

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 33 OF 2021

ISAYA ASENGA APPELLANT

VERSUS

REHEMA SUPHIAN RESPONDENT

**(Appeal from the judgment and decree of the District Court of
Kinondoni at Kinodoni in Civil Appeal No. 83 of 2019)**

JUDGMENT

31st March & 1st April, 2022

KISANYA, J:

Isaya Asenga, the appellant herein was the plaintiff in the suit instituted in the Primary Court of Kawe at Kawe, against the respondent, Rehema Suphian. His claim was for recovery of money to the tune of five million and five hundred thousand shillings (Tshs. 5,500,000) alleged to have been advanced to the respondent to purchase a piece a piece of land from the latter.

The respondent admitted the appellant's claims. She also admitted the material facts which constituted the appellant's claims. At the end of the day, the trial court entered a judgment in favour of

the appellant whereby, the respondent was ordered to pay the appellant the claimed amount of Tshs. 5,500,000/=.

Feeling that justice was not rendered, the respondent appealed to the District Court of Kinondoni. She advanced four grounds of appeal to the effect that: *One*, the trial court had no jurisdiction to try the matter. *Second*, the trial court erred in holding that the respondent was liable to pay the appellant Tshs. 5,500,000 basing on the fabricated facts and that it ought to have waited for the decision of the High Court Land Division. *Three*, the trial court failed to consider the evidence adduced by the respondent. *Four*, the trial court mixed facts based on a criminal case that had been instituted against the respondent.

The first appellate court determined the appeal basing on the first ground which gave rise to the issue whether the primary court had jurisdiction to entertain the matter. Although the first appellate court found that the appellant's suit was founded on a debt, it considered that the trial court had determined an issue of land ownership. Therefore, the first appellate court went to hold that the trial court had no jurisdiction to try the matter. More so, the first

appellate held that the trial court ought to have stayed the case before it pending determination of the suit for ownership of land which was pending in the High Court of Tanzania, Land Division.

Not amused, the appellant filed the instant appeal which is based on two grounds to the following effect:

1. That appellate court erred in law and in fact by holding that the Primary Court had no jurisdiction.
2. That the appellate court erred in law and fact by adjudging that the issue of ownership of land pending before the High Court.

At the hearing of this appeal, the appellant was represented by Mr. Edward Lisso, learned advocate, while the respondent appeared in person and unrepresented.

Starting with the first ground on jurisdiction of the trial court, Mr. Lisso submitted that the appellant's claim was for refund of money paid to buy the land. Therefore, the learned counsel faulted the trial court in holding that the suit before the trial court was related to land.

On the second ground, Mr. Lisso submitted that the first appellate court failed to consider the contract between the appellant and respondent had a clause on refund of money in case of any dispute over the land sold to the appellant. He submitted further the issue of land case pending before the High Court was not related to the appellant's claims and that the appellant was not a party to the said case. Therefore, he was of the view that the first appellate court erred in making decision basing on the foresaid fact. He, thus, prayed that the appeal be allowed with costs, the decision of the first appellate court be quashed, and the decision of the trial court be restored.

On her part, the respondent admitted that she sold a piece of land to the appellant. She went on to contend that the case pending in the High Court was related to the same land and that she was intending to pay the appellant after termination of the said case which is now before the Court of Appeal. Although the respondent admitted that the appellant is not a party to that case, she claimed that it is related to the case at hand. Therefore, she invited this Court to dismiss the appeal.

In his short rejoinder, Mr Lisso reiterated his submission in chief and urged this court to allow the appeal.

Upon going through the entire record, the submissions of the parties, I will tackle this matter in the order in which the grounds were presented. There are two issues calling for my determination. These are whether the trial court had jurisdiction to try the matter and whether the land ownership was at issue before the trial.

Starting with first ground on the issue of jurisdiction, the law is settled such issue can be raised at any stage of the proceedings even at appellate level. It is settled position that jurisdiction of the court is purely statutorily. As such, parties cannot confer jurisdiction to the court. See the case of **Shyam Thanki and Others vs. New Palace Hotel** [1971] 1 EA 199 in which the then East African Court of Appeal that:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess. "

The above cited case was cited with approval by the Court of Appeal in **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (unreported).

