

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

(PC) CIVIL APPEAL NO. 59 OF 2022

(Originating from Civil Case No. 428 of 2019 of Bukoba Urban Primary Court and arising from Misc. Civil Appeal No. 8 of 2020 of the District Court of Bukoba)

AMANI ENGLISH MEDIUM PRE AND SEC. SCHOOL.....APPELLANT

VERSUS

SADIQAL JAFFARALI (VISRAM AND SON).....RESPONDENT

JUDGMENT

22nd August & 24th August 2022

Kilekamajenga, J.

The respondent had an agreement with the appellant of shuttling students from Bukoba to Kigoma during the leave. The agreement started in 2009 until in 2015 and the appellant continued to pay the costs of transporting the students as agreed. In 2013, the appellant owed the respondent Tshs. 4,706,000/= as costs of transporting students as per their agreement. Sometimes in 2015, the appellant requested the bill for an outstanding debt and was given through a dispatch. However, the appellant did not clear the debt despite offering empty promises. In 2019, the respondent sued the appellant in the Urban Primary Court of Bukoba claiming the payment of the outstanding debt of Tshs. 4,706,000/=.

After the full trial of the case, the Primary Court was convinced that, the respondent proved the case on the balance of probability and ordered the appellant to pay the debt in ten instalments i.e. Tshs. 470,600/= each month.



The decision of the Primary Court was delivered on 12th February 2020 and the copy of judgment was ready for collection on the same date. On 08th May 2020, through the legal services of the learned advocate, Mr. Chamani, the appellant filed an application for extension of time in the District Court of Bukoba. In the application for extension of time, the counsel for the appellant, alleged illegality as the major reason to warrant extension of time. The application was dismissed, hence this appeal.

In faulting the decision of the District Court, the appellant, again through the legal services of the learned advocate, Mr. Chamani advanced three grounds of appeal thus:

1. *That, the learned magistrate erred in law to dismiss the application for leave to appeal (sic) by finding that there is no good cause to grant the same whereas there were illegalities in the trial court's proceedings and judgment as:*
 - i. *The trial court's want of jurisdiction for deciding the suit which is not covered under customary law;*
 - ii. *The testimony of the 'representative' without the donor's evidence, that is, hearsay evidence (sic);*
 - iii. *Admission of documents without payment of stamp duty;*
 - iv. *Want of locus standi of the respondent being an artificial person (sic) to sue without justifying its legal entity;*
 - v. *Whether the appellant has a legal entity to be sued in the court of law.*

2. *That, the learned magistrate misdirected herself in law to rely heavily on the submission of the counsel for the respondent without testing the same with that of the appellant's counsel.*
3. *That, the appellant is desirous to pursue her right according to the requirement of the law.*

Despite the fact that it was difficult to comprehend and grasp what the appellant was trying to bring to the attention of this court, for the interest of justice, the court invited the parties to defend the case. The appellant was represented by the learned advocate, Mr. Chamani whereas the learned advocate, Mr. Lameck John Erasto appeared for the respondent. In expounding the grounds of appeal, Mr. Chamani confined the discussion on the illegality as the reason for extension of time. Despite his haphazard presentation on the ground, the court finally grasped two points thus, the parties are not legal entities hence they cannot sue or be sued. Also, even if they are legal entities, the respondent's claim could not be filed in the Primary Court because legal entities are governed by the Companies Act.

Mr. Lameck for the respondent insisted that the respondent is a legal person trading as Sadiqali Jaferall Visram and Sons. He objected the allegation that, the respondent's witness gave hearsay evidence because the respondent is a registered entity. He further argued that, under rule 13 of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules, a firm can sue in the Primary Court so long as the claim is based on a debt. The appellant is also a registered entity

under section 24 of the Education Act, it can therefore sue or be sued in its own name. He stressed further that, the Primary Court did not occasion an irregularity. Therefore, the appellant had no sufficient reason for the delay and the appeal should be dismissed with costs.

The rejoinder submission from Mr. Chamani insisted that, both the appellant and respondent are not registered entities something which occasioned an illegality to warrant extension of time.

