

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL APPEAL NO. 218 OF 2020

HAPPINESS ALOYCE MINJA.....APPELLANT

VERSUS

JACOB KIULARESPONDENT

(Arising from Civil Case No. 6 of 2020 Kilombero District Court at Ifakara)

JUDGMENT

Date of last order: 01/07/2021

Date of Judgment: 28/10/2022

S.M. KULITA, J.

The Appellant herein HAPPINESS ALOYCE MINJA raised this appeal against the decision of Kilombero District Court at Ifakara in Civil Case No. 6 of 2020 delivered on 23/07/2020. In her Memorandum of Appeal the Appellant alleged that the District Court misdirected itself in law and fact in dismissing the suit having wrongly upheld the Defendant's (Respondent's) Preliminary Objection on the court's jurisdiction.

The appeal was argued by way of written submissions. While the appellant is represented by Mr. Bageni Elijah, Advocate of Kibaoni Ifakara, the Respondent enjoys the legal service of Mr. Hassan Salum Hassan, Advocate from Alin Law Care of Dar es Salaam.

In his written submission the Appellant's Advocate, Mr. Bageni Elijah submitted that the trial Magistrate at Kilombero District Court was wrong to dismiss the Civil Case No. 6 of 2020 for the reason that it was a land case, hence the District Court of Kilombero had no jurisdiction to entertain.

The Counsel submitted that the said matter was not heard on merit. It was dismissed in the ruling regarding the said Preliminary Objection raised by the Defendant's (Respondent's herein) counsel. According to the Appellant's submission, the said matter is not a land case but a pure civil case. He came up with the reason that the reliefs sought and the cause of action in the plaint ascertain that situation. He said that the matter involves lease agreement of which the Respondent neglected to execute after he had completed to repair the suit property/building as agreed. The counsel further alleged that the Appellant also cries for loss of business and income regarding the breach of contract by the Respondent. He concluded that

among the prayers by the Appellant is the specific damages which squarely fall within the jurisdiction of the civil courts, which includes the District Court of Kilombero.

Mr. Bageni Elijah, Advocate concluded by praying the appeal to be allowed with costs.

In the reply thereto, the Respondent's Counsel, Mr. Hassan Salum Hassan submitted that the appeal preferred, completely has no merit. He prayed for the same to be dismissed.

In his submission opposing the appeal the Counsel stated that it was proper for the District Court of Kilombero to dismiss the said Civil Case No. 6 of 2020 as the same falls under the land disputes, the matter which the ordinary courts of law like the District Courts have no jurisdiction to try as per section 4(1) of the Land Dispute Courts Act [Cap 216 of 2019]. He said that according to section 167 of the Land Act [Cap 113 RE 2019] and section 3 of the Land Dispute Courts Act [Cap 216 of 2019] the powers to entertain land matters have been vested to the Land Tribunals.

In justifying her argument that the matter from which this appeal arises, the Civil Case No. 6 of 2020 Kilombero District Court, is a land dispute, the

Respondent's Counsel submitted that the cause of action in that said case is breach of the lease agreement, the litigation which falls under the land issues. The Respondent's Counsel added that, even the Counsel for the Appellant admitted in his submission that the dispute arose from the execution of the lease agreement of which the Respondent herein is alleged to have breached.

Advocate for the Respondent, Mr. Hassan concluded by praying for the appeal to be dismissed with costs.

In rejoinder the Appellant's Counsel submitted that he has not admitted in his submission that the matter in question emanates from the breach of lease agreement. He reiterated that the appeal be allowed with costs.

Having gone through the pleadings and the rival submissions of the counsels here is my findings; there is no dispute that the parties herein were litigants in the Civil Case No. 6 of 2020 Kilombero District Court. It is also undisputable that the said case was dismissed through the Preliminary Objection raised by the Respondent herein that the said court lacks jurisdiction to entertain the matter for it being a land dispute.

The issue before me is whether the said case was a land matter, hence it was supposed to be filed before the court/tribunal designated to entertain land matters.

