

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MBEYA DISTRICT REGISTRY)

AT MBEYA

PC. CIVIL APPEAL NO 01 OF 2023

(Arising from Civil Revision No. 1/2022 in the District Court of Chunya at Chunya, originated from Civil Case No. 8/2020 of the Primary Court of Chunya District at Makongolosi)

RAPHAEL D. SINDANO1ST APPELLANT

LYOCHI NGUSA2ND APPELLANT

ELIZABETH N KINGWA3RD APPELLANT

DEODATA DAVID4TH APPELLANT

VS

MTANDE AMCOS LTD RESPONDENT

JUDGMENT

20/04 & 07/06/2023

NDUNGURU, J.

This is an appeal directed against the judgment of the District Court of Chunya at Chunya in Revision No. 1/2022 from the execution of the



original order of the Civil Case No. 8/2020 before the Primary Court of Chunya District at Makongolosi. The relevant facts for the purpose of this appeal can be shortly stated. In November 2020, the appellants before this court obtained a money decree in the Primary Court of Chunya District at Makongolosi against the judgment debtor Mtande Amcos Ltd. On 1st September 2021 the appellants filed an application for execution of the court order in execution of civil case number 08/2020 before the Primary Court of Chunya District at Makongolosi. On 26th October 2021 attachment was levied in execution on office premises belonging to the judgment debtor located at Mamba G – Chunya.

On 13th June, 2022 the respondent (judgment debtor) received notice of execution of court order of the Primary Court against him from the appointed court broker, Planet Auction Mart and Company. The respondent Mtande Amcos Ltd filed a chamber summons made under Section 22(1), (2), (3) and 95 of the Civil Procedure Act, (*sic*) [Cap. 33 R.E. 2019] accompanied with the affidavit sworn by Ezekiel Robert Mwambeso. The respondent was seeking the following orders, painted hereunder;

*(a) The this (sic) Honourable Court be please (sic) to
revise the surbordinate court's order for execution of the*



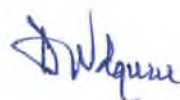
applicant's property to the extent that the same court has no jurisdiction to adjudicate on the case as it founded on Co-operative Society dispute.

(b) That this Honourable Court be please (sic) to call for and examine the record of the Makongolosi Primary Court (sic) in the civil case No. 08/2020 with a view to satisfying itself as to the correctness, legality and propriety, or otherwise of the regularity proceedings, judgment and decree pronounced and given by Hon. V. G. Ketapo RM on the said date.

(c) Costs of shall follow the event.

(d) Any other order(s) this Honourable Court may deem fit to grant.

The revised court ordered that, the trial court assumed the jurisdiction which does not have when dealing with the matter on merit because the dispute between the parties was raised from the cooperative society. Hence, the whole matter before the trial court was nullified to the extent of setting aside the obtained judgment and order for execution due to lack of inherent jurisdiction (subject matter) and the application was allowed with costs.



Being aggrieved with the decision of the revising court then the appellants approached this court armed with three grounds of appeal mentioned hereunder;

- 1. That, the District Court Magistrate erred in law and fact in entertaining an application for Revision which was time barred.*
- 2. That, the District Court Magistrate erred in law and fact by entertaining an application for Civil Revision No. 1/2022 without having jurisdiction.*
- 3. That, the District Court Magistrate erred in law and fact to revise the proceedings and judgment of the Makongolosi Primary Court (sic) in civil case No. 8/2020 on the grounds which were not deponed by the respondent in his affidavit.*

At the hearing, the appellants appeared unrepresented while the respondent enjoyed the service of Mr. Richard Baruti, learned counsel therefore, the matter was argued by way of written submission.

The appellant in support of the grounds of appeal have submitted grounds 1 and 2 jointly that, the District Court acted ultra vires to revise the entire proceeding contrary to section 22 (4) of the Magistrate Courts



Act, as from the date when civil case No. 8/2020 was determined to the date when application for revision was filed before the District Court, there was an interval of two years contrary to the cited provision. The respondent was ought to have applied for extension of time to file the application for revision out of time.

The issue of time limitation is a serious one as it touches the jurisdiction of the court. The matter was supposed to be dismissed under section 3(1) of the Law of Limitation Act, Cap 89 R.E. 2019 which proved the consequence of proceedings which instituted after the time limitation lapses. They prayed that the 1st and the 2nd grounds of appeal to be allowed with costs and the drawn order and ruling be quashed and set aside for being emanated from nullity proceedings.

