

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

AT KIGOMA

(DC) CIVIL APPEAL NO. 02 OF 2022

(Originating from Civil Case No. 2 of 2021 of Kasulu District Court)

- 1. D.W.T. SACCOS 1ST APPELLANT**
- 2. MBEZI AUCTION MART COMPANY LTD2ND APPELLANT**
- 3. ERASTO JAMES BHUTENDELI3RD APPELLANT**

VERSUS

JEREMIA CHARLES KAYAGAMBERESPONDENT

JUDGEMENT

17/06/2022 & 20/06/2022

F. K. MANYANDA, J.

By way of an appeal the Appellants, D.W.T. SACCOS, Mbezi Auction Mart Company Ltd and Erasto James Bhutendeli, have registered their dissatisfaction with the judgement and decree of the District Court of Kasulu, hereafter referred to as trial court dated 13/10/2021 by Hon. Shuli, Resident Magistrate, in Civil Case No. 2 of 2021.



Briefly, in the trial Court, the Respondent sued the Appellants jointly for general damages of Tshs. 20,000,000/= for unlawfully attaching and selling his two milling machines to the 3rd Appellant. They did so in a purported recovery of money advanced to him by the 1st the Appellant. It is on record that the Respondent secured a loan of Tshs. 6,000,000/= from the said 1st Appellant payable within 18 months.

After the Respondent failing to repay the loan within the agreed period, in another agreement, the duo mutually agreed to extended the time. However, before the extended time elapsed, the 1st Appellant unilaterally instructed the 2nd Appellant to attach and sell two milling machines of the Respondent. On 11/02/2021 in a public auction, the 2nd Appellant sold the two machines to the 3rd Appellant at a throw away price of Tshs. 840,000/=, a price which was found by the trial court to be below market price. Hence, the Respondent after been bemused by the acts of the Appellants filed the suit in the trial court.

After trial of the suit the trial court decided in his favour whereas the Appellants were ordered to pay him Tshs. 10,000,000/= general damages with costs. The Appellant are bemused by that decision therefore filed the instant appeal with the following three grounds of appeal: -

- 1. That the trial magistrate erred in law and facts by deciding the case without having the required jurisdiction;*
- 2. That the trial magistrate erred in law and facts by awarding excessive general damages to the respondent to the tune of Tshs. 10,000,000/=; and*
- 3. That the trial magistrate grossly erred in law and facts by not taking into consideration the evidence adduced by the 1st Appellant that the Respondent was in default of payment of the loan advanced to him since 2018.*

At oral hearing of the appeal, the Appellants were represented by Ms. Mary Peter Milali, learned Advocate and the Respondent enjoyed representation services of Mr. Majigo Dickson Makongo, learned Advocate.

Arguing in support of the appeal, Ms. Milali submitted that the trial court wrongly handled Civil Case No. 2 of 2021 as it was not clothed with the requisite pecuniary jurisdiction. The Counsel argued that the Respondent sued for general damages of Tshs 20,000,000/=. There was no substantive claim by the Respondent. Whereas he was awarded Tshs. 10,000,000/=.

The Counsel submitted further that courts are a creature of statutes, the district court is established under section 11 of the Magistrates' Courts Act, [Cap. 11 R. E. 2019], She cited the case of **Shyam Thanki and Others vs. New Palace Hotel**, [1971] EA 202

The Counsel went on submitting that it is substantive claim which forms the basis of pecuniary jurisdiction of a court not general damage.

To bolster her point, she cited the case of **Tanzania-China Friendship Textiles Company Ltd vs. Our Lady of Usambara Sisters** [2006] TLR 70.

She argued that since in this matter there was no substantive amount to give pecuniary jurisdiction, the same was supposed to be filed in a court of lowest grade. Which is the primary court per the provisions of section 18(1)(a)(ii) and (iii) of the MCA. For that matter, the Respondent was supposed to file the case in Kasulu Primary Court instead of the Kasulu District Court as he did. To support her submission, the Counsel cited the case of **Hamad Lila Mwinyikondo vs. Said Ally Kupo**, Civil Appeal No. 188 of 2020 (unreported) where this Court, Hon. Kakolaki, Judge held interalia that the primary court is a court of lowest grade and a court of first instance in the Tanzanian

Courts hierarchy. She concluded that the trial court was not seized with the requisite jurisdiction to try the case.