Having gone through the pleadings and submissions, I have noted that the parties herein had a contract that the Appellant should occupy the house as a tenant after completing to repair it at his (Appellant's) own costs. The Appellant executed what was agreed and started to handle hotel business under the terms that they had agreed. The two therefore became landlord and tenant as the business by the Appellant had already started according to her.

Though the case had not gone to full trial, the above said situation provides the circumstance of land dispute in which the relation between the Appellant and the Respondent looks to be of Lessor and Lessee. The Respondent is a Landlord (Lessor) while the Appellant is a tenant (Lessee).

In the Civil Case No. 6 of 2020 at Kilombero District Court the Appellant claimed for declaratory order that the Respondent breached the contract, he also sought for damages. The question is whether the Appellant was right to lodge the said case at that said court.

When you go through the pleadings lodged for this matter at Kilombero District Court, particularly the plaint, you can note that the crucial issue is “breach of tenancy contract”. This can be seen in the reliefs claimed, to wit the claim numbered (a) which states “Declaratory order to issue that the Defendant has breached the contract”. The fact that the contract which the Respondent herein is alleged to have breached involves tenancy agreement/contract, the cause of action is nothing but the **breach of tenancy agreement**. According to **section 107(2)(a) the Land Act [Cap 113 RE 2019]** conflict in tenancy agreement amounts to land dispute.

In his reply submission, the Respondent’s Counsel, Mr. Hassan Salum Hassan stated that, Counsel for the Appellant, admitted in his submission in chief that the dispute arises from the execution of the lease agreement of which the Respondent herein is alleged to have breached. The Appellant’s Counsel, Mr. Bageni Elijah resisted this fact, but that is a position according to the appeal record. In short, pleadings in the original record, and the appellate record, as well as the submissions of both parties, speak by themselves that the matter in question falls on the land dispute.

In determining the court's jurisdiction the trial Judge, my learned brother Mlyambina, J. stated in a case of **SHEILA ELANGWA SHAIDI V. WILFRED MOSSES LUKUMAY, Civil Appeal No. 203 of 2018, High Court DSM Zone (unreported)** while citing the case of **ROMBO GREEN VIEW INVESTMENT LTD V. CADASP TANZANIA LIMITED, Land Case No. 268 of 2008, High Court Land Division (unreported)** that;

"The first thing you look at the pleaded facts that may constitute the cause of action, and two you look at the relief(s) claimed and see whether the court has power to grant them and whether they correlate with the cause of action"

The above cited authority provides the guiding principle for the court to assess whether it has jurisdiction to entertain a particular matter. In doing so the cause of action and relief(s) claimed should be pointed out.

Section 109(2) of the Land Act [Cap 113 RE 2019] provides that in case of legal conflict between the lessor and lessee, any of them can commence a suit against the other at the court/tribunal dealing with the land matters, subject to the pecuniary jurisdiction of the subject matter. The said provision and the law is applicable in land and not in civil cases.

According to **Section 107(2)(a) of the Land Act [Cap 113 RE 2019]** an application for the relief against an order of termination of a lease can be made at the District Court by the lessee. But, **section 2** of the Act defines “**court**” as;

"anybody established by or under any written law which is referred to in section 167 as having jurisdiction to determine land disputes"

The said **Section 167(1)** and **section 2 of the Land Act [Cap 113 RE 2019]** provide the following courts as the ones vested with exclusive jurisdiction to hear and determine land disputes;

- (a) the Court of Appeal;
- (b) the High Court;
- (c) The District Land and Housing Tribunal;
- (d) Ward Tribunals;
- (e) Village Land Council.

Therefore, as far as section 107(2)(a) cited above is concerned, the court mentioned as the District Court is the one with exclusive powers to handle

land matters at the District level, that is the District Land and Housing Tribunal.

As for the matter at hand, the fact that the dispute arises from the tenancy contract, it is a land matter and therefore the District Court of Kilombero had no jurisdiction to entertain.

In upshot, the District Court Magistrate was right to dismiss the matter for having no jurisdiction. The Appellant herein is asked to lodge the matter at the Land Tribunal/Court with jurisdiction to entertain the matter. Appeal **dismissed** with costs.



S.M. KULITA

JUDGE

28/10/2022

