

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

CIVIL APPEAL NO. 48 OF 2021

(Arising from Civil Case No. 64 of 2020 at the Resident Magistrate's Court of Arusha at Arusha)

RACHEL HENLY KANYENYE APPELLANT

Vs

CRDB BANK PLC..... 1ST RESPONDENT

CITY LAND CO.LTD2nd RESPONDENT

JUDGMENT

Date of last Order: 9-6-2022

Date of Judgment: 23-6-2022

B.K.PHILLIP,J

Aggrieved by the decision of the Resident Magistrates' Court of Arusha at Arusha, the appellant herein lodged this appeal on the following grounds;

- i) That, the trial Magistrate erred in law when she raised and argued the issue of jurisdiction and determined it suo motu without affording the parties an opportunity of being heard and consequently adjudged in favour of the respondents.*
- ii) That, in the alternative the Magistrate erred in law and fact in dismissing the said suit with costs.*
- iii) That, had it been that trial Court determined the matter on merits with evidence available she would have decided the matter in*

favour of the appellant and given an order for rescheduling and or giving new arrangement for the said loan.

The learned Advocate Duncan Joel Oola and Moses Mbandu appeared for the appellant and the respondents respectively. When this appeal was called for hearing Mr. Mbandu informed this Court that the respondent is not contesting the appeal. He was of the view that the trial Magistrate erred in law to raise the issue on the Court's Jurisdiction *suo motu* and determine it without according the parties opportunity to be heard. Thus, I ordered Mr. Duncan to file written submission in support of the appeal.

With regard to the first ground of appeal, Mr. Duncan's submission was to the effect that the trial Magistrate erred in law to determine the issue of jurisdiction which she raised *suo motu* without according the parties opportunity to address her on that issue. He contended that the provisions of Order XIV Rule 5 of the Civil Procedure Code ("CPC") gives powers to the Court to frame new or additional issues apart from the ones framed at the beginning of the case, but the law requires that if the trial Magistrate/ Judge frames additional issues he/she has to accord the parties opportunity to be heard in respect of the new issue so framed. To cement his argument he cited the case of **Charles Christopher Humphrey Kombe t/a Kombe Building Materials Vs Kinondoni Municipal Council , Civil Appeal No. 19 of 2019 ,** (unreported) and **Wegesa M. Nyamaisa Vs Chacha Muhogo, Civil Appeal No.161 ,** (unreported) , in which the Court of Appeal said the following;

" In the instant appeal we are minded to re-assert the centrality of the right to be heard guaranteed to the parties where Courts while composing their decision , discover new issues with jurisdictional implications. The way the first appellate Court raised two jurisdictional matters suo motu and determined them without affording the parties an opportunity to be heard had made the entire proceedings and judgment of the High Court a nullity , and we hereby declare so"

Mr. Duncan abandoned the second ground of appeal. Submitting for the third ground of appeal, he argued that since the parties had given their evidence the trial magistrate was required to evaluate the evidence adduced by the parties and determine the case on merit. The appellant had clearly proved her case. The respondent Bank did not issue the 60 days mandatory notice as per section 127 (2) (d) of the Land Act, Cap 113 R.E 2019. To cement his argument he cited the case of **The Registered Trustee of African Inland Church Tanzania Vs CRDB Bank Plc and three others, Commercial Case No. 7 of 2017**, (unreported). Mr. Duncan made the following prayers; That the appeal be allowed, the Judgment of the Resident Magistrates' Court be set aside and the case file be remitted to the trial Magistrate for composition of a fresh judgment.

I have perused the lower Court's records. It is apparent on the judgment of the lower Court that the trial Magistrate raised an issue on whether or not the trial Court had jurisdiction to adjudicate the plaintiff's case and her decision is solely based on that issue. She ruled out that the trial Court had no Jurisdiction to entertain the case and proceeded to dismiss it with costs. As correctly submitted by Mr. Duncan, the

Court's records reveal that the trial Magistrate did not accord the learned advocates opportunity to address her on the new issue she raised *suo motu*. That is a clear violation of the law, in particular the parties' right to be heard. The learned trial Magistrate was obliged to accord the learned advocate opportunity to address her on issue she raised *suo motu* before composing her judgment. No wonder the advocate for the respondents was of the view that the appeal has merit.

Under the circumstances, I hereby set aside the judgment of the trial Court and order that the case file should be remitted to the trial Court before the same trial Magistrate for composition of a fresh judgment after hearing the parties on the issue of jurisdiction. I give no order as to costs, since the advocate for the respondents did not contest the appeal.

Dated this 23rd day of June 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip".

B.K.PHILLIP

JUDGE