

**IN THE HIGH COURT OF TANZANIA
(IN THE SUB-REGISTRY OF MWANZA)**

AT MWANZA

PC CIVIL APPEAL NO. 122 OF 2022

*(Originating from Civil Appeal No.23 of 2022 at Nyamagana District Court and Civil
Case No. 84 of 2022 Mwanza Urban Primary Court)*

LEVINA THEODORY.....APPELLANT

VERSUS

DISMAS NYIBAGO MARWA.....RESPONDENT

JUDGMENT

Date of Last Order: 09/03/2023

Date of Ruling: 14/03/2023

Kamana, J:

This is a second appeal from the judgments of the Nyamagana District Court and Mwanza Urban Primary Court in Civil Appeal No.23 of 2022 and Civil Case No. 84 of 2022 at Mwanza Urban Primary Court respectively. The admitted facts depict that the Appellant and the Respondent entered into an agreement whereby the former sold to the latter the right to use the business place she leased from one Magreth Lucas Wambura and her business tools. The value of the said agreement was Tshs. 14,000,000/-. The Respondent paid Tshs. 12,100,000/- and the remaining unpaid sum was Tshs. 1,900,000/-.

The Appellant tried her level best to claim the remaining sum but her efforts proved futile. In that case, she approached the Mwanza Urban Primary Court to claim such sum. The Respondent did not object to having been in debt. However, he attributed his failure to pay the debt on the account that there is a dispute whereby Wambura recognizes the Appellant as her tenant whilst the latter introduces him as his employee. In view of that, the Respondent contended to have failed to discharge his duty. Having heard both parties, the trial Court held in favour of the Appellant and ordered that the Respondent should pay the claimed amount and costs.

The decision of the trial Court did not amuse the Respondent and he preferred an appeal to the Nyamagana District Court. His grounds of appeal were:

1. That the trial Magistrate erred in law for entertaining and deciding a civil case emanating from a lease agreement without jurisdiction.
2. That the trial Magistrate erred in law for blessing unjust enrichment to the tune of Tshs. 1,900,000/- on the part of the Respondent to the detriment of the Appellant without considering the loss sustained by the Appellant from the acts of the Respondent.

The first appellate Court nullified the proceedings of the trial Court and set aside its decision on the ground that the trial Court did not have jurisdiction to entertain the case as it falls within the cases which are adjudicated by the Land Courts.

Aggrieved by such decision, the Appellant came to this Court to seek justice armed with four grounds that are reproduced hereunder:

1. That the appellate Court erred both in law and facts by ruling that the trial Court had not vested with jurisdiction to entertain the matter in Civil Case No. 84 of 2022 while it has jurisdiction to entertain the matter.
2. That the appellate Court erred both in law and facts by failing to consider and analyze the evidence tendered by the Appellant at the trial Court, henceforth delivering judgment in favour of the Respondent by considering his weak evidence.
3. That the appellate Court erred both in law and facts by entertaining the issue of land which was not raised by either party in the trial Court.
4. That the appellate Court erred both in law and facts by failing to consider the admission of debt by the Respondent at the trial Court henceforth delivering judgment in favour of the Respondent.

When the appeal was set for hearing, the Appellant was represented by Ms. Stella Sangawe, learned Counsel whilst Mr. Stephen Mhoja, learned Counsel advocated the Respondent. The Appeal was argued for and against *viva voce*.

Submitting in support of the appeal Ms. Sangawe, on the first ground, averred that the trial Court had jurisdiction to entertain the matter. She cited section 18 of the Magistrates' Courts Act, Cap.11 [RE.2019] as conferring jurisdiction upon the trial Court to entertain the matter which revolves around debts. On the second, third and fourth grounds, the learned Counsel submitted that the appellate Court failed to analyze the evidence of the Respondent who admitted to having been in debt. With those arguments, the learned Counsel implored this Court to allow the appeal and upheld the decision of the trial Court.

Responding, Mr. Mhoja with regard to the first ground was of the view that the trial Court was not clothed with the jurisdiction to entertain the matter. He reasoned that the claim of Tshs. 1,900,000/- was in relation to an agreement to purchase the business place and other business tools. In that case, he contended that such claim was a land issue that was required to be adjudicated by Courts listed in section 167 of the Land Act, Cap. 113. To bolster his views, the learned Counsel

referred this Court to the case of **Rombo Green View Investment Limited v. Cadasp Tanzania Limited**, Land Case No. 269 of 2018. With regard to the remaining grounds, the learned Counsel contended that the agreement speaks for itself as the matter in question was a land issue.

Ms. Sangawe had a brief rejoinder. She contended that the remaining sum which was the subject at the trial Court was in relation to the purchase price of the business tools.

At this juncture, I should put it clear that I will not consider the second, third and fourth grounds of appeal as the appellate Court determined the appeal on one ground which relates to whether the trial Court had jurisdiction to entertain the matter. Having put that way, the question this Court is invited to investigate is whether the appellate Court was right in concluding that the trial Court did not have jurisdiction to entertain the matter.

As a matter of principle, before entertaining any matter, the Court is required to ascertain whether it is clothed with the jurisdiction to entertain the matter. In the course of ascertaining the jurisdiction, the Court is required to firstly look upon the facts of the case with a view to understanding the cause of action. Secondly, the Court is supposed to

determine whether the reliefs sought are within its powers to grant and whether they reflect the cause of action. When the Court is satisfied that the course of action and prayed reliefs are within the ambits of its jurisdiction, it is considered to have been clothed with the jurisdiction to entertain the matter before it. This position was accentuated in the case of **Exim Bank (T) Limited v. Agro Impex (T) and Another**, Land Appeal No. 29 of 2008 where this Court stated:

'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.'