What seems to be apparent in this appeal is whether the appellant had good reasons to warrant the District Court enlarge time for the appellant to file the appeal. In the application for extension of time before the District Court, the appellant alleged illegality both in the judgment and proceedings of the trial court. However, the alleged illegality did not satisfy the court to grant extension of time. The application for extension of time was denied hence this appeal. Again, before this court, Mr. Chamani for the appellant insisted that there are illegalities in the proceedings and decision of the trial court. For instance, he argued that for the civil claim to be tried by the Primary Court, such a claim should either fall under customary law or Islamic law. Alas, the learned counsel might have not carefully considered **section 18 of the Magistrates' Courts Act, Cap. 11 RE 2019** or he simply heard such a section from other people and never read it. For academic reasons and further discussion, the section reads:

18.-(1) A primary court shall have and exercise jurisdiction

(a) in all proceedings of a civil nature-

(i) where the law applicable is customary law or Islamic law: Provided that no primary court shall have jurisdiction in any proceedings of a civil nature relating to land;

(ii) for the recovery of civil debts, rent or interests due to the Republic, any district, city, municipal or town council or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed fifty million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value;

*(iii) **for the recovery of any civil debt arising out of contract,** if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and*

(b) in all matrimonial proceedings in the manner prescribed under the Law of Marriage Act.

(c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act;

(d) in all proceedings in respect of which jurisdiction is conferred on a primary court by any other law; and

(e) in all proceedings in which the Attorney General's right of audience is excluded.

(2) The Chief Justice may, by order published in the Gazette, confer upon a primary court jurisdiction in the administration of deceased's estates where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, save as provided in subsection (1) of this section, Islamic law.

(3) The Minister may, by order published in the Gazette, add to the First Schedule jurisdiction to administer or enforce any provision of any law which a district court has jurisdiction to administer or enforce (other than any such provision in respect of which jurisdiction is conferred on a district court only when held by a civil magistrate), and may amend or replace the same accordingly.

To put the above provision of the law in a simplified language, the primary court has both civil and criminal jurisdiction. In civil jurisdiction, the Primary Court has jurisdiction to try any civil matter where the law applicable is customary or Islamic law; it has jurisdiction to determine any civil claim for recovery of civil debt, rent or interest due to the Republic, District, City, Municipal, town council or town authority. Also, the Primary Court may try any civil case for recovery of civil debt arising out of contract. The Primary Court has jurisdiction to try any matrimonial disputes whether the marriage was contracted under civil, customary, Islamic or Christian rites. See, **section 76 of the Law of Marriage Act, Cap. 29 RE 2019**. Furthermore, the Primary Court has criminal jurisdiction to try all offences under the Penal Code which are listed in the first schedule to the Magistrates' Courts Act. Also, the Primary Court has jurisdiction to try any other matter vested to it by any other law. It is therefore, too irrational and misleading to the court and the public at large to anchor an argument suggesting that the Primary Court cannot try any civil debt unless and until such civil claim falls under customary law or Islamic law.

In the petition of appeal, Mr. Chamani further argued that the witness for the respondent adduced hearsay evidence because the respondent did not appear to testify. In other words, according to Chamani, where a party does not appear, his/her witness who appears in court will have no direct evidence but hearsay testimony. Again, this being the court of record and for academic reasons, I am obliged to assist the counsel and other public members on what amounts to hearsay evidence. The doctrine of hearsay evidence may be easily understood after grasping the doctrine on direct evidence in oral testimonies. In Tanzania, the doctrine on direct evidence in oral testimonies derives from **section 62 of the Evidence Act, Cap. 6 RE 2019** thus:

- 62.-(1) Oral evidence must, in all cases whatever, be direct; that is to say-*
- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*
 - (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*
 - (c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*
 - (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion or, as the case may be, who holds it on those grounds:*

