THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL APPEAL NO. 4 OF 2021

(Arising from the decision of the Resident Magistrates Court of Arusha at Arusha, Civil Case No. 48 of 2019)

GLORIA RAJESH CHANDARANA..... APPELLANT

VERSUS

JUDITH CHARLES AKWERA..... 1ST RESPONDENT

REV. CHARLES AKWERA..... 2ND RESPONDENT

THE TEGISTERED TRUSTEES OF DOMINION

RESTORATION INTERNATIONAL MINISTRY..... 3RD RESPONDENT

JUDGMENT

22th August & 21st October, 2022

TIGANGA, J.

Upon hearing the matter on merits, the Resident Magistrates Court of Arusha at Arusha delivered its judgement on 29th December, 2020 in favour of the respondents. The appellant was not well served with the result and therefore lodged this appeal before this court premised on the following grounds:

1. That, the trial magistrate erred in law and in fact by determining a land dispute that was not before the court, and which it did not have jurisdiction to try, while disregarding the civil suit before it.
2. That, the trial magistrate erred in law and in fact by failing to consider exhibits which were tendered by the appellant and her witness hence arriving at erroneous decision.
3. That, the trial magistrate erred in law and in fact by pronouncing a judgment which is ambiguous, paradoxical, equivocal and impracticable to execute.
4. That, the trial magistrate erred in law and in fact by holding that the matter was prematurely brought before the court.
5. That, the trial magistrate erred in law and in fact by failing to evaluate the evidence on record vis as vis the facts of the case hence, arriving at a wrong decision.

With the oral application of parties and leave of the Court, this appeal was disposed of by way of written submissions. The scheduling order was duly complied by the learned Advocates representing the parties.

However, the factual background of the matter can be summarized as follows:

The appellant, 1st and 2nd defendants are followers of Christianity belief. The trio, are worshippers of the church of Dominion Restoration International Ministry located in Arusha at Suye.

The 3rd defendant is the Board of Trustees of the above stated church whereas, the 1st defendant is the wife of the 2nd defendant who is a lead Reverend in that church. As it can be gathered from the record, it is intimated that, the church did not have a place of setting its building for its believers to gather for worshiping. Thus, three women, members of the said church decided to surprisingly donate the landed area so that the church can be built thereat for deliverance of its holy services. Unfortunately, the mission aborted. The tree women could not afford to secure the fund sufficient to implement their holy motive. Thus, the second plan was to borrow the said money from either source in order to fulfil the said Godly motive.

Sometimes in August, 2016 it is alleged that, the 1st defendant on behalf of the church approached the appellant so that, she can borrow her some money to the implementation of the project. The appellant did not have the sum and therefore, went to and convinced her husband,

PW2 who accepted borrowing the money to the 1st respondent. It is alleged further that, PW2 withdrew the amount of 20,000 USD from his personal account equivalent to forty-Six Million Tanzanian Money (Tshs. 46,000,000/=). The money was handled over to the appellant who later on gave it to the 1st respondent without any written agreement for being trustworthy.

The 1st respondent promised to, as soon as possible return the money but things got worse of mentioning after had gone against their wishes and contrary the desired motive. The water melon farming which they expected to be the source of money to pay the loan did not sire out enough products to accommodate the need. Contrary to their wishes and expectation, the few ripped watermelons were stolen and sold in secrecy by the very trusted serf. As a result, the debt was not honoured. The matter went so until when the appellant instituted a civil suit before the trial court as said above. However, the decision of the trial court was not in favour of the appellant, hence, this appeal.

In this appeal, the appellant was represented by Mr. Emmanuel Sood, learned Advocate and the respondents were jointly and together enjoying the service of Mr. Edwin Silayo also learned Advocate.

The main issue for determination is whether this appeal is meritorious.

On the first ground Mr. Sood argued that, the trial court determined the issue of land ownership without jurisdiction. To substantiate his argument Mr. Sood referred the percept by the trial court which stated that;

> *"...the court answer the above issue in negative due to the reasons that the land bought by the plaintiff on behalf of the church was discovered to be the property of NSSF since 01/10/1989 as per the report of the Land Ministry."*

According to the learned Advocate, these words sound as good as entertaining the matter of land ownership and therefore contrary to section 3(1) of Land Dispute Courts Act, [Cap. 216 R.E 2019] which provides the hierarchy of Land Disputes settlement mechanisms. In addition to this ground, Mr. Sood argued that, the trial magistrate failed to respond to the 1st and 2nd issues, the omission which is fatal.

