IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT MOROGORO

CIVIL APPEAL NO. 289 OF 2021

(Originating from Civil Case No. 10 of 2014, In the District Court of Kilombero, at Ifakara)

ZENO NDULU ..... APPELANT

VERSUS

BENJAMINI MFAUME..... RESPONDENT

JUDGEMENT

19th Dec, 2022

CHABA, J.

The appellant in this appeal is appealing against the decision of the District Court of Kilombero, at Ifakara in Civil Case No. 10 of 2014 (herein to be referred to the District Court) delivered on 22/12/215 in favour of the respondent / plaintiff (Benjamini Mfaume) to the effect that, the appellant / defendant (Zeno Ndulu) had to pay to the respondent the principal amount of debt TZS. 1,500,000/=, general damages to the tune of TZS. 4,000,000/= and costs of the suit.

The appellant after being aggrieved by the decision of the District Court, he decided to lodge this appeal accompanied with three (3) grounds of appeal.

To appreciate what transpired in this case, I find it apposite to narrate albeit briefly the factual background as discerned from the record. As gleaned from the plaint filed by respondent / plaintiff at trial (Benjamini mfaume) before the trial Court at the District Court of Kilombero, at Ifakara on 27th May, 2014, the respondent instituted a civil suit before the District Court claiming against the appellant herein (defendant at trial) for the payment of principal amount and damages for a loan to the tune of Tanzanian Shillings Three Million (TZS. 3,000,000/=). That, around June, 2012 the appellant took a loan from the respondent amounting to TZS. 1,500,000/= on agreement that he could cultivate 37.5 hectares of land for TZS. 40,000/= per hectare, but the appellant (Zeno Ndulu) neither cultivated the said farm nor did he returned back the loan given to him execute the said work. It is on record that, since the appellant has remained with such amount of money without executing the said work, he has caused irreparably loss to the respondent (Benjamini Mfaume). Despite the respondent's (plaintiff's) demand to the appellant (defendant), the appellant has refused and / or neglected to make the settlement to the respondent (plaintiff).

As alluded to above, basing on the foregoing facts the respondent lodged a civil suit registered as civil case no. 10 of 2014 praying for the following reliefs: One, principal amount and interest in the tune of TZS. 3,000,000/=, Two; General damages amounting to five million Tanzania Shillings (TZS. 5,000,000/=), Three;

Cost of the suit, and Four; Any other reliefs(s) and or Orders as the Honourable trial Court may (could) deem just and proper to grant.

In his written submission, the appellant (defendant) alleged that after cultivating three (3) acres his tractor broke down, as such he failed to execute the whole work something which was beyond his control, hence he became unable to return back the loan he took from the respondent taking into account that he had already spent the money in repairing the tractor. He further asserted that, at the material time he was ready to refund the respondent herein (plaintiff at trial) a total sum of TZS. 1,500,000/= on or before 31st day of October, 2014. It is apparent on record that, the appellant (defendant) had never refused to, and/or neglected to make a settlement to the respondent (plaintiff). However, during trial, the appellant came up with a different version stating that he failed to cultivate the respondent farm due to lack of fuel/diesel.

After a full trial, the trial Court entered judgment and decree in favour of the respondent (plaintiff), to wit: One; the appellant (defendant) was ordered to pay the principal sum amounting to TZS. 1,500,000/=, Two, General damages to the tune of TZS. 4,000,000/=, and Three; Cost of the suit.

As indicated above, the appellant was unhappy with that decision, hence the presented appeal. To challenge the trial Court decision, the appellant preferred this appeal armed with three (3) grounds enumerated hereunder: -

1. *That, the Honorable trial District Magistrate erred in law and fact by granting suit without considering the pecuniary jurisdiction of the District Court.*
2. *That, the Honourable trial District Magistrate erred in law and fact by awarding the general damages which exceeds the principal sum to the respondent without justification of that award.*
3. *That, the Honourable trial District Magistrate erred in law and fact by producing a non-well composed judgement as per the law.*

From the above grounds of appeal, the appellant prayed from this Honourable Court for the following orders: -

1. *That, this Court be pleased to quash the judgment and decree of the District Court of Kilombero, at Ifakara and therefore reverse the proceedings and determine the suit.*
2. *Costs of this appeal be awarded to the appellant,*
3. *Any other relief(s) this Court may deem fit and just to grant.*

At the hearing of the appeal, Mr. Bernard Chuwa, learned advocate entered appearance for the appellant whereas Mr. Barnabas Paschal Nyalusi, also learned advocate appeared for the respondent. By consensus, parties agreed to argue and dispose of the appeal by way of written submissions. However, I will not reproduce the whole submissions advanced by the parties' learned advocates, but I commend

them for their arguments for and against this appeal. I will refer to them in the course of addressing substantive issues.

