

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA
CIVIL APPEAL NO.34 OF 2021**

(C/F Civil Case No.22 of 2021 at the Resident Magistrates' Court of Arusha at Arusha)

NAKUHAJA MOSSES MYOMBO.....1ST APPELLANT

PETER JOSEPH CHACHA.....2ND APPELLANT

VRS

AMON PETRO AMON.....1ST RESPONDENT

CHES COMPANY LTD.....2ND RESPONDENT

JUDGMENT

Date of last Order: 13-5-2022

Date of Judgment: 17-5-2022

B.K.PHILLIP,J

The appellants herein being aggrieved by the Ruling of the Resident Magistrates' Court of Arusha at Arusha lodged this appeal on the following grounds;

- i) That the trial Resident Magistrate erred in law and fact by finding that the Resident Magistrate's Court has no jurisdiction to entertain and adjudicate the suit without considering the agreement and business projects which were stopped by the 2nd respondent's defective notice.*
- ii) That the trial Resident Magistrate erred in law and fact by finding that the Resident Magistrate's Court has no jurisdiction to entertain and adjudicate the suit without considering that defective notice stopped the appellants' business projects has no signature of the 1st respondent.*
- iii) That the trial Resident Magistrate erred in law and fact by finding that the Resident Magistrate's Court has no jurisdiction to entertain and adjudicate*

the suit without considering that the plaintiff settled out the version of the facts and specified the damages. It framed the issues of the case which is the most important pleadings in a civil case.

A brief background to this appeal is that the appellants herein filed a suit at the Resident Magistrates' Court of Arusha at Arusha against the respondents herein. Upon being served with the plaint, the advocate for the respondents raised points of preliminary objections against the appellants' case, the same were couched as follows;

- i) This Honourable Court has no jurisdiction to entertain and adjudicate the suit because it is a land dispute.*
- ii) That the plaint does not disclose cause of action against the defendants.*
- iii) That this suit is bad in law and embarrassing to the defendants for failure to follow the principles of pleadings.*

In her Ruling in respect of the aforesaid points of preliminary objections, the trial Magistrate upheld the first point of preliminary objection. She made a finding that the dispute between the parties is about a tenancy agreement in respect of a landed property owned by the 1st respondent. Relying on the provisions of section 167 of the Land Act and, sections 2 and 3 of the Land Disputes Courts Act, she ruled out that the case between the appellants and the respondents is a land case, therefore the Resident Magistrates' Court has no jurisdiction to entertain and adjudicate the same.

Back to the instant appeal, the appellants and the 2nd respondent were unrepresented. They appeared in person whereas the 1st respondent was represented by the learned Advocate John Mbitu. I ordered the appeal to

be heard by way of written submissions. The appellants were supposed to file their submission in support of the appeal on or before 1st April 2022. The submission by the respondents was supposed to be filed on or before 20th April 2022. Rejoinder if any, by the appellants was supposed to be filed on or before 29th April 2022. It is the appellants only who filed their written submission in support of the appeal as ordered by the Court. Thus, I have been compelled to compose this judgment without the respondents' written submission. It has to be noted that the position of the law is very clear, that is, failure to file written submission as ordered by the Court is tantamount to failure to prosecute one's case. In the case of **Godfrey Kimbe Vs Peter Ngonyani, Civil Appeal No. 41 of 2014** ((unreported)) the Court of Appeal held as follows;

" ..in the circumstances , we are constrained to decide the preliminary objection without the advantage of the argument of the applicant . We are taking this course because failure to lodge written submissions after being so ordered by the Court is tantamount to failure to prosecute or defend one's case"

[Also, see the case of **National Insurance Corporation of (T) and another Vs Shengena Ltd , Civil Application No. 20 of 2007,** (unreported)]

The appellants submitted that the trial Court erred in law for dismissing their case because it is not a land case. Their claims are based on breach of a tenancy agreement. They contended that their cause of action is breach of contract.

