

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

CIVIL APPEAL NO. 10 OF 2021

(Originating from the decision of the Court of the Resident Magistrate of Mwanza at

Mwanza in Civil Case No. 66 of 2019)

ACCESS BANK TANZANIA LTD.....APPELLANT

VERSUS

JOSEPH MAGESA CHILAYE.....RESPONDENT

JUDGMENT

15/12/2021 & 15/03/2022

F. K. MANYANDA, J.

The Appellant, Access Bank Tanzania Ltd, has been distressed by a decision of the Court of the Resident Magistrate of Mwanza at Mwanza dated 3/9/2020 by Hon. G.K. Sumaye, Senior Resident Magistrate.

The said appellant has raised a total of four grounds of appeal namely: -

- i. That the learned trial Magistrate erred in law by entertaining the suit without being clothed with jurisdiction;*
- ii. That the learned trial Magistrate erred in law and facts by awarding the Respondent the sum of Tshs. 1,300,000/= damages per month from the date of seizure of the motor vehicle to the*



date of judgment which was not specifically pleaded by the Respondent;

- iii. That, the learned Magistrate erred in law and facts by not considering the weight of evidence adduced by the Appellant/and or failure to make critical analysis of evidence adduced by the Applicant; and*
- iv. That, the learned trial Magistrate erred in law and facts by deciding that attachment and sale of the motor vehicle T. 462 CMN, Toyota Noah by the Appellant was lawful while the Appellant never conducted any attachment and sale of the motor vehicle in question.*

The background of this case is that on 25/2/20214 the Respondent Joseph Magesa Chilaye, obtained a loan of Tshs. 20,000,000/= from the Appellant, Access Bank (T) Ltd, to secure the loan the Respondent mortgaged two motor vehicles with Registration, Numbers T. 894 AUQ, Toyota Hiace and T.462 CNM, Toyota Noah. He also mortgaged an auto spare parts retail shop situated at Nyakato Market Area in Mwanza City.

It turned out, as contended by the Appellant, that the Respondent failed to service the said loan as agreed. However, the Respondent contends that he completed servicing the said loan. The respondent contends

further that the Appellant attached and sold the motor vehicle Noah make without there been any proclamation. Hence, the Appellant denied him earning of Tshs. 1,300,000/= per month that he used to obtained from a school which had hired the same to transport its students. The Appellant denied the allegations of attachment and sell as well as the alleged loss. As a result of the dispute, the Respondent filed this civil suit.

The trial court found in favour of the Respondent ordering the Appellant to pay the Respondent value of the Noah, being Tshs. 14,000,000/= and special damages of Tshs. 1,300,000/= per month from date of seizure to date of judgment with an interest of 12% commercial rate from suit filing date to judgment and at a rate of 12% of the principal sum from date of judgment to full settlement date and costs of the case.

As a result, the Appellant decided to knock the doors of this Court in this appeal.

Hearing was ordered by this court to be conducted by way of written submissions which the parties complied. The submission by the Appellant were drawn and filed by Mr. Patrick Suluba Kinyerero, learned



Advocate and for the Respondent were drawn and filed by Mr. Jackson Marwa Ryoba, learned Advocate.

Mr. Kinyerero started his submissions in support of the first ground arguing that the trial court was not clothed with jurisdiction in that the pecuniary value of the subject matter before it was Tshs. 14,000,000/= which is well within the jurisdiction of a primary court. The counsel was of the views that failure by the Respondent to reveal the pecuniary value of the subject matter as required by order VII Rule 1(i) of the **Civil Procedure Code**, [Cap. 33 R. E 2019], hereafter referred to as "the CPC", made the plaint fatally defective.

To bolster his argument, he cited the cases of **Benja John Botto and 2 others vs Umoja wa Wafanyabiashara ndogondogo Mailimoja**, Civil case No. 157 of 2018 where it was held by this Court that district courts cannot entertain cases of which value of the subject matter fall under the pecuniary jurisdiction of primary courts. The Counsel was of the views that issues of pecuniary jurisdiction are fundamental which are supposed to be ascertained at the earliest stage of the trial. He cited the case of **MIC (T) Ltd vs Hamisi Mwinyijuma and Another**, Civil Appeal No. 112 of 2019 (unreported) where this Court, Hon. De-Mello,



Judge stated that it is risky and unsafe for a court to proceed on the assumption that it has jurisdiction.

In respect of the second ground Mr. Kinyerero submitted that the damages of Tshs. 1,300,000/= was not specifically pleaded. Moreover, the Respondent didn't tender any document to prove the same. The Counsel was of the views that it was not justified for the trial court to award the specific damages which was not proved. He cited the case of **Anthony Ngoo and another vs Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported), **Zuberi Augustino vs Anicent Mugabe** [1992] TLR 137 and **Tanzania – China Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters** [2006] TLR 70.