Submitting on the first ground which states that, the trial District Magistrate erred in law and fact by granting suit without considering the pecuniary jurisdiction of the District Court, Mr. Benard Chuwa submitted that it is fairly obvious that, Primary Courts are the Courts of the first instances in cases where the pecuniary jurisdiction does not exceed thirty million, pursuant to the provision of section 18 (1) of the Magistrates Courts Act (Cap. 11 R. E, 2019) and as it was explicated by this Court in the case of **GODSON MUNUO V. UMOJA SAVINGS SAVING AND CREDIT COOPERATIVE SOCIETY LIMITED**, MISC. CIVIL APPLICATION NO. 24 OF 2021. He averred that, the pecuniary jurisdiction of Primary Courts on matters arising from the contract since enactment of The Written Laws (Miscellaneous Amendment) Act No. 6 of 2016 (The Written Laws) is TZS. 30,000,000/=. According to him, prior to the enactment of The Written Laws (supra), the pecuniary jurisdiction of the Primary Court on matters arising from contract was Tanzanian Shillings Three million (TZS. 3,000,000/=) whereas in this current scenario, the parties had a contract and that the remaining debt due was TZS. 1,500,000/=. Thus, in his view, the proper Court clothed with the pecuniary jurisdiction was the Primary Court and not the District Court. He accentuated that, looking at the requirement of the law, it is apparent that the District Court entertained the matter without being clothed with the respective jurisdiction.

On the second ground, the appellant's complaint is that, the trial District Magistrate erred in law and fact by awarding the general damages which exceeded the principal sum to the respondent and without justification of that award. He submitted that, the general damages awarded exceeds the acceptable interest rate as per laws of the country, he was of the view that, the punitive damages allocated against their client are oppressive and unreasonably charged and it has to be re-evaluated and be changed as per wishes of the law.

As regards to the third ground, which states that, the trial District Magistrate erred in law and fact by producing a non-well composed judgement as per the law, the counsel highlighted that, the trial magistrate produced a very poorly composed judgement as contrary to the requirement of the law, citing Order XX, Rule 4 of the Civil Procedure Act [Cap. 33 R. E, 2019], to buttress his argument. He amplified that, the judgment of a trial Court is a three paged document, hence failed to meet the minimum qualification of a good judgment. To bolster his contention, Mr. Chuwa referred this Court to the case of **HUSSEIN IDD & ANOTHER V. REPUBLIC (1986) TLR 166,** where the Court stated that, a judgment shall contain a concise statement of the case, the points of determination, the decision thereon, and the reasons for such decision. In another case of **CRDB BANK PLC V. NOKWIM INVESTMENT CO. LTD 7 & NOVATUS AKWIRINO MWANANENGULE,** CIVIL APPEAL NO. 105 OF 2020 (unreported), this Court insisted the importance of writing a good judgment where it stated that,

the judgment is the most important legal document and it is the Courts and Magistrates' duty to treats it as such, because it has the power to grant and take away a person's rights. According to him, the impugned judgement is short of the provisions of Order XX, Rule 4 of the CPC as it lacks points for determination, proved points and unproved ones, hence citing the case of **STANSALAUS RUGABA KASUSURA AND THE ATTORNEY GENERAL V. PHARES KABUYE (1982) TLR, 338,** in buttressing his argument. In this case the Court held *inter-alia* that: -

> *"The judgement is fatally defective, it leaves contested material issues of facts unresolved. It is not really a judgement because it decided nothing, In so far as material facts are concerned. It is not a judgement which can be up-held or up-set, it can only be rejected".*

He concluded that, the impugned judgement is tainted with illegality related to pecuniary jurisdiction faulted in granting of general damages. He further submitted that the manner on how the judgment is written, calls for the second eye of this Court to review and determine on it. He thus, prayed the Court to decide in favour of the appellant and costs of the appeal be borne by the respondent.

In response to the first ground of appeal, Mr. Barnabas Paschal Nyalusi submitted that, the counsel for the appellant misdirected himself because when the suit was filed in 2014 the applicable law was section 18 (1) (iii) of the

Magistrate Courts Act, [Cap. 11 R. E, 2002] (the MCA) read together with The Written Laws (Miscellaneous Amendment) No. 4 of 2004 in which the provision specifically provided for pecuniary jurisdiction of Primary Courts not to exceed Three million (TZS. 3,000,000/=). According to him, paragraph 3 of the plaint read together with the prayers sought clearly shows that the amount claimed that is, principal amount and interest its total is TZS. 3,000,000/=, hence the District Court had the requisite pecuniary to handle the matter. He said, the assertion raised by the counsel for the appellant that the debt due was TZS. 1,500,000/=, is without any justification.

