

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

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 109 OF 2022**

*(Originating from the judgement and Decree of the Resident Magistrate Court of Kinondoni at  
Kinondoni in  
Civil Case No. 22 of 2022 dated 07<sup>th</sup> June, 2022 (Hon. A.M Lyamuya-PRM) )*

**CELINA PETER MWERO..... APPELLANT**

**VERSUS**

**KASIAN NINGA..... RESPONDENT**

**JUDGMENT**

05<sup>th</sup> December, 2022 & 03<sup>rd</sup> March, 2023

**POMO, J.**

I have found it apposite to preface this judgment with this illuminating quotation from the judgment of the Court of Appeal in the case of **Hadija Masudi as the Legal Representative of the late Halima Masudi v. Rashid Makusudi**, Civil Appeal No. 26 of 1992 (unreported) in which the Court of Appeal lucidly observed thus: -

*"We have found it necessary to give a chronological background to this case since the outcome of the appeal is to say the least, **a startling demonstration of the truth that this Court like all courts can***

***do justice only in accordance with the law and not otherwise...***” (Emphasis is mine).

The conventional wisdom inherent in this 1993 observation by the Court of Appeal, was in 2000, given constitutional recognition in Article 107B of our 1977 Constitution of the United Republic of Tanzania. I shall, therefore, endeavour to render the justice to the parties herein ***are seeking***, “in accordance to the law of the land and not otherwise.”

As to the facts giving rise to this instantaneously appeal, it is alleged that sometimes in the year 2016, the appellant and respondent herein were having an arrangement to which the respondent and other WhatsApp group members were obliged to deposit some amount of money in the appellant’s bank account and in the return, the appellant was to use the said amount to buy a large portion of land and thereafter split it among the group members. It appears, the appellant knew the person who owns a large portion of land at Vikawe village in Coastal region and thus, the respondent entrusted the appellant and continued to deposit the agreed amount expecting to get four plots however, until to date they are yet to be given. The respondent’s deposits were alleged to have been made in the appellant’s bank account at different instalments and in totality, to a tune of TZS. 9,000,000/= and in the appellant’s TigoPesa mobile phone account to a tune of TZS. 205,000/=.

Basing on those reasons, the respondent herein decided to institute a civil suit before the Resident Magistrate of Kinondoni at Kinondoni which was registered as Civil case No. 22 of 2019 praying for the following reliefs:-

- (1) *Refund of money at a tune of TZS. 9, 205,000/= owed to the plaintiff by the defendant from the money that was deposited in her bank account number **7040613001 at Diamond Trust Bank.***
- (2) *Payment of specific damages at a tune of TZS. 25,000,000/=*
- (3) *Payment of General damages at a tune TZS. 20,000,000/=*
- (4) *Interest at the Commercial rate*
- (5) *Interest at the Court rate*
- (6) *Costs of the suit and*
- (7) *Any other relief this Court may deem fit and just to grant.*

On the other hand, the appellant herein who was the defendant at the trial did agree on the existence of such arrangement with WhatsApp group members, and went further to state that he had even met the seller of the plot namely Mwanaidi Kawambwa and negotiated with her the proper price that was TZS. 9,000,000/= per acre whereby for 20 acres it was TZS. 180,000,000/=. She contended to have collected the whole amount from members and paid the seller the said amount in three equal instalments of TZS. 60,000,000/=.

In her defence, the appellant had contended that, on 7<sup>th</sup> day of October, 2017 all group members went to Mapinga to sign the sale agreement in presence of local government authority leader and the advocate. However, she contended that the respondent was not among them and at the time of handing over the land, another person emerged and claimed to be the owner of the land. For this reason, one member of the group decided to file a complaint at the police station and accused the appellant and the seller for obtaining money by false pretence.

At the end of the trial, save only for specific damages at a tune of TZS. 25,000,000/= but for other prayers, the trial Court was satisfied that the claims were proved and ordered the appellant to refund the respondent; TZS. 9,205,000/= deposited in her bank and Tigopesa account, interest at commercial rate of 18% from the date of filing the suit to the date of judgment, interest at the Court rate of 7% from the date of judgment to the date of payment in full, general damages to a tune of TZS. 5,000,000/= together with 7% interest at the court rate and Costs of the suit.