Provided that, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

(2) If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

Again, for simplicity and understanding, according to the above provision of the law, oral evidence only becomes direct when it is given by a witness who either saw, heard or perceived the thing by his/her senses. If the evidence is based on an expert's opinion, such an opinion must be given by the person who holds the opinion. If the witness testifying did not see, hear or perceive by his/her own senses, or where an expert opinion is not given by the maker of such an opinion, such evidence becomes second hand information or rather hearsay evidence. Hearsay evidence is not, as a general rule, admissible in court unless such evidence falls under the exceptions provided by the law. See, for instance **section 34 of the Evidence Act**. Collins Online English Dictionary defines hearsay evidence as '*evidence based on what has been reported to a witness by others rather than what he she has observed or experienced (not generally admissible as evidence)*.' It was therefore a misconception to argue that, so long as the respondent was a firm, the witness who testified for the respondent's case adduced hearsay evidence.

The counsel for the appellant further challenged the respondent's *locus standi* arguing that it was an artificial person and therefore had no capacity to sue without justifying its legal entity. In addressing this point, I revisited the record

of the trial court and found out that, in the course of implementing the terms of the agreement, the appellant made some payments to the respondent. For instance, on 28th March 2013, the appellant paid the respondent the sum of Tshs. 1,600,000/= being costs for a single trip for students from Bukoba to Kigoma. On 1st May 2013, the appellant made another payment to the respondent (the sum of Tshs. 1,220,000/=) being the costs of a special trip for students from Kigoma to Bukoba. In all these payments, the appellant was issued with receipts to signify the acceptance of payment. On 11th September 2015, the appellant received an invoice from the respondent and signed in the dispatch. In all these transactions, the appellant did not question the legality of the respondent. Also, when the appellant hired the buses owned by the respondent, there was no query on whether the respondent was a registered entity or not. It may be gross injustice and a serious misdirection to deny the respondent's rights just on the reason that it did not prove whether it is registered or not.

However, the appellant did not deny the fact that the students from his school were ferried to and from Kigoma by the respondent on several occasions. The administration of justice should not let unscrupulous persons hide on legal technicalities raised after such a person has enjoyed services of the other person. This court has refused to commit injustice based on legal technicalities. During the trial of the case, the appellant, in this case, did not doubt the legality of the respondent until the matter landed into the hands of lawyers who do not

understand their role as officers of the court. Such lawyers would smile when an innocent person struggles to find justice under the umbrella of legal technicalities. Currently, the administration of justice has turned towards the dispensation of justice without heeding to legal technicalities. See, **section 3A and 3B of the Civil Procedure Code, Cap. 33 RE 2022.**

In this case, I find no reason to doubt the legal personality of both, the appellant and the respondent. The appellant is a registered school and runs business in Tanzania. The respondent is a registered firm which operates transport business in Tanzania. The appellant who enjoyed the services of the respondent on several occasions cannot, at this stage, challenge its legal personality. Allowing this flimsy argument will turn the administration of justice into a legal game of professionals. Administration of justice is a serious business and courts should retain their role as temple of justice. The respondent was right in filing this minor claim in the Primary Court and **section 33(3) of the Magistrates' Courts Act, Cap. 11 RE 2019** accommodates such a claim. The section provides that:

"(3) In any proceedings in a primary court to which a body corporate is a party (including proceedings of a criminal nature) a person in the employment of the body corporate and duly authorised in that behalf, other than an advocate, may appear and act on behalf of that party."

Therefore, the respondent did not violate any law for filing this civil claim against the appellant in the Primary Court. Based on the reasons stated above, I find no merit in the appeal and hereby dismiss it with costs. I uphold the decision of the

trial court and that of the District Court. I further order the appellant to pay the debt of Tshs. 4,706,000/= plus interest at the court's rate as soon as possible. It is so ordered.

Dated at Bukoba this 24th Day of August 2022.




Ntemi N. Kilekamajenga.

JUDGE

24/08/2022

Court:

Judgement delivered this 24th August 2022 in the presence of the counsel for the appellant, Mr. Fahadi Rwamayanga and the counsel for the respondent, Miss Erieth Barnabas. Right of appeal explained.




Ntemi N. Kilekamajenga.

JUDGE

24/08/2022