

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO 44 OF 2022

(Arising from Civil Appeal No 01/2022 in Bunda District Court and Originating from Civil Case No 65 of 2021 at Mugeta Primary Court)

PENDO M. IRANGA APPELLANT

VERSUS

KITAMA ELIAS RESPONDENT

RULING

8th & 8th March 2023

F.H. MAHIMBALI, J.:

This ruling is in respect of the preliminary objection raised by the respondent's counsel that the appellant's appeal is bad in law for attempting to challenge the decisions of the two lower courts instead of the District Court's decision.

The basis of this preliminary objection is premised on the wording of the grounds of appeal contained into the appellant's petition of appeal. The said petition of appeal appears to be appealing against both decisions of the lower courts, I quote:

1. That, both **subordinate courts** erred in law and facts for failure to make properly the analysis and parties, hence the evidence of the appellant is stronger than the respondent.
2. That, **both subordinate courts** erred in law and facts for failure to determine that the contract entered by parties is unlawful based on the elements of valid contract.
3. That, **both subordinate courts** erred in law and facts for failure to consider the counter claims of the appellant against the appellant.
4. That, **both subordinate courts** erred in law and facts for raised issued which is pure biasness against the appellant concerned to the counter claims of the Appellant ...”

[Emphasis added]

Mr. Emmanuel Paul Mng’arwe learned advocate for the respondent argued that according to section 25 (1) b of the magistrates’ Courts Act, Cap 11 R. E. 2022 provides that:

“In any other proceedings any part it aggrieved by the decision of order of a district court in the exercise of its appellate or revision jurisdiction may, within thirty days after the date of the decision or order, appeal either before or after such period of thirty days has expired”

In essence, Mr. Emmanuel Paul Mng’arwe is of the view that this appeal is bad in law as it is not within the dictate of the law. That one

cannot appeal to the High court against the decisions of the two lower courts but only against the decision of the District court, Resident Magistrate, etc. In law, one cannot appeal against the decisions of both lower courts at one but of the last court. In reliance to this position, Mr. Emmanuel cited this court to the decision of **George Ntagera vs Shabani Madandi**, Misc. Land Appeal No 2 of 2022, High Court at Kigoma which struck out the appeal on the basis that this court has no legal mandate to question the decision of the court not immediate subordinate to the High Court. Only if a decision of the immediate court aggrieves a party, the High Court then gets its legal mandate. Thus, on that basis, it has been prayed that the appeal be struck out with costs.

On the other hand, Mr. Emmanuel Gervas learned advocate is of the view that the wording "both" does not make prejudice to the appeal and in anyway has been misconstrued by Mr. Emmanuel. Moreover, he asked this court not to be bound or persuaded by the decision of George Ntagera (*supra*).

I am aware that the powers of a Higher Court in appellate Jurisdiction are vast including correction of legal errors done by a subordinate court. In doing so, it can correct even legal errors done by all

subordinate courts in the process. However, for this court to get legal jurisdiction, it must be an error first omitted or committed by the court immediate to the High Court. So, this court as per its appellate jurisdiction, under section 25 (1) (a) and (b) of the MCA, gets its appellate powers on appeals originating from courts only to legal errors committed or omitted by the district Court but not others.

Therefore, it was improper for the appellant's counsel to lodge appeal to this court for errors committed by the Primary Court while there is a decision by the District Court.

As what is the way forward, Mr. Emmanuel Paul is of the considered view that the appeal is incompetent thus be struck out.

On the other hand, Mr. Emmanuel Gervas, is of the view that this court can apply overriding objective to bless the legal errors done. He also made reference to Article 107A (2) of the Constitution of the United Republic of Tanzania of 1977.

I am impressed by the pronouncement of Honorable Z. N. Galeba, J (a.h.w) in the case of **Baraka Owawa vs Tanzania Teachers' Union**, Miscellaneous Labour Application No 6 of 2020, High Court Musoma, that the principle of overriding objective should not be construed as a nursery

within which to fertilize and lead to germination and growth of illegal practices in mandatory legal practices. The same cannot be condonation to illegalities. I therefore sustain the preliminary objection raised and rightly argued by Mr. Emmanuel Paul Mng'arwe, learned advocate that for appeals originating from primary court to High Court, the party thereof only appeals against the decision of the District Court if aggrieved with.

In the circumstances, this appeal is illegally before the court. The same is struck out for being incompetent. However, parties shall bear their own costs.



DATED at MUSOMA this 08th day of March, 2023.


F. H. Mahimbali

Judge

Court: Ruling delivered 08 day of March, 2023 in the presence of the Appellant, Ms. Emmanuel Gervas, advocate for the appellant, Mr. Emmanuel Paul Mng'arwe, advocate for the respondent and Mr. Kelvin Rutalemwa, RMA.


F. H. Mahimbali

Judge