Disgruntled, the appellant has appealed against such a decision armed with seven (7) grounds of appeal which I hereby reproducing them verbatim as follows: -

- (1) *That the trial Court erred both in law and in fact by entertaining the matter which it had no jurisdiction as the matter involves purchase of land located at Vikawe Street, Mpinga Ward, Kibaha Pwani region.*
- (2) *That the trial Court order made on 23/1/2020 and 14/2/2020 were laid off without any reason being adduced hence vitiated the proceedings and occasioned a failure of justice.*
- (3) *That the resident magistrate erred in law and fact for failure to observe the principle of natural justice by denying the appellant's fair trial hence occasioned a failure of justice.*
- (4) *That the trial resident magistrate erred in law and in fact in evaluating evidence hence reached in a wrong decision.*
- (5) *That the Resident magistrate erred in law and in fact for failure to order joinder of the vendor one Mwanaidi Abdallah Kawambwa as a necessary party.*
- (6) *That the trial magistrate erred in law and in fact in accessing general damages by ordering the appellant to pay excessive and erroneous general damages.*
- (7) *That the trial magistrate erred in law and in fact by awarding costs of the case by way of general damages at a tune of TZS. 5,000,000/=.*

Upon leave of this Court, this appeal was agreed to be argued by way of written submissions and the parties herein were represented in which they complied accordingly with the schedule. The appellant was duly represented

by Mr. Rajabu Mrindoko, learned advocate whereas the respondent enjoyed the services of Mr. Sigsbert Ngemera, learned advocate.

Excavating from the appellant's written submission on ground 1; Mr. Mrindoko in essence complains that the dispute was a land dispute as it arises from the breach of sale of land as evidenced under paragraphs 3,4,5,6,7 and 8 of the plaint and thus, the trial Court had no jurisdiction to adjudicate. He cemented that, the issue of jurisdiction is so vital and that the trial Court's proceedings should be vitiated. To buttress, for his preposition he invited the Court to make reference to the decisions in **Tanzania Revenue Authority vs. Kotra Company Ltd**, Civil Appeal No. 12 of 2009, CAT at Dsm , **Clement Gerorge Mwakibinga vs. CRDB BRANCH Manager-Kahama**, Civil Appeal No. 6 of 2021, HCT at Shinyanga, **Honourable Attorney General vs. Reverend Christopher Mtikila**, Civil Appeal No. 45 of 2009, **Commissioner General Tanzania Revenue Authority vs. African Barrick Gold PLC**, Civil Appeal No. 11 of 2020, CAT at Dar es Salaam (All unreported) and **Attorney General vs. Loha Y. Akonaa Y and Another** (1995) T.L.R No. 80. In all cited decisions, in essence the Courts of record made it certain that jurisdiction aspect is a fundamental issue that goes to the root of the case.

At crux the learned brother for the appellant stressed that, the section 3 (1) & (2) of the Land Disputes Courts Act, [Cap 216 R.E 2019], section 167 of the Land Act, [Cap 113 R.E 2019] and section 62 of the Village Land Act, [Cap 114 R.E: 2019] do not mention the trial Court as among the forum vested with power to adjudicate land disputes.

As to the second ground of appeal, Mr. Mrindoko submitted that, there were two orders made by the trial Court however they were never complied. That is to say, the order of 23/1/2020 to which the trial Court ordered parties to address the Court as to whether the Court is clothed with pecuniary jurisdiction to try the matter however, it was never complied. And the other order was of 14/02/2020 to which prior, the appellant made an application to the trial Court to compel the regional police commander to avail the appellant with the document seized from him which he intended to rely at the trial and thus the Court order directed the regional police officer to release the photocopies of the requested documents i.e. contract of purchase of land, bank statement and deposit slip but the order had not been complied. According to Mr. Mrindoko, the appellant's defence was prejudiced for non-compliance of the second order.

The appellant's counsel forcefully submitted that, court orders should be respected and complied with and the Court are supposed to condone such

failure, by doing so is to set bad precedent and invite chaos. To support his contention, he cited the case of **Karoli Chogoro vs. Wathihache Merengo**, Civil Appeal No. 164 of 2018, CAT at Mwanza (Unreported).