Furthermore, they argued that there was a valid tenancy agreement between Amon Petro Amon (the 1st respondent herein) and Nakuhaja Mosses Myombo (the 1st appellant herein) in respect of a premises located at Sakina (Henceforth " the rented premises"). The 1st respondent who was not a party to the tenancy agreement served them with a notice to vacate the rented premises. Thus, respondents breached the aforesaid tenancy agreement. The appellants maintained that since there is breach of the tenancy agreement the respondents are liable to pay damages to the appellants for frustrating their businesses which were being conducted in the rented premises together with the losses suffered thereof. The appellants implored this Court to allow this appeal.

From the foregoing, the issue for determination in this appeal is whether the Resident Magistrates' Court of Arusha at Arusha has no Jurisdiction to entertain the appellants' case.

The appellants' case is as follows; That the 1st respondent breached the tenancy agreement that he entered into with the 1st appellant. The 1st appellant rented the 1st respondent's premises located at Sakina for the purpose of conducting his business therein to, wit; Bakery project, poultry project and recording studio . The 2nd respondent was not a party to the tenancy agreement but served them with a notice to vacate from the rented premise, thus caused them to suffer losses to a tune of Tshs 200,000,000/=. The tenancy agreement is attached to the plaint as an annexure "3".The reliefs prayed in the plaint are as follows;

- i) *Payment of Tshs 200,000,000/= being specific damages.*

- ii) *An order for payment of general damages suffered by the plaintiffs as a result of the 1st defendant's (the 1st respondent herein) delay in settling the plaintiff's claim.*
- iii) *An order for the 1st defendant to pay an interest at Commercial rate on the decretal sum as the Court will make from the date of judgment to the date of full payment.*
- iv) *Costs of the suit.*
- v) *Any other relief as this Court may deem just to grant.*

In order to understand, whether the Court has jurisdiction or not, Hon. Mziray, J (as he then was) in the case of **Exim Bank (T) Limited Vs Agro Impex (T) Ltd and others** , Land Case Appeal No. 29 of 2008 (unreported,) said the following;

"Two matters have to be looked upon before deciding whether the Court is clothed with the jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the Court has power to grant them and whether they correlate with the cause of action".

Looking at the facts alleged by the appellants in the plaint and the reliefs prayed therein, it is clear that the appellants' claims are based on the tenancy agreement which they attached to the plaint. Their cause of action is breach of a tenancy agreement. The appellants are claiming for payment of Tshs 200,000,000/= being losses suffered after being evicted from the rented premises in question.

The provisions of section 3 of the Land Disputes Courts which was relied upon by the trial Magistrate Court in holding that it has no jurisdiction to entertain the appellants' case provides as follows;

"Section 3: Institution of land disputes

- (1) Subject to section 167 of the Land Act Cap. 113, and section 62 of the Village Land Act Cap. 114, **every dispute or complaint concerning land** shall be instituted in the Court having jurisdiction to determine land disputes in a given area.*
- (2) The Courts of jurisdiction under subsection (1) include:*
 - (a) The Village Land Council;*
 - (b) The Ward Tribunal;*
 - (c) The District Land and Housing Tribunal;*
 - (d) The High Court (Land Division);*
 - (e) The Court of Appeal of Tanzania."*

(Emphasis is added)

Now the pertinent question here is; are the appellants' claims "concerning land". In the case of **Charles Rick Mulaki Vs William Jackson Magero, Civil Appeal No. 69 of 2017**, (unreported) Hon Maige J, as he then was, held as follows;

*"...the expression "matters concerning land" would only cover
Proceedings for protection of ownership and or possessory rights in
land"*

I entirely associate myself with the above quoted holding of this Court as far as the interpretation of the expression *"matters concerning land"* is

concerned. In the instant case the appellants are neither claiming for protection of ownership and/ or possessory right of the rented premises . Their claims are basically based on losses incurred following the alleged breach of the tenancy agreement. I am of the settled view that the provisions of section 2 and 3 of the Land Dispute Courts are not applicable in the instant case.

From the foregoing, it is the finding of this Court that the trial Court erred in law to uphold the respondent's point of preliminary objection on jurisdiction. The Resident Magistrates' Court of Arusha at Arusha has jurisdiction to entertain and adjudicate the appellants'.

In the upshot, this appeal is allowed with costs. The case file should be remitted to the Resident Magistrates' Court of Arusha at Arusha forthwith for determination of the case.

Dated this 17th day of May 2022




B.K.PHILLIP
JUDGE