

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CIVIL APPEAL NO. 23 OF 2022

**Arising from Civil Case No. 62 of 2020 in the Resident Magistrates' Court of
Mwanza**

EQUITY FOR TANZANIA LIMITED (EFTA) 1ST APPELLANT

IWAWA TRADING TANZANIA CO. LTD2ND APPELLANT

VERSUS

DR. DERICK DAVID NYASEBWA RESPONDENT

JUDGMENT

9 & 18/8/2023

ROBERT, J:-

The two appellants named above having been aggrieved by the judgment and decree of the Resident Magistrates' Court of Mwanza (trial court) in Civil Case No. 62 of 2020 preferred this appeal against the decision of the trial Court.

The background of this matter reveals that, the respondent filed a legal action against the two appellants herein at the Resident Magistrates' Court of Mwanza seeking a number of reliefs including, a declaration that the first appellant breached the loan settlement agreement and an order for payment of specific damages to the tune of Tanzanian Shillings 100,000,000/= being

the loss of business and goodwill. The trial Court granted the claim partly by declaring the appellants to have breached the agreement and ordered them to inform the respondent the proper debt owed and issue him payment schedule for the remaining debt.

Aggrieved, the appellants preferred this appeal armed with the following grounds of appeal:-

- (1) *That, the learned trial Magistrate erred in law and fact in holding that the defendant had breached the contract between her and the respondent;*
- (2) *That, the trial Magistrate erred in law and fact in holding the parties entered into loan settlement on 08.01.2019 to which the first appellant was held to breach the same*
- (3) *That, the learned trial Magistrate erred in evaluation and analysis of evidence resulting to reaching a rather wrong conclusion in prejudice to the appellants.*
- (4) *That, the learned trial Magistrate erred in holding the respondent herein had proved his claim against the appellants herein*
- (5) *That, the learned trial Magistrate erred in ordering reliefs that were not prayed for by the plaintiff.*

In addition to the grounds of appeal above, the appellant successfully filed an additional ground of appeal to the effect that, *the trial Court was not vested with pecuniary jurisdiction to entertain the suit as the suit was a case of commercial significance.*

When the appeal came up for hearing parties were represented by Messrs. Alex Job and Kevin Mutatina, learned counsel for the appellants and respondent respectively.

Mr. Job argued in support of the appeal. He started with the additional ground of appeal, contending that the subject matter of the suit fell within the definition of a commercial case under Section 2 of the Magistrates' Court Act. He maintained that, the pecuniary jurisdiction of the Resident Magistrates' Court in commercial cases under section 40(3)(b) of the Magistrates' Courts Act read together with section 41(1) of the Act is seventy Million Shillings (TZS 70,000,000/=). Therefore, since the claim for specific damages of TZS 100,000,000/= arose from a commercial agreement with a monetary value exceeding TZS 70,000,000/=, the Resident Magistrates Court had no jurisdiction to hear and determine the case. To reinforce his argument, he referred the Court to the case of **National Bank of Commerce Limited vs Maisha Mussa Uledi (Life Business Centre)**, Civil Appeal No. 501 of 2022, CAT at Mtwara (unreported) at pages 9 to 14. On that basis, he prayed for the proceedings and judgment of the trial Court to be quashed and set aside for lack of jurisdiction and the costs to be awarded.

Mr. Mutatina, learned counsel for the respondent, conceded to the additional ground of appeal and asked the Court not to proceed with the remaining grounds of appeal. He prayed for an order to set aside the proceedings and judgment of the trial court and for a retrial before a court of competent jurisdiction.

The central issue before this Court revolves around whether the trial court had the requisite jurisdiction to hear and decide the matter. The appellants have primarily anchored their appeal on the jurisdiction of the trial court based on the commercial significance of the case, as provided for in the Magistrates' Court Act.

The appellants contend that the subject matter of the case falls within the ambit of a commercial case, as defined by Section 2 of the Magistrates' Court Act. This definition encapsulates various aspects of commercial activities, including contractual relationships, liabilities arising from commercial activities, payment of commercial debts, and more. In evaluating this contention, the Court must ascertain whether the claim for specific damages, amounting to TZS 100,000,000/=, stems from a situation that aligns with the elements of commercial significance.