On the third ground of appeal which is co-related with ground 2 of appeal, the appellant's counsel had submitted that the failure of the regional police commander to comply with the Court Order of 14/02/2020 had denied him a fair trial hence it has occasioned a failure of justice. According to him, if the order could have been complied then, the trial magistrate could have not found that the appellant had failed to prove that he paid Mwanaidi Kawambwa a total amount of TZS. 180,000,000/= in three instalments of TZS. 60,000,000/=. He went on to pose the question as to how could the appellant prove that he had deposited the said amount to the seller without showing the deposit slip which were in Dar es Salaam Zone Crime Office custody? It was Mr. Mrindoko submission that, all the requested documents to which the order was meant for, were very important for the appellant's case and that the trial Court's act of **laid off** its order and started the trial without the requested documents being availed to the appellant, it ended up in denial of fair trial.

On the fourth ground of appeal, Mr. Mrindoko succumbed that, the trial magistrate did not correctly evaluate the evidence hence he reached to



a wrong decision. According to the learned brother for the appellant, the respondent's evidence had departed from his pleadings without even amending the same under Order VI Rule 7 of the Civil Procedure Code, [Cap 33 R.E: 2019] (herein the CPC). That, the respondent pleaded under paragraph 4 of the plaint that he was requested by the appellant to assist him to purchase a land to the person whom the appellant knew that owns the land at Vikawe village. However, in his testimony he changed and testified that, he had paid the appellant TZS. 9,250,000/= for purchase of 4 plots from the appellant and the appellant has failed to give him the said plots. As well in cross examination, according to the appellant's counsel, the respondent insisted to have purchased the said plots from the appellant and the village leaders confirmed that the land belonged to the appellant.

Mr. Mrindoko stressed that, pleadings bind parties and it is a cardinal principle that parties to the suit should always adhere to what is contained in their pleadings unless an amendment is permitted by the Court. To support his argument, he cited the decision of **Charles Richard Kombe t/a buildings vs. Evarani Mtungi and Others**, Civil Appeal No. 38 of 2012, CAT-Dar es Salaam (Unreported). It was his further submission that, the sale agreement of land (Exhibit D1) indicates that seller of the land was

Mwanaidi Kawambwa and the appellant was among the purchasers of the land thus the allegations were not proved on the required standard.

On the fifth ground of appeal, Mr. Mrindoko insisted that, the seller of the land was a necessary party as she was a person whose presence before the Court was necessary for it to effectively and completely adjudicate the questions involved in the suit. He emphasized that Order 1 rule 10 (2) of the CPC were to be invoked to join Mwanaidi Kawambwa. According to the appellant's counsel, this was a land suit and in land suits, a person who is alleged in the pleadings to have conferred land title to the parties or any of them and the person whom the title was conferred are necessary parties. He then invited the Court to make reference to the decision in **Juma B. Badala vs. Laurent Mnkende**, (1983) T.L.R No. 103.

As to ground 6 and 7 were argued together as they both relates to assessment of general damages. Particularly, Mr. Mrindoko submitted that the general damages were awarded by the trial Court to a tune of TZS. 5,000,000/= however the discretion to award the same was never exercised judiciously. According to him, the reason given by the trial Court was not sufficient to grant such amount. The learned counsel explicated that, the trial Court ought to have considered that the appellant was not the one who was supposed to hand over the land to the respondent and that neither of

them had contemplated that the said land for purchase could have ownership dispute. He argued that, ordering the appellant to pay such amount was unfair as Mwanaidi (the seller) was the one who parted with the money. He then prayed for the appellant's appeal be allowed with costs.

On the other hand, in respect of the 1<sup>st</sup> ground of appeal, Mr. Ngemera resisted that the matter was not a land dispute and articulated that, the Court from time to time has argued that, there are two basic factors to consider in determining jurisdiction; which are the pleaded facts and the reliefs claimed. To support, he invited the Court to read the decision in **Rombo Green View Investment Ltd vs. Cadasp Tanzania Ltd**, Land case No. 268 of 2008, HCT at Dar es Salaam (Land division) (Unreported).

In parallel to that, Mr. Ngemera argued that reliefs under the plaint filed by the respondent on 25<sup>th</sup> January, 2017 in nowhere the respondent pleaded to be the rightful owner of the landed property neither did he plead handing over of the purchased land and he never pleaded to recover the land. That the pleading reveals that the respondent was claiming for refund of the money he deposited to the appellant's account for purchasing of land. Again, the counsel for the respondent insisted that, even looking at the issues, neither of them touched on the question of who was the rightful owner of the land. He then insisted that, the case cited by the appellant of

**Clement Geroge Mwakibinga** (*Supra*) is distinguishable. Mr. Ngemera then stressed that, refund of the purchase price is not a land matter. He then invited the Court to make reference to the decision of **National Bank of Commerce vs. National Chicks Corporation Ltd and 4 Others**, Civil Appeal No. 129 of 2015, CAT at Dar es Salaam (Unreported). In that decision, the Court of Appeal had cemented on a point that litigation whose cause of action accrued from any commercial contract, regardless of its aftermath to the landed property/real property is not necessarily a land matter.