On the 3rd ground was submitted in support of appeal that, it is a trite law that parties are bound by their pleading. The affidavit in support of the application before the District Court was never deposed about the powers of the Primary Court to determine suits which a cooperative society is involved but the same argument was involved in the impugned ruling. The said argument is in contravention of the rule of a fair trial hence, they prayed this court to allow the third ground of appeal on the reasons expounded herein above. This court be pleased to allow the



appeal and quash the proceedings and judgment of the District Court with costs in favour of the appellants.

In reply to the written submission in support of appeal Mr. Baruti, learned counsel stated that, the respondent file an application for revision on 1st day of August, 2022 against the execution process undertaken before the primary court on 1st day of September, 2021. On that regards, the respondent's application for revision was in compliance of section 22 (4) of the Magistrate Court Act, Cap 11 which requires the revision to be done within the period of twelve months. The respondent was right to lodge the said revision because the respondent was challenging the execution proceedings and not the main suit. The 1st and the 2nd rounds of appeal have no merits on the eyes of law hence, entitled to be dismissed.

Then Mr. Baruti dealt with the question of determination of a ground not deponed in the affidavit cited in the 3rd ground of appeal. It is from the outset that, the jurisdiction of the primary court in respect of the case of a cooperative society dispute was stated in the respondent's chamber summons as a prayer which form part of the pleadings. Therefore, this ground of appeal has no limb to stand because the decision of the District Court of Chunya is based on the pleadings and arguments advanced



before it. Hence, this ground of appeal is liable to be dismissed by this Honourable Court.

Mr. Baruti, learned counsel went further in his submission. He stated that, the District Court of Chunya had a jurisdiction to entertain such civil revision. And the application for revision was filed within time prescribed by the law. Therefore, the District Court of Chunya was right to revise the execution proceedings of the Primary Court based on the principle stated in the case of **Hemedi Saidi v. Mohamedi Mbilu** (1984) TLR 113 to the effect that parties to suit cannot tie, but the person whose evidence is heavier than that of other is the one must win the case. Finally, he prayed this appeal to be dismissed for being baseless and has no merits.

In rejoinder, the appellants maintained their position in support of the appeal that the revision was filed out of time hence, was entitled to suffer the consequences of being dismissed. The same argument was maintained was in contravention of the provision of section 22 (4) of the Magistrate Court Act, Cap 11 which provide that,

"...No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and




no proceedings shall be further revised this section in respect of any matter arising thereon which has previously been the subject of a revision order under this section...”

The primary court decision was delivered on 4th November 2020 while the application for revision was filed on 29th July 2022 after the period of 20 months lapsed without leave to extend time to lodge an application out of time. The issue of time limitation is a serious one which touches the jurisdiction of the court. The consequences of contravention of time limitation is provided under section 3(1) of the Law of Limitation Act, Cap 89 R.E. 2019 which state that;

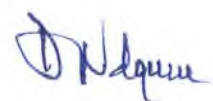
“...Every proceedings described in the first column of the schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence...”

In respect of the above cited authorities the appellants urged the grounds of appeal be allowed and the impugned order and judgment of the District court be quashed and set aside with costs.



With regard to the facts of this case, rival submissions of the parties scanned intensively by this court hence, it is pertinent to address the issue of the jurisdiction of the trial court in adjudication of the matter. It is very clear from the lower courts' records that the appellants were members of the Co-operative Society registered as MTANDE AMCOS LTD, herein referred as the respondent and judgment-debtor. The trial court entertained the matter arises from the business of the cooperative society and the order for payment of money was passed in favour of the appellants. When the execution application for trial court order was entertained then, the respondent applied revision before the District Court which overturned the decision and the whole trial court records were declared to be a nullity in accordance with the law applicable to the dispute at hand.

It is a position of law that where the dispute arises between the members of the cooperative society and the cooperative society itself then the matter is required to be dealt with in accordance with the provision of regulation 83 of the Cooperative Societies Regulations, 2015 G.N. No. 272/2015. This position has been expounded in the case of **Manager Majengo Saccos v. Medrad Prosper Nyakulima**, PC. Civil Appeal No. 7/2020, HCT at Dodoma (Unreported) where the court held that;



"Regulation 83 of the Cooperative Societies Regulations, 2015 provides for procedure for disputes settlement, whereas, the disputes are to be settled amicably within thirty days then the dispute shall be referred to the Registrar for Arbitration. When a person is aggrieved by the decision of the Registrar then he may within thirty days appeal to Minister. The decision by the Minister may only be challenged in the High Court through Judicial Review. In the instant case, the Respondent, ought to have exhausted the remedies provided for under Regulation 83 of the Cooperative Societies Regulations, 2015 before taking the matter to court. Therefore, the matter/dispute was taken prematurely to the Court with no competent jurisdiction to entertain the same. In that case the Dodoma Urban Primary Court together with the District Court of Dodoma at Dodoma had no jurisdiction to entertain the dispute."