In support of their argument, the appellants have referred to the case of **National Bank of Commerce Limited vs Maisha Mussa Uledi (Life Business Centre)** (supra), which revolves around similar circumstances involving the jurisdiction of a court in a commercial case. The case serves as a reference point in understanding the interpretation of the Magistrates' Court Act, specifically with regard to the concept of "commercial significance" and the pecuniary jurisdiction of the court.

In the cited case, the dispute emerged from a loan agreement and the retention of a Certificate of Title by the bank, even after the respondent had repaid the loan. The core issue was whether this case was of "commercial significance" and whether the court that initially heard the matter had the necessary jurisdiction to do so.

Section 2 of the Magistrates' Court Act defines a "commercial case" as one involving matters of commercial significance. These encompass various elements such as contractual relationships, liabilities arising from commercial activities, and payment of commercial debts. It is notable that the Magistrates' Court Act's definition aligns with the High Court Registries (Amendments) Rules, 1999, and the High Court (Commercial Division) Procedure Rules, 2012.

The appellants in the **National Bank of Commerce case** argued that the matter at hand was commercial in nature due to the business contractual relationship between the parties, involving a loan secured by a Certificate of Title. The appellants emphasized that the retention of the Certificate of Title, even after loan repayment, had a direct connection to the commercial arrangement between the bank and the respondent.

In response, the respondent contended that the case was not of commercial significance, asserting that the claim centered around compensation for the unlawful withholding of his Certificate of Right of Occupancy. The respondent argued that the dispute arose after the contractual relationship had concluded, suggesting that not every claim against a bank should be considered commercial in nature.

The Court of Appeal, in assessing the matter, referred to the definition of "commercial case" in the Magistrates' Court Act, which encompasses contractual relationships. Given that the respondent's claim arose from a contractual arrangement tied to the loan and the Certificate of Title, the Court deemed the matter to have commercial significance. The Court emphasized that the loan was secured by the Certificate of Title, which directly connected it to the business relationship between the parties.

The Court noted that the case fell within the purview of the definition outlined in the Act, specifically item (ii) under "commercial case." This interpretation was pivotal in determining whether the case had commercial significance.

Regarding the jurisdictional aspect, the Court delved into Section 40 of the Magistrates' Court Act, which delineated the pecuniary jurisdiction of the District Court. The court affirmed that the value of the subject matter exceeded the jurisdictional limit, rendering the court's jurisdiction improper in handling a case with such financial implications.

In essence, the Court ruled in favor of the appellant, concluding that the matter fell within the realm of a commercial case due to the contractual nature of the dispute. Furthermore, it was determined that the jurisdiction of the court had been exceeded, leading to the court's lack of proper authority to entertain the case.

The cited case's principles and interpretations are pertinent to the current appeal, as it underscores the importance of determining whether a case possesses commercial significance and whether the court's jurisdiction is appropriate. In the present matter, the appellants argue that the claim for

specific damages arising from a commercial agreement amounts to a case of commercial significance. They rely on the Magistrates' Court Act's definition of "commercial case" to support their contention.

Given the persuasive and relevant nature of the precedent set in the **National Bank of Commerce case**, it can be argued that the claim for specific damages arising from a commercial agreement bears characteristics consistent with a commercial case as defined by the Magistrates' Court Act.

In light of the criteria provided in Section 2 of the Magistrates' Court Act regarding what constitutes a commercial case, it appears reasonable to accept that a claim for substantial specific damages arising from a commercial agreement indeed meets the threshold of commercial significance.


Considering the monetary value of the claim for specific damages amounting to TZS 100,000,000/=, it is evident that it exceeds the jurisdictional limit of TZS 70,000,000/= specified in Section 40(3)(b) of the Act. As a result, the trial court, operating under its original jurisdiction, did not possess the legal authority to adjudicate this matter.

In light of the foregoing analysis, the Court is inclined to accept the appellants' contention that the trial court lacked the requisite pecuniary jurisdiction to adjudicate a case of this commercial magnitude. The purpose of granting specific jurisdictional limits for different types of cases is to ensure that matters of varying significance are dealt with by courts that possess the necessary expertise and capacity.

Consequently, the additional ground of appeal is upheld, leading to the invalidation of the proceedings and judgment of the trial court. The Court hereby allows the appeal on the additional ground of appeal. The judgment and proceedings of the trial court are quashed and set aside. Any party interested in this matter is at liberty to institute a fresh claim in a court of competent jurisdiction.

It is so ordered.




K.N. ROBERT
JUDGE
18/8/2023