On the second grievance, the respondent's advocate had accentuated that, as to the order of 23/01/2020 which the appellant contends that the parties were ordered to address on whether the trial Court had pecuniary jurisdiction over the matter and never complied, Mr. Ngemera died in the totality on existence of such order in records. He further highlighted that, the trial Court could have not made such order as on 24/04/2019 the appellant decided to withdraw the preliminary objection on point of jurisdiction.

As to the complained Court order of 11/02/2020, the respondent's counsel insisted that, the appellant ought to have filed a third party application and the fact that she slept over her right thus she was ready to

proceed with hearing. Mr. Ngemera went on to state that, the appellant was playing a delaying tactic as she proposed that she had no documents and that the documents were with police office and she was availed an opportunity to procure them from the police station and through her advocate she admitted to be ready to proceed with a hearing of her defence on 17/06/2021. According to Mr. Ngemera, the appellant is not bonafide but a manifestation of the desire to manipulate the administration of justice system and these complaints are afterthoughts and must be disregarded. It was his submission that, the decision in ***Karori Chongoro*** (Supra) cited by the appellant is distinguishable to the case at hand as there is no order which made the trial court *functus officio* and the appellant cannot benefit from her own wrong where she failed to comply with the order.

As to the third ground of appeal, Mr. Ngemera stiffly submitted to the effect that, there was no any breach of rules of natural justice which occasioned failure of justice to the appellant. He succumbed that, the appellant neither did seek for any other court order for compelling the said officers to produce the said documents instead, the appellant just informed the Court that she was ready for hearing without any further complaint in relation to the said documents.

To catch my attention, Mr. Ngemera further submitted that, Mwanaidi Kawambwa was a key witness whom could inform the trial Court as to whether she was paid the entire amount however, the appellant failed to call her and that the trial Court was right to draw inferences adverse to the appellant who did not advance the reason as to why Mwanaidi Kawambwa (the purported seller of the land) who was within reach, competent to testify and in possession of material facts was not called upon to testify in her favour. He then cemented his argument with the decision in **Azizi Abdallah vs. Republic** [1991] T.L.R 71 to which the Court of Appeal had pointed out that the Court can draw adverse inference where a witness is within reach and not called without sufficient reason.

In respect of ground 4, the counsel for the respondent vehemently resisted and went on to argue that, the records are clear that the respondent presented the pay in slips (Exhibit P-1), Tigopesa transactions (Exhibit P-2) and a demand letter requiring refund of such amount (Exhibit P-3). On the other hand, the appellant presented a sale agreement (Exhibit D-1). Besides, it was Mr. Ngemera contention that, the appellant during cross examination admitted to have received the money, admitted to be the one who knew the land owner, admitted to be the founder of WhatsApp group and admitted to be the one collected and received the money through her phone and bank

account. However, she was unable to reveal the mode of payment to the land owner. The advocate whom is contended to have witnessed the sale agreement was never called to testify in Court. According to Mr. Ngemera, the appellant was heard, she was availed all opportunity worthy a right to a hearing including legal representation, however she failed to discharge her burden thus the ground lacks merit.

On the fifth ground of appeal, the learned counsel for the respondent explicated that, the objection as to joinder of parties to the suit need to be taken at the earliest possible stage and any objection not so taken shall be taken to have been waived. He then requested the Court to make reference to the contents of Order 1 Rule 13 of the CPC and in buttress to his argument, Mr. Ngemera cited the case of **Venance Mwageni and 4 Others vs. Zavede Chelele and Another**, Land Appeal No. 50 of 2015, HCT (Land Division) at Dr es Salaam (Unreported). In this decision, the Court made it clear that, failure to make an objection earlier amounts to waiver. Moreover, he also invited the Court to make reference in its decision of **Rashid Abdallah Dochi vs. Leonard Gerald Bura**, Land Case No. 5 of 2019, HCT at Tanga (Unreported) which has a similar position.

