondent's claim was for recovery of a loan granted to the Appellant. It was not a claim for general damages as the 2<sup>nd</sup> Respondent would love this court to believe. General damages are different animal. They encompass those damages which cannot be mathematically assessed at the date of trial and they are claimed predominantly for personal injuries for instance, suffered and loss of business reputation etc. Recovery of a loan does not fall under the head of general damages.



Be it as it may, the Mbagala Primary Court had no jurisdiction to entertain a claim of Tshs 32,000,000/=. The pecuniary Jurisdiction of a primary court before the 2016 amendments of section 18(1) of MCA was Tshs three Million. Thus, the Primary Court exercised jurisdiction not vested in it by law. It acted illegally and all the proceedings ensued therefrom are therefore a nullity.

That point alone is sufficient to dispose of this appeal in Appellant's favour. But there are other irregularities which were complained of but the District Court didn't address them. The rescheduling of the case for early hearing without assigning reasons the legality and enforceability of a loan agreement where it would appear that an interest rate of 50% per month were chargeable (see pg 2 of the typed proceedings of the trial court where the Respondent is quoted saying thus;

*" aliweka nyumba yake kama dhamana  
walikubaliana Shs 2,000,000/= riba  
yake shs 1000,000/=*

All these are matters which ought to have been investigated by the District Court on revision. The District court did not do that. That was an error.

For all what has been said I allow the Appellant's appeal. The proceedings of the Mbagala Primary Court were illegal and therefore null and void. I accordingly quash and set aside all the proceedings and ensuing order of Mbagala Primary Court in Civil Case No. 101 of 2013. The ensuing and consequential orders which arose from these proceedings are also quashed and set aside as they originated from proceedings, decision and orders which were illegal and nullity. The 1<sup>st</sup> Respondent has the right to institute a fresh suit to claim the money she lent to the Appellant. Similarly the 2<sup>nd</sup> Respondent may claim from the 1<sup>st</sup> Respondent for refund of the purchase price (if at all he purchased) the house as he alleges.

The Appellant is awarded costs here and below.



  
A. R. Mruma

**Judge**

**27/5/2022.**

**27/5/2022**

Coram: Hon. A.R. Mruma]

For the Appellant: Present in person

For the 1<sup>st</sup> Respondent: Present in person

For the 2<sup>nd</sup> Respondent: Present in person

For the 3<sup>rd</sup> Respondent: Present in person

Cc: Delphina

**Court:**

Judgment delivered in presence of the Appellant, the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent in person but in absence of the 3<sup>rd</sup> Respondent this 27<sup>th</sup> day of May 2022.

R.A. Explained.



A handwritten signature in blue ink, appearing to read "A.R. Mruma".

A.R. Mruma

**Judge**

**27/5/2022.**