

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

CIVIL REVISION NO. 04 OF 2022

(Arising from Civil Appeal No. 11 of 2021 in the District Court of Dodoma Originating from Civil Case No. 68 of 2021 Chamwino Urban Primary Court)

BEATRICE MANARI..... APPLICANT

VERSUS

KENEDY JOSIA..... RESPONDENT

RULING

19th July & 28th August, 2023

HASSAN, J.

This is a *Suo motto* Revision done as per complaints lodged by the Applicant in the court regarding the whole proceedings of the District Court of Dodoma in entertaining Civil Appeal No. 11 of 2021. Mainly on two grounds that; one, the District Court Magistrate who entertained the matter on appeal was biased since she attested the contract allegedly entered by the parties in the suit and two, the trial magistrate erred in law by holding that the matter is a land matter not a civil matter. The Applicant thus prays the court to revise the District Court's decision and orders meted.

The background of this case is that, the parties herein allegedly entered into a contract for payment of money to be gained as compensation of the farm land located at Msalato previously owned by the Applicant, which was later transferred to TANROADS for construction of Airport thereto. Their agreement was that, the Respondent would compensate the Applicant Tshs 1,580,000/= after being paid compensation by TANROADS. That, the Respondent did not furnish the agreement thus the Applicant filed Civil Case No. 68 of 2021 before Chamwino Urban Primary Court claiming the money agreed.

In the trial court, the Respondent admitted the claim hence judgment was entered in the Applicant's favour. The Respondent was ordered by the trial court to pay the amount not later than the 30th day of April, 2021. The Respondent then appealed to the District Court of Dodoma which ruled in his favour that there was no proper admission of facts and claim in the trial court. Aggrieved, the Respondent then wrote a letter to this court challenging the whole proceedings and the decision hence this Revision.

Going through the record of two lower courts, my deliberation on this Revision will be based on the grounds raised by the Applicant in her letter to the court.

On the first ground, indeed the record is clear that, the District Court magistrate who entertained the appeal was the same person who had attested the parties' contract which was the base of the Applicant's claim in the trial court and the appeal thereafter.

Rule 9 (1) (c) of the Code of Conduct and Ethics for Judicial Officers, 2020 directs a judicial officer to recuse himself from proceedings once noted that he would be biased with the matter in one way or another or when he seems to have knowledge of the facts, thus:-

"9. (1) A judicial officer shall disqualify himself in any case in which that judicial officer;

(a).....

(b).....

(c) has a personal bias or prejudice concerning a party or personal knowledge of facts;"

In the case at hand since the magistrate had attested the contract which form the main cause of action and thus, had personal knowledge of the facts, she therefore ought to have recused herself from the proceedings to avoid conflict of interest regarding the matter.

The Rule against bias has been explained in various decisions of the court, one being **Ramadhan Mlindwa v Republic, Criminal Appeal No. 158 of 2015** (unreported) where the court held:-

"the rule against bias, means that a person is barred from deciding any case in which he or she may be, or may fairly be suspected to be biased."

The court has in various decisions advised judicial officers to be very keen in making sure they recuse themselves from matters they ought to have conflict of interest, In **Vidyadhar G. Chavda v Pravinchandra G. Chavda, Civil Revision No. 7 of 2016** (unreported) the court had this to say:-

"However, before we conclude, we wish to emphatically advise

trial magistrates and judges to study well the cases assigned to

them and promptly take the necessary actions including, in case of conflicting interest, recusal at the earliest possible opportunity."

The fact that, the magistrate had the knowledge of the facts and went on entertaining the matter amount to her being biased in one way or another in her decision.

However, despite the fact that the District Magistrate Court wrongly entertained the matter, another issue for deliberation by this court is whether or not this is a land or civil matter. Jurisdiction of primary courts are derived from Section 18 of the Magistrates' Courts Act, Cap 11 R. 2019. Thus,

"Section 18. (1) A primary court shall have and exercise jurisdiction

(a) In all proceedings of a civil nature-

(i) Where the law applicable is customary or Islamic law;

Provided that no primary court shall have jurisdiction in any proceedings of a civil nature relating to land;"

The matter at hand originates from compensation on a piece of land previously owned by the Applicant hence this is a purely land matter which has to be entertained by courts with competent jurisdiction to try land matters. Therefore, the trial Primary court had no jurisdiction to try the case at hand.

That being the case, I invoke my revisionary powers vested under section 30 of the Magistrate Courts Act, Cap 11 R. E 2019 to quash the proceedings and decisions of the Primary Court of Chamwino Urban and the District Court of Dodoma and set aside the orders meted thereto. I make no order to costs. Anyone interested to pursue the matter may wish to approach court with competent jurisdiction.

Ordered accordingly.

DATED at **DODOMA** this 28th day of August, 2023.




S. H. Hassan
JUDGE