On the sixth and seventh grounds of appeal which is a complaint on the amount of general damages awarded against the appellant, it was Mr.

Ngemera's contention that, as per Order VII Rule 7 of the CPC, general damages are awarded at the discretion of the Court. To cement he cited the case of **Consolidated Holding Corporation vs. Grace Ndeana** [2003] T.L.R No. 191, in which the Court of Appeal had held on those premises. He submitted that the amount awarded was not inordinate as the trial magistrate considered a number of factors that is to say, the trial Court was of the view that since the appellant did not fulfil the promise and the respondent had an expectation to benefit her life through the said land, but yet the appellant parted with the money for the entire period without any communication with the respondent, that obvious at her benefit, the time spent to recover that money and financial position in recovering that money entitled the trial Court to exercise its discretion to award the general damages as awarded. To cement, he invited the Court to make reference to the conditions stipulated in **Tanzania Saruji Corporation vs. African Marble Company Ltd** [2004] T.L.R No. 155 to which he contended that the trial Court did adhere.

In his rejoinder, Mr. Mrikondo had no much to say rather than echoing and repeating from what he had submitted in chief, thus I do not wish to reiterate such replications.



Upon digesting the submissions by the parties, the crucial question for determination is whether the meritorious or otherwise

I prefer to dispose this appeal in a seriatim as follows; starting with the 1<sup>st</sup> ground of appeal. As to the first complaint, the appellant's contention is that, the dispute between the parties was a land dispute as it originates from the sale of land agreement and thus the trial Court did not have a requisite jurisdiction to adjudicate. On the other hand, the respondent's preposition is that, the respondent's reliefs sought were mainly on refund of the money deposited in the phone and bank account of the appellant purposely for purchase of 4 plots of land thus, it was never a land dispute.

I need not to be detained much here as, this Court in several occasions has made it clear that the suit for recovery of purchase price is not a land dispute. To mention one, in **KCB Bank Tanzania Limited vs Ramadhani Myolela**, Civil Appeal No. 197 of 2018, HCT at Dar es Salaam (Unreported), where in original suit the plaintiff claimed for recovery of a purchase price and my learned brother his Lordship Mugeta J while exercising appellate jurisdiction stressed on the preposition that, for the matter to be considered as the land dispute there are two indicators which are; either *ownership of land* or *right to possession* which includes occupation by tenancy. And his Lordship concluded that, the recovery of purchase price does not amount to

a land dispute. I do subscribe fully to this position without any hesitation whatsoever.

In similar vein, the Highest Court of the land in **National Bank of Commerce vs. National Chicks Corporation Ltd and 4 Others** (*Supra*) did not disguise its position on the claims where the purchase price of land is the subject matter; It had this to say at page 33-34 of the decision:-

*"It must be understood that any litigation whose cause of action accrued from mortgage or any commercial contract, regardless of it's aftermath to the landed property/real property is not necessarily a land matter..."* [Emphasis is added]

Guided by the above, in consideration of the reliefs sought by the respondent (the plaintiff by then) which had nothing to do with either ownership nor possession of the landed properties but rather recovery of the purchased price, I see it apt at juncture to rule out that, the first ground of appeal lacks merit as the dispute was never a land dispute. Thus, I hereby dismiss the 1<sup>st</sup> ground of appeal.

Coming to the second ground of appeal, the appellant complains is that, there were orders which were made by the trial Court to which they were not complied to and eventually the appellant was prejudiced. These

were two orders, the first of 23/01/2020 which the Court ordered the parties to address the Court on whether the trial Court was clothed with pecuniary jurisdiction to adjudicate the matter and the other of 14/02/2020 to which the trial Court ordered the regional police officer to release the photocopies to the appellant of the contract of purchase of land, bank statement and deposit slip which they were under their custody as the appellant wanted to use them for his defence. The complaint is that, the trial Court laid off the two orders and proceeded with trial something which caused unfair hearing to the appellant (defendant by then). On the other hand, the respondent's contention is that, there was no such order of 23/01/2020 which ordered the parties to address on the pecuniary jurisdiction of the trial Court.

As to the second order, it has been the contention by the respondent's side that, the order of 11/02/2020 could have been not the issue if the appellant would have lodged a third party application.