In short, Mr. Nyalusi maintained that, the District Court had pecuniary jurisdiction as the matter had a nature of commercial transaction which was exclusively on the jurisdiction of the District Court and he cited section 40 (3) of the MCA (supra) as amended by Act No. 4 of 2004. He was of the view that, the provision sets the maximum amount for the pecuniary jurisdiction in the District Court and not the minimum amount, citing the case of **WAZIR HASSAN V. ARAFA BAKARI, (DC) CIVIL APPEAL NO. 12 OF 2017** at p. 10. He added that, since the respondent enjoyed the legal services of an advocate, it was right for him to be represented before the Court despite of the issue of pecuniary jurisdiction as it was held in the case of **LUCIA MBOJE V. CHILONWA MWITOND BITULO, MATRIMONIAL APPEAL NO. 106 OF 2021** (unreported).

With the above submission, the counsel maintained that, this ground of appeal has no merit.

Responding to the second ground, Mr. Nyalusi highlighted that, in our jurisdiction the issue of general damages need not to be proved but it is based on the discretion of the Court. He supported his contention by citing the case of **ACCES BANK TANZANIA LTD V. OLIVER KISAKA,** LABOUR REVISION NO. 887 OF 2018 at p. 8 where Court defined the term general damages to mean;

"Damages that the law presumes follows from the type of wrong complained of. Generally, damages do not need to be specifically claimed or proved to have been sustained."

He maintained that, even if this Court will find the general damages was excessively granted by the trial Court, the position of the law is that, this Court may interfere and revise the order issued by the trial Court and reduce it, but not to quash the whole decision as suggested by the counsel for the appellant.

As for the third ground, Mr. Nyalusi found this ground of appeal as worthless. Amplifying the reason thereof, the counsel accentuated that judgement writing is an art and the impugned judgement met all the prerequisites of a good and sound judgment. If at all, the Court will satisfy itself that the impugned judgment failed to meet the standard required, the only remedy available is for this Court to return such a judgment to the trial Court for it to compose a new judgment and declare

the rights of the parties to the suit and not to infringe their rights by punishing them for the wrongs or mistakes committed by the trial Court.

He concluded by asking this Court to dismiss the appeal so that the respondent can enjoy his fruits of judgement and decree.

Having summarised the rival arguments advanced by the counsel for the parties and upon passing through the trial Court records and keenly perused the parties' pleadings, I find that the main issue for consideration is whether the instant appeal is meritorious.

I will start with the first ground concerning with the question of pecuniary jurisdiction of the District Court, in which the counsel for the appellant submitted that, in the instant matter the debt due was (is) TZS. 1,500,000/= and thus the proper Court clothed with the pecuniary jurisdiction was the Primary Court and not the District Court. On the other hand, the counsel for the defendant maintained that, the District Court had the prerequisite pecuniary jurisdiction on the ground that the matter had a nature of commercial transaction which was exclusively on the jurisdiction of the District Court and he cited section 40 (3) (iii) of the MCA as amended by Act No. 4 of 2019, to support his argument.

In order to disentangle the parties' dilemma, I find it apt to revisit the relevant law and find out what exactly amounts to commercial transaction or case that conferred power and clothed the trial Court with the said pecuniary jurisdiction

to entertain the matter at hand. The Written Laws (Miscellaneous Amendments) Act No. 4 of 2019, defines a commercial case as: -

> *"A civil case involving a matter considered to be of commercial significance including but not limited to:*
>
> *(i) the formation of a business or commercial organizations;*
>
> *(ii) the governance of a business or commercial organization;*
>
> *(iii) the contractual relationship of business or commercial organization with other bodies or persons outside it;*
>
> *(iv) the liabilities of commercial or business persons arising out of that person commercial or business activities;*
>
> *(v) the liabilities of a commercial or business person arising out of that person commercial or business activities;*
>
> *(vi) the restructuring or payment of commercial debts by or to business or commercial organization or person;*
>
> *(vii) the winding up or bankruptcy of a commercial or business organization or person;*
>
> *(viii) the enforcement of commercial arbitration award;*
>
> *(ix) the enforcement of award of a regional court or tribunal of competent jurisdiction made in accordance with a treaty or mutual assistance arrangements to which the United Republic is a signatory and which forms part of the law of the United Republic*
>
> *(x) Admiralty proceedings; and*
>
> *(xi) Arbitration proceedings.*

Besides, this Court in the case of **G. K. HOTELS AND RESORT (PTY) V. BOARD OF TRUSTEES OF THE LOCAL AUTHORITIES PENSION FUND**, COMMERCIAL

CASE NO. 1 OF 2008 HCT (unreported), when dealing with similar scenario enunciated the test of a commercial case to mean:

1. *It must be a civil case ...*
2. *That, civil case must be of commercial significance, in other words that the case must have connection with buying and selling of goods or services...*

In the light of the above cited provisions of the law and precedent, I am now in a position to state that, for the matter to be treated as a commercial one, it must *firstly*, be a civil case, *secondly*, such a civil case must involve commercial or business activities connected to buying and selling of goods or services and I would add that, *thirdly*, the transaction involved must be of considerable commercial significance.