See: Rombo Green View Investment Ltd v. Cadasp Tanzania Ltd, Land case No. 268 of 2008.

Guided by that principle, I think it is prudent to understand that land courts, as rightly contended by Mr. Mhoja, are established by section 167 of the Land Act, Cap. 113. The said section listed the Court of Appeal, the High Court, the District Land and Housing Tribunals, Ward Tribunals and the Village Land Councils as courts with jurisdiction to

entertain all kinds of disputes, actions and proceedings concerning land. My thorough perusal of the Land Act and the Land Disputes Courts Act, Cap.216 [RE.2019] convinces me that there is no comprehensive definition of what dispute or matters concerning land mean. However, this Court had defined 'matters concerning land.' In the case of **Anderson Chale v. Abubakar Sakapara**, Civil Appeal No. 121 of 2014 (Mlay, J as he then was) defined matters concerning land to mean a matter on which a right on land or interest thereon is in dispute. Since then, that definition was cited with approval by my learned brother Maige (as he then was) in the case of **Charles Rick Mulaki v. William Jackson Magero**, Civil Appeal No. 67 of 2017, my learned Sister Maghimbi in **Arnold Moshi and Another v. Shirwa Company Limited**, Land Case No. 125 of 2019 and my learned Brother Arufani in **Ukodi International Limited v. J.M Hauliers (T) Limited and Two Others**, Land Case No. 105 of 2022. Suffice it to say that I, too, subscribe to that position.

From that definition, there is no doubt that for a matter to be considered a land dispute, such matter must involve a right on land or interest thereon. Deducing from that definition, a right on land or interest thereon relates to the ownership or possession of the land. Any

issue beyond ownership or possession of the land is not a matter concerning land. In this regard, I am persuaded by the position taken by this Court in the case of **Charles Ricki Mulaki (Supra)** where the Court held that:

'that the expression "matters concerning land" would only cover proceedings for protection of ownership and or possessory rights in land.'

To ascertain whether the issue that was brought in the trial Court concerns land, I thoroughly perused the records of the trial Court. Claims Form No. 1 states that the claim was for Tshs. 1, 900,000/-. Claims Form No. 2 states:

'Madai ya pesa Tshs.1,900,000/- Tarehe 8/9/2021 tulifanya makubaliano ya mauziano ya eneo la biashara na mdaiwa, wakiwa wanalipia vifaa vya kazi vilivyokuwa ndani ya eneo hilo ambavyo ni vyangu kwa makubaliano ya Tshs. 9,800,000 kwenye vifaa na kodi ilikuwa Tshs. 4,200,000/- jumla ni Tshs. 14,000,000/-. Mdaiwa amelipa Tshs. 12,000,000/- deni likabaki Tshs.1,900,000/-. Mdaiwa ameshindwa kulipa deni hilo.

Hivyo, naiomba Mahakama mdaiwa alipe Tshs. 1,900,000/- na gharama za kesi.'

The agreement between the parties is titled '*MKATABA WA MAUZIANO YA ENEO LA BIASHARA.*' Clause 1 of such agreement states:

'KWAMBA *kwa kuzingatia malipo ya pesa za Kitanzania Milioni kumi na nne ambayo iko katika mchanganuo ufuatao; (1) kiasi cha Tshs. 9,800,000/- kwa ajili ya vifaa vyote vya uendeshaaji, (2) kiasi cha Tshs.4,200,000/- kwa ajili ya kodi ya pango kwa mwaka mmoja itakayolipwa kwa mwenye nyumba, hivyo fedha uliyolipa kama malipo ya awali ni Tshs. 10,000,000/- na kiasi kilichobaki kitakamilishwa ndani ya siku 30 (yaani 8th October 2021).*

Clause 2 identifies business tools that were handed over to the Respondent. None of them is a business place. Clause 3 provides that:

'KWAMBA, *mara baada ya malipo kukamilika mnunuzi atakuwa na haki ya kuendelea kutumia eneo la biashara kwa mkataba endelevu wa miaka minne (4) ambayo muuzaji amebakiza kwenye upangaji.'*

Clause 4 states:

'KWAMBA, mara baada ya muda wa upangaji katika eneo hilo kwisha, mnunuzi atakuwa huru kukaa na mwenye nyumba na kuingia mkataba upya wa upangaji kwa jina lake.'

I have decided to reproduce the contents of the agreement so as to understand the thrust of its contents. The Contents of Clause 1 suggest that the Appellant sold the business tools to the Respondent to the tune of Tshs. 9,800,000/-. The sum of Tshs. 4,200,000/- was rent paid to Wambura as the landlady. In other words, the Appellant was not paid rent.

Further, the contents of Clauses 3 and 4 suggest that the Appellant sold her right to use the business place and not the business place as she was merely a tenant. Further, as it is shown hereinabove, the Appellant did not receive rent as the same was agreed to be paid to Wambura, a landlady.

In that context, the dispute between the parties is not a land matter as the Appellant did not claim ownership or possessory rights. Further, the relief claimed by the Appellant does not insinuate that she claims ownership or proprietary right. In that case, it is my holding that

the appellate Court misdirected itself by concluding that the dispute is a land matter and that the trial Court had no jurisdiction. The appeal is allowed with costs. Consequently, I quash the proceedings and judgment of the appellate Court. I uphold the proceedings, judgment and order of the trial Court. It is so ordered.

Right to Appeal Explained.

DATED at **MWANZA** this 14th day of March, 2023.



A handwritten signature in blue ink, appearing to read "KS Kamana". The signature is stylized with large, sweeping loops and a long horizontal stroke at the end.

KS KAMANA

JUDGE