

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 163 OF 2022

*(Appeal from the ruling of the Resident Magistrate Court of Dar es salaam at Temeke
in Civil Case No. 28 of 2022 before Hon. C.M Madili -RM dated 21/09/2022.*

SAID SALUM MATENGANYA APPELLANT

VERSUS

BUTI LA ZUNGU COMPANY LIMITED RESPONDENT

J U D G M E N T

2nd & 16th December, 2022

MWANGA, J.

The appellant herein sued the respondent in the District Court of Temeke Tshs. 20,000,000/= for special compensation due to pain and permanent disability and Tshs. 10,000,000/= as a general compensation. The claim was lodged by Athumani Mohamedi Mlawa on behalf of the appellant through power of Attorney dated 17th February, 2022.

The document purporting to be power of Attorney bared two different and separate names of the donor; that is, **SAID SALAM MAENGANYA** and, **SAID SALUM MATENGANYA**. It is not indicated as to whether the same was registered by the relevant authority or not as require by law in order to grant the person ability to make decision on behalf of the principal. The said document looks like this;

*'I the undersigned **SAID SALAM MAENGANYA**, hereby appoint my grandfather known as Athuman Mohamedi Mlawa whose signature appears below*

Signaturesgd

With full power to act for me in my name and for my commitment to do either of all the following acts related to CRDB UAP Insurance corporation in respect of Car accident happened on 19 October, 2020 Kilwa involving car.no T546 DLL

- i. To sign, execute endorse all documents*
- ii. To make all the follow ups from authorities related to this claim*
- iii. To commence any action/actions, suit or defend us in any action*

Or the appropriate with some effect as if I had done, execute and performed it myself in relation to the above-named claim.

*In witness here of I am entitled to sign for and on behalf of **SAID SALUM MATENGANYA***

Signed this power of attorney on this.....day of2022

This power of attorney is valid until.....

Authorised

*Name **SAIDI SALUM MATENGANYA***

Designation.....MDAI

Signature.....sgd

This is to certify that Athumani Mohamedi Mlawwa

This 17th day of February, 2022 signed this power of attorney on behalf of the claimant above named.

BEFORE ME

Sgd & Stamped

COMMISSIONER FOR OATHS'

On 26th July, 2022 the appellant prayed to the court for the matter to be heard *exparte*. The trial Magistrate granted the application and stated that since Mr. Godfrey appeared late on the respective date when the matter was set for mention, let the matter proceed *exparte* as the plaintiff prayed for.

On that basis, the matter proceeded *exparte* effectively on 30th August, 2022. Nothing was raised on the validity of the power of attorney of the appellant and the mode granting *exparte* order. At the conclusion, the trial court dismissed the suit on grounds that there was no evidence sufficiently to justify the amount of money claimed by the appellant.

The appellant being dissatisfied with that decision, appealed to this court on four grounds, namely;

1. The trial Magistrate erred in law and fact by dismissing the suit on the ground that the appellant has failed to tender the attached documents without taking into account that the respondent despite

of being served with the plaint have failed to file her written statement of defence, hence the matter proceeded exparte.

2. The trial Magistrate erred in law and fact by dismissing the suit despite clear narration and attachment proving the incident and without taking into account that the respondent is required to pay for compensation herself instead of insurance company because the vehicle involved in the incident was not insured, was bearing a dubious cover note whereby the insurance company issued a letter to prove.
3. The trial Magistrate erred in law and fact by dismissing the suit citing cases which are not of exparte proceed matters like this, whereas the defendant failed to file the written statement of defence nor raised any objection against the plaint, which implies the acceptance of the claim. Either the defect of not tendering the document before the court isn't the only way to justify the incidence and compensation, the Hon. Magistrate could inquire from the appellant and obtain just like she inquired the power of attorney and obtained.
4. Copies of the judgement of the trial Magistrate, proceedings and the plaint have been attached and marked JU1, PR1 and PL1 respectively

in order to support this memorandum of appeal and draw attention of the high court to reach a fair decision.

In the appeal, the appellant was unrepresented while the respondent was represented by Mr. Godfrey Kizito, learned Advocate. The learned counsel highlighted on the question of jurisdiction in respect of validity of the power of attorney and pecuniary jurisdiction. He stated that, these shortcomings occurred in the lower court could have been sorted out but he was not given opportunity to be heard on the reason that he came late in court.

With carefully consideration and scrutinization of the proceedings of the trial court, the proceedings were conduct without jurisdiction. The said Mohammed Athumani Mlawa had no *locus standi* to lodge and prosecute the suit and the appeal altogether.

The purported power of attorney is fatally defective in form and substance. The same cannot purport to represent him in this court under the purported power of attorney. It bears two different names of the Donor. In **Lujuna Shubi Balonsi Snr Vs Registered Trustees of CCM** (1996) TLR, 203 the court observed that,

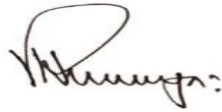
' Locus standi is governed by common law, according to which a person bringing a matter to court shall be able to show that his rights or interest has been breached or interfered'.

The proceedings conducted without jurisdiction is a nullity. The court of appeal in **Tanzania -China Friendship Textile Co. Ltd Vs. Our Lady of the Usambara Sisters**, Civil Appeal No. 84 of 2002[TLR] 70 at page 76 held that, the issue of jurisdiction is so fundamental and the same can be raised at any stage even on appeal even though the same was not raised before the trial court.

Despite all that, the case also suffered from lack of pecuniary jurisdiction. According to Section 18(a) (iii) of the Magistrate Courts Act, Cap 11, pecuniary jurisdiction of the primary Court goes up to Tshs. 30mil. Since the claim was 20mil, the same ought to be lodged in the primary court and not the district court.

In the circumstances, I proceed to quash the decision and the proceedings of the trial court for the reasons stated herein above. Consequently, the appeal is hereby dismissed in its entirety.

It is so ordered.

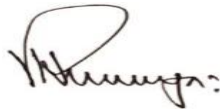


H. R. MWANGA

JUDGE

16/12/2022

COURT: Judgement delivered in Chambers this 16nd day of December, 2022 in the presence of the appellant in person and learned counsel for the respondent.



H.R MWANGA

JUDGE

16/12/2022