As regard to the second ground of appeal, Ms. Milali submitted that it was wrong for the trial court to award high amount of general damages without assessing the evidence to support that amount. She was of the views that even though general damages are within the discretion of the court, the same are required to be judiciously awarded with reasons. The Counsel submitted that this Court can interfere with the amount of damages awarded where the trial court acted on wrong principles or misapprehended the facts. She referred this Court to the case of **Kyera District Council and Another vs. Leonard Mwinuka**, Civil Appeal No. 24 of 2020 (unreported)

Moreover, the Counsel pointed out that at page 7 of the impugned judgement that damages awarded were excessive based on current market price of the machines which is wrong. In addition, Ms. Milali added that the general damages awarded included costs of the case which are awardable in different forum of taxation after finalization of the case. She cited a case of this Court, the case of **Finca Microfinance Bank Ltd vs. Mohamed Omari Magayu**, Civil Case No. 26 of 2020 (unreported) where this Court, Hon. Karayemaha, J.

stated that courts have discretion to award damages the discretion must be exercised judiciously and by assigning reasons. A position of the law I agree with.

In regard to ground three, Ms. Milali argued that the trial court erred in law and facts when it failed to find that the Respondent defaulted repayment of the loan since 2018. That once the trial court found that the Respondent defaulted to repay the loan, therefore, the act of defaulting ought to have been taken into consideration by the trial court in assessment of general damages as a mitigating factor. She referred this Court to the maxim that "*who comes into equity must come with clean hands.*" She prayed the appeal to be allowed with costs.

On his side, Mr. Makongo submitted supporting the appeal on one basic ground that the trial court lacked pecuniary jurisdiction to try the case. He conceded on the principle of law that general damages do not confer jurisdiction to a court because they are not substantive claims as they are awardable under discretionary powers of courts.

The Counsel after opining that the ground disposes of the appeal, had nothing to say on the rest of grounds. Then he prayed for exemption of costs on reasons that the Respondent was not contributor

to the issue of jurisdiction but of the trial court. Moreover, he requested the court to proceed afresh in court of competent jurisdiction.

In a short rejoinder, Ms. Milali submitted opposing the request for costs exemption on reasons that it was the Respondent who set the machinery into motion, hence he ought to be care not to file a case in a court without competent jurisdiction.

Those were the submissions of the Counsel for both sides. I thank the Counsel for both sides who, with the usual zeal and eloquence, by their well-researched submissions, have eased the work of determining this matter.

In this matter it has been submitted by the Counsel for the Appellant and conceded by the Counsel for the Respondent that the trial lacked the requisite jurisdiction to try the case. This Court is in total agreement that the trial court was not seized with jurisdiction when it tried the case.

It is trite principle of law that courts are a creature of statutes. The East Africa Court of Appeal in the case cited by Ms. Milali of **Shyam Thanki and Others vs. New Palace Hotel (supra)** stated as follows:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary

principle of law that parties cannot by consent give a court jurisdiction which it does not possess. Mr. Lakha, however, argues that in this case the High Court did have jurisdiction to hear the application."

In the instant case the district court which tried the original case is established under the Magistrates' Courts Act, whereas section 40(2)(b) thereof provides for pecuniary jurisdiction of the district court to be not more than Tshs. 200,000,000/= for movable properties. It reads as follows: -

"40(2)(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred million shillings."

As it can be seen, the provision does not put a minimum amount, however that does not place the district court on concurrent jurisdiction with a primary court. As put by my brother, Hon. Kakolaki, Judge in the case of **Hamad Lila Mwinyikondo vs. Said Ally Kupo (supra)**, that the primary court is a court of lowest grade not under the Civil Procedure Code but a court of first instance in the Tanzanian Courts hierarchy.

The Respondent in the instant matter sued for general damages of Tshs 20,000,000/= which do not count when it comes for assessment of

pecuniary jurisdiction because it is not the substantive claim which gives a court pecuniary jurisdiction. It is substantive claim which forms the basis of pecuniary jurisdiction of a court not general damages. See the case cited by Ms. Milali of **Tanzania-China Friendship Textiles Company Ltd vs. Our Lady of Usambara Sisters (supra)** where the Court of Appeal held clearly that: -

"(ii) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the Court."

It follows therefore that the trial court was not clothed with the requisite pecuniary jurisdiction to handle Civil Case No. 2 of 2021.

Since there was no substantive amount to give pecuniary jurisdiction the trial court, then the case was supposed to be filed in a court of lowest grade, which is the Kasulu Primary Court per the provisions of section 18(1)(a)(iii) of the MCA.

In the result, I agree with the counsel for both sides, and for reasons I have stated above, that the first ground is meritorious. The Kasulu District Court had no jurisdiction to try Civil Case No. 2 of 2021, then, its consequential proceedings and the judgement are a nullity.



Having found that the trial court lacked jurisdiction to try the original case, I find not need of going into the rest of grounds of appeal.

Consequently, I do hereby allow the appeal, quash the proceedings and the judgement and I set aside the decree thereof.

As to costs, I agree with the Counsel for the Respondent that the trial slipped into an error for failure to assess the facts presented before it by the Respondent and ponder whether it had jurisdiction to try the case. Therefore, I order each party to bear its own costs.

Order accordingly.




F. K. MANYANDA

JUDGE

20/06/2022