Guided by that position, it is necessary to consider the provisions governing jurisdiction of the primary court. In terms of section 3 of the MCA, jurisdiction of the primary is limited to district in which that court is established. Since the matter which gave rise to this appeal is of civil nature, the relevant provision is section 18(1) (c) of the MCA which provides:

"18.-(1) A primary court shall have and exercise jurisdiction

(a) in all proceedings of a civil nature-

(i) N/A

(ii)N/A

(iii) for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value.

In the light of the above position, it is clear that the primary court has jurisdiction on a claim for the recovery of civil debt arising from contract where the value thereto does not exceed thirty million shillings.

As rightly submitted by the learned counsel for the appellant, the first appellate court held that the primary court determined land ownership while it had no jurisdiction. Indeed, in terms of the Land Act [Cap. 113, R.E. 2019], the Village Land Act [Cap. 114, R.E. 2019] and the Land Disputes Courts Act [Cap. 216, R.E. 2019], primary court is not one of the courts with jurisdiction to try issues related to land.

The question is whether the matter before the trial court was related to land. The first appellate court was satisfied that the respondent claimed for refund of the money spent for buying the land. The relevant part of the judgment of the first appellate is quoted hereunder as follows:-

"...it is true that the a(sic) claim for refund of money does not fall within the ambit of land as there were no dispute that the suit was purely

founded on debt but went further and make determination of ownership of that piece of land.”

I am at one with the first appellate court that the trial court erred in commenting that the respondent was not the lawful owner of the land sold to the appellant. That issue was required to be determined by court competent to try land matter. However, considering that the matter before the trial court was related to claim for refund of money, I am of the view that, it was wrong for the first appellate to hold that the trial court had no jurisdiction. In my considered view, the first appellate court ought to have considered whether the appellant proved her claim for refund of money. In any case, since it is not disputed that the matter before the trial court was related to claim for refund of money and not land, the first ground of appeal is found meritorious.

The second ground raises the issue whether the matter of land ownership was at issue before the trial court. As stated earlier, appellant claim was for refund of Tshs. 5,500,000. When the claim was read over to the respondent, she admitted the same to be true. In that premises, the case proceeded under rule 44 of the

Magistrates Court (Civil Procedure in Primary Court) Rules, GN 310 of 1964 as amended by GN No. 119 of 1983 which provides:

"At the first hearing of proceedings, the court shall ascertain from each party whether he admits or denies the allegations made against him by the other party and shall record all admissions and denial and shall decide and record what matters are in issue"

Upon the respondent admitting to the claim, the appellant was called upon to state the particulars of his claim. When called upon to respond on the said particulars, the respondent affirmed and testified as follows:

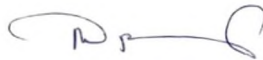
"Ni kweli tuliuziana kiwanja na mdaiwa na alinipa Tshs. 5,500,000 kuna shauri Mahakama Kuu la ardhi na litakapoisha nitaweza kumlipa pesa yake kwa sababu linahusu ardhi niliyomwuzia."

The above evidence shows clear that the respondent did not dispute the appellant's claim for refund of Tsh. 5,500,000. Her admission to the respondent's claim was clear and unambiguous. It is clear that the respondent indicated that she was intending to settle the appellant's claim after termination of the case which was pending in the High Court. In that regard, nothing suggesting land ownership

was an issue before the trial court. Further to this, it was not stated whether the appellant was a party to the said land.

In the event, I find merit in this appeal and allow it. As a result, the judgment of the first appellate court is hereby quashed, and the decree extracted therefrom set aside. Further to this, save for the decision that the respondent was not the lawful owner of the land sold to the appellant, the decision of the trial court is hereby restored. Considering the circumstances of this case, each party is ordered to bear its own costs.

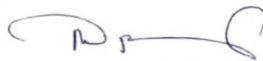
Dated at DAR ES SALAAM this 1st day of April, 2022.



S.E. Kisanya
JUDGE

Court: Judgment delivered this 1st day of April, 2022 in the presence of Mr. Edward Liso, learned advocate for the appellant and the respondent. B/C Zawadi present.

Right of appeal explained.



S.E. Kisanya.
JUDGE
01/04/2022