Counteracting the ground, Mr. Silayo was of the argument that, the writings in the trial court judgment at page 10 paragraph 3 of the impugned judgment makes it notable that the trial court did not determine the issue of land ownership instead, in answering the issue

negatively, was at the reasoning that the dispute must at first be resolved by the competent court. The manuscripts are written as;

> *"... this court for good reasons answers the above issue in the negative until the said dispute is resolved by a competent court."* [The emphasis added]

It is quite clear that, our land laws demarcate on the mechanisms under which land disputes shall be determined. As clearly cited by Mr. Sood, the hierarchy is provided under section 3(1) of the Land Dispute Courts Act, [Cap. 216 R.E 2019]. The Resident Magistrates Courts are not among them. But the question here is, did the trial court determine on the ownership of land as contended by the learned Advocate? The answer to this question is in negative. I am so settled because the orders which are likely to be executed given by the trial magistrate do not include such contention. It was only spoken by the trial magistrate by the way with no legal bindingness. It cannot qualify being termed as determination. That is why the trial magistrate continued to determine in the finality that, the issue of ownership should first be taken for determination to the competent court. If it was determined, I think, she could not have referred the matter to the competent authority before continuing with the normal civil case presented before her. Thus, this ground fails miserably for lack of merit.

Another complaint attached to this ground is that, the trial magistrate did not respond to the 1st and 2nd issues. That, the omission is fatal to the extent of vitiating the impugned judgment. To hummer on it, he cited the case of **Igunga District Council vrs Afriline General Transport Limited**, Civil Appeal No. 51 of 2019 HC at Mwanza (unreported). According to him, in this case it was held that, failure to consider material issues leads to miscarriage of justice.

In arguing against, Mr. Silayo distinguished the case cited above by his fellow Advocate. He said, the reason for not determining the 1st and 2nd issues was given by the trial magistrate which is lack of jurisdiction to determine the matter.

This ground need not detain me much. It is apparent that, in the impugned judgment after the trial magistrate's satisfaction that she had no jurisdiction to rule on the presented matter, she went on vacating to responding to the 1st and 2nd issues because to her, she thought responding to them could never bring the different outcome as the matter was in court without jurisdiction. For easy of reference the part of her response at page 10, the last but one paragraph of the challenged judgment is hereby reproduced. She said;

"This Court for good reasons answers the above issue in the negative until the said dispute is resolved by a competent court. The plaintiff brough her claim prematurely because she was the one who found the middleman who found the seller of the land and later (sic) introduced (sic) to the defendants. For the interest of justice, this court finds (sic) that it is not proper to deal with the first and the second issue until the problem in the 3rd issue is resolved. (sic) the court can be in a position to know who is responsible to pay back the money to the plaintiff." [The underlined is mine.]

Reading clearly between the lines of the above quoted paragraph, it is crystal clear that, the claimed to have not been answered issues 1 and 2 were covered by the trial court. The question as to whether were answered properly or not is not the wanting of this court at this juncture because it was not so invited to do.

On the 2nd ground which is failure of the trial magistrate to consider exhibit, Mr. Sood contended that, it seems the trial court did not acknowledge exhibits which were tendered by the appellant and the witness. That, the judgment did not discuss the exhibit in its reasoning. The lamented exhibit to have not been considered is exhibit P2 (Hati ya makabidhiano ya pesa ya manunuzi ya kiwanja). This exhibit shows the

payment by instalments. In his view, had the exhibit been considered, the court could have reached to a different conclusion contrary to what was decided.

Arguing against, Mr. Silayo said that, the exhibits were all considered in evidence brought by the parties. It is his view that, after observing the dispute of ownership of land the trial Magistrates realized that the court had no jurisdiction to determine the matter.

I have gone through the judgment of the trial court. It is obvious that exhibit P2 is not written anywhere. However, that does not mean that the exhibit was not considered in the judgment. I am saying so because, the exhibit itself is about the land ownership which the appellant paid the amount of thirty million on behalf of the church of Dominion Restoration International Ministry. So long as the exhibit reflects land ownership which is also an epic centre of the civil case filed in the Resident Magistrates Court and the trial magistrate decided the case on the same basis, one cannot be heard claiming that the exhibit was not considered.

Additionally, if I may say a word or two though by passing, on the said exhibit P2, the exhibit shows that the appellant bought the land from Simon Marunda the alleged owner. She bought that land on behalf

of the church of Dominion Restoration International Ministry. It does not state that, the appellant owed the said money to the church to purchase the said piece of land. In the circumstances of the case, and given these facts, the determination of land ownership first before any other claim is inevitable. This outlook would have been taken a different shape if Exhibit P2 was on the instances of borrowing money which is not the case in this matter. According to exhibit P2, the appellant stands in the position of a vendee and Mr. Simon Marunda in a position of a vender. Therefore, this ground also fails.

All said, I do not see any demanding reason for discussing the remaining grounds of appeal. I hold so because, given the nature of the grounds, no way their determination will bear different results from what I have found herein above. That said, I find this appeal to be unmeritorious, it deserves no better than dismissal in its entirety. The dismissal is with costs.

It is accordingly ordered.

DATED at **ARUSHA** this 21st day of October, 2022

J.C. TIGANGA

JUDGE