I wish to make certain here, that *one*, this Court and the Court of Appeal have time without number underscored compliance to Court orders that, a court order is binding and Court orders are made in order to be implemented. See; **Tanzania Harbours Authority v. Mohamed R.** [2002] T.L.R 76; **Patson Matonya v. Registrar Industrial Court of Tanzania & Another**, CAT-Civil Application No. 90 of 2011; and **Geoffrey**

**Kimbe v. Peter Ngonyani**, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

**Two**, the question of jurisdiction for any Court is basic and it goes to the very root of authority of the Court to adjudicate. The question of jurisdiction is so fundamental thus, the Court of Appeal in **Fanuel Mantiri Ngunda v. Herman Mantiri Ngunda and Two Others**, [1995] T.L.R 155 (CAT) had this to say:-

*"...the Courts must as a matter of practice on the face of it be certain as assured of their jurisdictional position at the commencement of trial...It is risk and unsafe for the Court to proceed with the trial of a case on the assumption that the Court has jurisdiction to adjudicate upon the case."*

Guided by the above, it is obvious that the jurisdictional issue is conferred by the statute and not by wishes or willingness of the parties, neither can the parties, magistrate, judge or even the Court itself cloth itself with it.

**Three**, appreciating the seriousness of the complaint raised under ground two of appeal that there was a Court order of 23/01/2020 which required the parties to address on whether the trial Court had pecuniary

jurisdiction over the matter and it was never complied, I took trouble to keenly peruse the handwritten proceedings of the trial Court. For *ex tensio*, the following is an excerpt of 23/01/2020: -

**"23/01/2020**

*Coram: K.C. Mshomba, RM*

*Plaintiff: Paskas Alexander adv*

*Defendant: Absent*

*CC: Lewis Mwangamila*

**Alexander, Adv**

*Since the defendant prayed to file a third party Notice which they didn't do, we pray for a date of final PTC.*

*Sign*

*23/01/2020*

**Orders**

*(1) Final PTC on 29/01/2020*

***(2) Parties to address Court whether this Court is clothed with pecuniary jurisdiction to try the matter.***

*(3) The defendant to be notified*

*Sign*

*23/01/2020"*

From the above extract, it is apparent on record that, the trial Court had made such an order requiring parties to address the Court on whether it had pecuniary jurisdiction to adjudicate the matter as contended by the appellant. Therefore, I am not easily being convinced cheaply by the

respondent's counsel that, there was no such an order by the trial Court on 23/01/2020 as principally, in as far as the sanctity of records is concerned, the court records are presumed to accurately represent what actually transpired in Court. See- **Alex Ndendy vs. Republic**, Criminal Appeal No. 207 of 2018, CAT at Iringa (Unreported).

The trial Court had made an order under which it had to ensure that it was to be complied to and it was therefore even more imperative for the Court to determine the said issue as the same concerned the jurisdiction of the Court over the said matter. I have read the whole proceedings but it is very unfortunate that, in neither occasion the parties did address the Court on the said issue of pecuniary jurisdiction of the trial Court nor did the Court give a decision on the said issue.

Procedurally, the trial magistrate ought to have determined the issue of pecuniary jurisdiction before proceeding to the full trial of the suit and deliver its findings either before or in its judgement, depending on the circumstances. Given the fact that the point of law touches the issue of jurisdiction of the trial Court which is so basic and goes to the very root of authority as alluded earlier, it was unescapable for the trial magistrate to make a finding over the said issue even if the parties could have neglected to make compliance with the order.

Under the circumstances, I am settled in my mind that there was a procedural irregularity committed by the trial Court that vitiates the entire proceedings from 29<sup>th</sup> January, 2020. Consequently, the second ground of appeal is hereby allowed to such extent. The fact that, the violation of the order of 23/01/2020 has faulty the entire proceedings thereafter, I therefore see no reason to delve into other grounds of appeal which are emanating from those nullity proceedings. I declare the proceedings of the trial Court starting from 29/01/2020 a nullity and quash them. I further set aside the judgment and decree arising therefrom and direct that the issue of whether the trial Court is clothed with pecuniary jurisdiction be expeditiously heard before another Resident Magistrate. I make no order as to costs as none of the parties is at fault.

Order accordingly.

Rights of the parties have been duly explained.

DATED at **DAR ES SALAAM** this 03<sup>rd</sup> day of March, 2023.



**MUSA K. POMO**

**JUDGE**

**03.03.2023**