Hence, the position of the referred applicable procedures cited above has been put clear in the provision of Regulation 83 of the Regulations, for easy reference is provided hereunder;



" (1). Any dispute concerning the business of a cooperative society between the members of the society or persons claiming through them or between a member or persons so claiming and the Board or any officer, or between one cooperative society and another shall be settled amicably through negotiation or reconciliation.

(2). Where the dispute under sub-regulation (1) is not amicably settled within thirty days pursuant to sub regulation (1), such dispute shall be referred to the Registrar for arbitration through Form No. 13 appearing under the First Schedule to these Regulations.

(3)

(4)

(5)

(6)

(7). In resolving the dispute under this regulation, the Registrar may appoint a committee of experts and persons conversant with the cooperative matters and law to assist him in reaching appropriate decision or he may refer the matter to an independent arbitrator nominated after consultation with the parties to the dispute.



(8)

(9). *A person aggrieved by a decision of the Registrar under sub-regulation (3) may within thirty days of the receipt thereof appeal in writing against such decision to the Minister whose decision shall be final.*

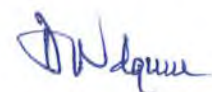
(10)

(11)

(12)

(13). *Where, in pursuance of the provisions of sub regulation (7), the Registrar exercises the power of deciding the dispute himself, the proceedings before him in relation thereto shall, as nearly as possible, be conducted in the same way as proceedings before a court of law."*

When the trial court was determining the dispute at hand arising from the business of the cooperative society contravened the procedural law governing the adjudication of the matter. The trial court was not a proper forum to adjudicate the matter at hand as underlying in the principle of *forum non competens* over the dispute between the parties see, **Manager Majengo Saccos case** (supra). Where there is a proper



forum established for adjudication of the matter then any grievance arises shall be referred to the proper forum. Other forum cannot adjudicate the matter without a vested jurisdiction by a statute. Also, this position has been expounded in the case of **Speaker of the National Assembly v. Karume**, [1993-2009] 1 EAGR 572 at page 575 where the court held that;

"...where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed."

The decision of the District Court of Chunya was proper to nullify the trial court proceedings, judgment, and order for being repugnant to the law governing adjudication of the matter at hand. Hence, it lacks inherent jurisdiction over the matter. The second ground of appeal has no merit and it is dismissed.

The first and third grounds of appeal are discussed together. The application for revision before the District Court of Chunya was based on the illegality of the trial court judgment and order for execution. The issue of illegality can be traced from the records where the chamber summons was containing the prayers which are not supposed to be included in the



affidavit. It is clear that the matter does not contravene the law that governing the affidavit. Therefore, another issue that drove this court to determine is whether matter touching the jurisdiction of court can be raised even at the stage of execution process.

Where a lack of jurisdiction is proved, the very order of execution would be nullity. The question relating to jurisdiction can be raised at any stage in the proceedings. As evident, the plea does not relate to wrongful exercise of jurisdiction but relates to absolute want of jurisdiction and such plea can be raised at the stage of execution see, the case of **P. L. Morada v. S. D. Bakshi, AIR 1974 HP 57 (DB)**. This position also was held in the case of **Rajasthan SRTC & Anr. vs. Ugma Ram Choudhry**, (2006) 1 SCC 61 the High Court opined that;

"...the civil court did not have jurisdiction to entertain a claim based on the ID Act and if any decree is passed by the court without jurisdiction, the same shall have no force of law. Following the ratio in this judgment, the High Court held that the civil court lacked inherent jurisdiction to entertain the suit based on the ID Act and the judgment and decree so passed, are nullity. It was further observed that the plea of decree being a nullity

can also be raised at the stage of execution. The revision petition filed by the judgment debtor was accordingly allowed by setting aside the decree passed in favor of the plaintiff."

From the outset, the issue of jurisdiction is of paramount importance which goes to the root of the whole matter and can vitiate the trial court proceedings. The respondent to raise the issue of jurisdiction at the time of execution stage was proper. Hence, based on lower courts records this matter was properly before the District Court of Chunya. There was no need for respondent to apply extension of time before the District Court of Chunya because the revision was applied within twelve months. The whole matter before the trial court was tainted by illegality for being contravention of the principle of *coram non judice* and therefore, the same is a nullity. The first and third grounds of appeal have no merit. This court finds that the whole appeal before this court has no merit therefore, the decision of the District Court of Chunya is upheld.

This appeal is dismissed with no order as costs on the reason that the parties had a common tie of being members of the respondent and their claim is against the very respondent. If parties still want to pursue this



matter, they are directed to refer the dispute to the established proper forum.

Order accordingly.




D.B NDUNGURU
JUDGE
07/06/2023