The importance of having the transaction of considerable commercial significance is not far-fetched as our daily lives are surrounded by small transactions of commercial nature such as, oral contracts of transportation of goods from one place to another and supply of services such as food and water, etc. To entertain every transaction involving selling and buying of goods or services as commercial cases, and without considering the nature of claims involved in each case, in my considered opinion, is tantamount to opening of a pandora box whereby small transaction cases which would be treated as normal civil cases for

arising from less valued and simple contracts to flood in the District Courts, which is meant to deal with a bit complicated matter.

Having so found, the next issue for determination is whether the respondent's / plaintiff's suit is in the nature of a commercial case and therefore fall within the pecuniary jurisdiction of the District Court. In responding to this issue, there is no dispute that section 40 (3) (b) of the MCA as amended by Written Laws (Miscellaneous Amendments) Act No 4 of 2019 indicates that, the District Court had pecuniary jurisdiction to hear a commercial dispute whose value does not exceed TZS. 30,000,000/= as the maximum value for the subject matter capable of being estimated at monetary value. For ease of reference, I reproduce section 40 (3) (b) of MCA which reads:

> *"(3) Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited;*
>
> *(b) in the proceedings where the subject matter is capable of being estimated at money value,* ***to proceedings in which the value of the subject matter does not exceed thirty million shillings****. (Emphasis supplied)".*

From the above, it should be noted that not every commercial transaction or dispute in respect of a contract shall constitute a commercial case. Regard shall be paid to the nature and size or volume of transaction(s) as each case has to be

determined basing on its own fact(s) as deposed by the respondent / plaintiff in the plaint.

In the present case, having considered the cause of action as deposed by the respondent / plaintiff at paragraph 3 of the plaint and the reliefs sought, I am of the view that, the matter at hand do not fall under the realm of commercial significance, but such a case can be treated under normal civil case. My finding, and so correctly submitted by the counsel for the appellant, the appellant / defendant does not claim any breach of contract / agreement in respect of the money indebted to him for a service by the respondent, rather he is claiming for the payment of the principal amount and damages for loan as exhibited at paragraph 3 of the respondent's / plaintiff's plaint which categorically states that:

> *"That, the plaintiff claim against the defendant is for the payment of principle amount and damages for loan to the tune of three million Tanzania Shillings (Tshs.3,000,000/=)".*

Even if, I will agree with Mr. Nyalusi's proposition that respondent's (plaintiff's) case is premised on commercial significance, I would still hold that, the same was a simple commercial transaction and not one of commercial significant worth treatment of commercial case. It is a normal civil case as discussed herein above. Now, applying the provision of section 40 (3) (b) of the MCA (as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2019) to the facts of this case in which the claim involved is TZS. 3,000,000/=, hence outside the jurisdiction

of the District Court to try the matter under scrutiny, it is my holding that the suit was incompetent on the ground that it was improperly filed before the District Court for want of pecuniary jurisdiction. The same did not met the threshold for inception before the District Court, as it ought to have been entertained by the Primary Court which at the material time had been vested with the prerequisite pecuniary jurisdiction.

Now from the above deliberation, the next question is, what course should I take under the circumstance of this case? On this facet, the counsel for the respondent, Mr. Nyalusi has invited this Court to dismiss the appeal in its entirety with costs, whereas the counsel for the appellant, Mr. Chuwa prayed the Court to enter judgment in favour of the appellant and the costs of the appeal be borne by the by the respondent.

Having considered the prayers put forward by the counsel for both parties, I think in my view that, on the basis of the interest of justice, to refrain from dismissing this appeal as prayed by Mr. Nyalusi, and instead therefore, I hereby apply the provisions of section 21 (1) (a) and (2) of CPC (supra) which states *inter-alia* that,

> "..***this Court on its own motion without such notice, may at any stage, transfer any suit or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same***; *and* ***that where any suit or proceeding has been transferred***

or withdrawn under subsection (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn." [Bold is mine].

Based on the above dictates of the provisions of the law, I thus, proceed to order for transfer of this case to the Urban Primary Court of Ifakara, at Ifakara to proceed with the case from the stage of hearing of the case. Having so determined, the above finding is sufficient to dispose of the entire appeal. In my view, consideration of the remaining two grounds fronted by the appellant will not affect my decision hence I accordingly, refrain from delving on it.

For the above reasons, this appeal is meritorious, and I allow it with no order as to costs. Further to that, I direct that parties should not pay any filing fees while lodging their respective pleadings, and the matter shall be expeditiously be heard in accordance with the governing laws. **I so order.**

DATED at **MOROGORO** this 19th day of December, 2022.

M. J. CHABA

JUDGE

19/12/2022