Then the Counsel argued grounds 3 and 4 jointly that the trial magistrate failed to consider the weight of the evidence adduced by the Appellant and equally erred to hold that attachment and sale of the Noah Motor vehicle was lawful, while the Appellant never conducted attachment and sale of the same. The Counsel argued that the Respondent failed to prove that the Appellant did attach the motor vehicle in question and sell the same. It was his views that the allegation by the Responded is mere speculation which is not evidence.



He prayed the appeal to be allowed with costs.

On his side, Mr. Ryoba submitted opposing the appeal arguing in respect of the first ground that the Court of the Resident Magistrate was clothed with jurisdiction to try the case. The Counsel gave reasons conceding that section 18(1)(a)(iii) of the **Magistrates' Courts Act**, hereafter referred to as "the MCA" categorizes jurisdiction based on pecuniary value of the subject limiting it to maximum of Tshs. 30,000,000/= in respect of movable properties to primary courts. The Counsel pointed out also that section 13 of the CPC equates district courts and courts of the resident magistrate into one level and at the same time requires suits to be filed in the court of the lowest grade. Moreover, the Counsel pointed out that section 40(2) of the MCA empowers a District Court and a Court of the Resident Magistrate to entertain a suit of which jurisdiction is not specifically barred by other laws in which the pecuniary value does not exceed Tshs. 200,000,000/=.

The Counsel observed that since this section does not provide a minimum amount when read together with section 41(1) of the MCA that empowers the District Court and the Resident Magistrate's Court to have original jurisdiction, then the said courts have jurisdiction to



entertain suits of which subject matter value fall under the jurisdiction of primary courts. He cited the case of **Mkerenge Horera vs Abdul Ally Mbonde and 2 others**, Civil Appeal No. 6 of 2017 where this court held that both a District Court and a Court of the Resident Magistrate can handle cases whose pecuniary value fall under jurisdiction of Primary courts.

The counsel, therefore, meant that in those circumstances the primary courts, the district courts and courts of the resident magistrate have concurrent jurisdiction in civil cases.

In regard to the second ground of appeal, the Counsel argued that the trial court was right to order specific damages of Tshs. 1,300,000/= per month from the date of seizure of the Noah motor vehicle to the date of judgment.

The Counsel submitted that specific damages were specifically pleaded and the same were proved. He pointed out the facts in paragraphs 8, 10(v) and 12(ii) which contain pleadings on specific damages. Then the Counsel distinguished the cases.



As to the third and fourth grounds, Mr. Ryoba submitted that the evidence by the Respondent is weightier than that of the Appellant. The Counsel went on analysing the evidence tendered by the Respondent (who was the Applicant in the trial court) that the Respondent tendered the contract for loan and the receipt evidencing loan repayment and a release document for the collateralized security of only one motor vehicle with registration of T. 894 AUQ make, Toyota Hiace. While PW1 led evidence that the motor vehicle snatched by the Appellant was never returned to date.

He cited the case of **Francis Kidanga vs Kilimanjaro Fast Ferries Ltd**, Revision No. 668 of 2019 where this court dismissed an application, for lack of merit because the applicant consented to his deeds therefore, became estopped from denying the same. He prayed the appeal be dismissed.

Those were submissions by the counsel of both parties, it is my turn to determine this matter. In the first place I appreciate the well-researched works by the Counsel for both sides, it has eased the work of this Court of determining this appeal. Moreover, I sincerely register my apology for

late delivery of this judgement, the causes of delay were out of my control.

Let me start by determining the controversy in the first ground since it questions the jurisdiction of the Court of the Resident Magistrate which tried the original case and I will be referring to it as "the trial court".

It has been argued by the Counsel for the Appellant that the trial court lacked jurisdiction because, per Section 18(1)(a)(iii) of the MCA, the subject matter value being of Tshs. 14,000,000/= falls well within the pecuniary jurisdiction of a primary court. This is also per the authority in the case of **Benja John Botto and 2 Others (supra)**.

The Counsel for the Respondent, Mr. Ryoba, concedes on the provisions of section 18(1)(a)(iii) of the MCA that it sets pecuniary jurisdiction limits of subordinate courts being Tshs. 30,000,000/= for movable properties to be triable by primary courts.

However, Mr. Ryoba quickly pointed out that there is an exception to the principle under section 18(1)(a)(iii) of the MCA. Mr. Ryoba observed that section 13 of the CPC when read together with section 40(2) of the MCA equate the district court and the court of the resident magistrate by providing that a suit may either be filed in either of them provided the



subject matter value does not exceed Tshs. 200,000,000/=. Mr. Ryoba also argued that since section 40(2) does not provide minimum pecuniary amount, then, when read together with section 41(1) of the MCA, the district court and the court of resident magistrate have original jurisdiction to hear a case which fall within the primary courts pecuniary jurisdiction.

In my understanding, Mr. Ryoba's argument is that the district court and the court of the resident magistrate enjoy concurrent pecuniary jurisdiction in original jurisdiction cases; in my considered views, that construction tend to make the provisions of section 18(1)(a)(iii) of the MCA redundant. Was that the intention of the legislature?

In my firm opinion the answer is in negative. The principle enshrined in section 18(1)(a)(iii) of the MCA is very clear that it sets out a demarcation of jurisdiction between a primary court on one hand and the district courts/court of the resident magistrate on the other hand based on the pecuniary value of the subject matter thereby setting grades of jurisdiction from the highest, that is, the High Court, the middle being the District Court and the Court of the Resident Magistrate and the lowest is the Primary Court.

and the Court of the Resident Magistrate on one hand, and the primary courts on the other hand, have concurrent original jurisdiction as argued by Mr. Ryoba due to lack of minimum pecuniary value of the subject matter. However, the former courts, that is, the District Court and the Court of the Resident Magistrate enjoy their jurisdictions under quite different procedures provided by different laws. While the District Court and the Court of the Resident Magistrate are governed by the provisions of section 13 of the CPC, the primary courts are not. Section 13 clearly provides that every suit is to be mandatorily filed in a court of lowest grade, save for the High Court which have unlimited jurisdiction.

What is a court of lowest grade? As stated above, according section 18(1)(a)(iii) of the MCA, it is the primary court. It follows therefore that the Court of the Resident Magistrate is not clothed with jurisdiction to try a case which falls within pecuniary jurisdiction of primary courts, which is a court of the lowest grade.

I am not alone on this position, my brother Hon. I. C. Mugeta, Judge in the case of **Denja John Botto and 2 Others vs. Umoja wa Wafanya Biashara Ndogondogo Mailimoja**, Civil Appeal No. 157 of 2018 was faced with an issue akin this one where he stated as follows: -



"I beg to, respectfully depart from this holding of my learned brother. The following are my reasons Firstly, indeed the MCA does not set the minimum limit jurisdiction of district courts. However, while the MCA provides for the pecuniary jurisdiction of district courts, procedures for exercising such jurisdiction are provided in the CPC. Therefore, district courts and for that matter resident magistrate courts can exercise jurisdiction conferred by the MCA subject to the limitation imposed by the CPC."

The Honourable judge after quoting *in extenso* the provisions of section 13 of the CPC concluded in the following words: -

"It follows therefore that legally, only the High Court has general jurisdiction."

The same position was discussed by Hon. Dr. Twaibu, Judge, as he then was, in the case of **Lihetu AMCOS vs. Hassan Maulid**, (DC) Civil Appeal No. 02 of 2018 (unreported) where he discussed a question whether a district court and or the court of the resident magistrate enjoys the same general jurisdiction as the High Court due to absence of minimum pecuniary amount in section 40(2) of the MCA and introduction of the proviso to section 13 of the CPC by the Written Laws

(Miscellaneous Amendments) Act No. 4 of 2016, which disapplied section 13 to the High Court, he stated as follows: -

"In my considered view they cannot. If the legislature wished to extend that proviso to subordinate courts. As the wording currently stands, the general rule is that subordinate courts cannot entertain civil cases where the value of the subject matter is within the pecuniary jurisdiction of the primary courts."

The Counsel for the Appellant cited a case of **Mkerenge Horera Rashid vs Abdul Mbonde and 2 Others (supra)** where this Court, Hon. Amour S. Khamis, Judge, held at page that: -

"My take of section 40(2)(b) of the MCA is that it empowers a district court and a court of the resident magistrate to entertain civil cases whose jurisdiction is not barred by other written laws... and the value of the relevant subject matter does not exceed Tshs. 200,000,000/=."

The Honourable Judge gave a reason that the said section does not set a minimum figure. He compared it with section 18(1)(a)(iii) of the MCA which gives primary courts the jurisdiction in civil cases where the subject matter does not exceed Tshs. 30,000,000/= and went on holding as follows:



"The provision has not empowered a primary court to entertain such a suit at the exclusion of all other courts and specifically district court or a court of the resident magistrate. In such a case, in my view, is that a court of the resident magistrate or a district court can handle civil cases whose pecuniary value can also be handled by primary court. In other words, other exceptions considered, courts of a resident magistrate and district courts have concurrent jurisdiction with primary courts in civil cases whose value of subject matter is below fifty million or thirty million depending whether the subject matter is movable or immovable."

With due respect, for reasons I have given above, I am not ready to associate with that construction of sections 18(1)(a)(iii) and 40(2) of the MCA, because those provisions have to be read together with Section 13 of the CPC which provides for general jurisdiction to the High Court only.

In the instant matter, from this premise, I find that the Court of the Resident Magistrate of Mwanza lacked jurisdiction to entertain Civil Case No. 66 of 2019; the proceedings, judgement and decree thereof were a nullity.

Having found that the trial court lacked jurisdiction to entertain the case which gave rise to this appeal and that the proceedings, judgement and

decree thereof were a nullity, I find no need of proceeding with determination of the rest of grounds, as this ground disposes of the appeal.

Consequently, I do hereby allow the appeal, quash the said proceedings, judgement and set aside the decree thereof. Costs to be borne by the Respondent. It is so ordered.




F. K. MANYANDA

JUDGE

15/03/2022