

**IN THE HIGH COURT OF TANZANIA**

**(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**CIVIL APPLICATION NO. 31 OF 2023**

*(Arising from Mwanza Resident Magistrate's Court in Civil Case No. 61 of 2021)*

**SELEMAN MAGUHA.....1<sup>ST</sup> APPLICANT**

**ROBERT CHRISTOPHER MASAHI.....2<sup>ND</sup> APPLICANT**

**JACKSON ROBERT KAHARA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**LETSHEGO BANK (T) LTD.....RESPONDENT**

**RULING**

*26<sup>th</sup> September & 29<sup>th</sup> September, 2023*

**KAMANA, J:**

This is an application for revision, preferred by the applicants, against the summary judgment delivered by the Resident Magistrate's Court of Mwanza at Mwanza. The impugned judgment condemned the applicants to payment of the sum of Tshs.288,490,337.09/-. Alternatively, a house located at Plot No.1063 Block M, Pasiansi, Ilemela Municipality in Mwanza and a house located at Plot No.337 Block 'A' Mkolani in Mwanza were ordered to be attached and sold to cover the loan repayment. The decretal sum allegedly constituted an outstanding principal loan, accrued contractual rate and late repayment fees.

Facts have it that the first applicant applied for the loan from Letshego Bank (T) Ltd to the tune of Tshs.250,000,000/-. The sum was advanced to the first applicant through an agreement signed on 29<sup>th</sup> July, 2020. It was agreed by the parties that the loan would be paid in 36 installments whereby each installment was to be effected monthly. The loan was secured by a mortgage over the above-mentioned houses owned by the first and second applicants.

According to the facts, by 21<sup>st</sup> October, 2021, the first applicant was in arrears of Tshs.288,490,337.09/-. Those arrears triggered the institution of the suit that led to this application.

The application was made by way of chamber summons supported with an affidavit whose affiant is Mr. Kulwa Samson Ndulila, learned counsel for the applicants. The application was opposed by the respondent through a counter affidavit deposed by Mr. Innocent Michael, learned counsel for the respondent.

The application sought revision of this Court over the decision of the trial court on the grounds that the same was tainted with illegality. When the application was set for hearing, the applicants were advocated by Mr. Ndulila whilst the respondent had the services of Mr. Michael. The application was argued by way of oral submission.

For the purpose of this ruling, I will only reproduce the arguments of the parties with regard to the pecuniary jurisdiction of the trial court and my decision will be premised on that issue.

Submitting in support of the application, Mr. Ndulila contended that the trial court erred in entertaining a suit whose value was beyond the prescribed pecuniary jurisdiction of that court. He reasoned that according to section 40(2)(b) of the Magistrates' Courts Act, Cap. 11 [RE.2022], the pecuniary jurisdiction of the Resident Magistrate's Court does not exceed Tshs.200,000,000/-. Given that, the learned counsel held the view that by adjudicating the suit whose claims were Tshs.288,490,337.09/-, the trial court acted without jurisdiction.

Strengthening the argument, Mr. Ndulila contended that the pecuniary jurisdiction of the court is deduced from the claim stated in the plaint and not from the prayers. Bolstering the argument, he cited the cases of **Tanzania China Friendship Textiles Ltd v. Our Lady of Usambara Sisters** [2006] TLR 70 and **Felix Isdory Ngowi and Another v. John Alfred**, HC Civil Appeal No. 72 of 2020 (Unreported). In summing up, the learned counsel urged the Court to grant the application.

Reacting to the submissions of the learned counsel for the applicants, Mr. Michael prefaced by beseeching the Court not to consider

the ground on the reason that the same is not reflected in the affidavit supporting the application. Concerning the merits of the ground, the learned counsel considered it as irrelevant when tested to the circumstances of the suit at the trial court.

He argued that during the trial, the applicants raised an objection with regard to the pecuniary jurisdiction of the trial court but the same was overruled. He went on to argue that the objection was overruled on the grounds that the suit was about the immovable mortgaged properties which the trial court has jurisdiction to try provided the immovable property's value does not exceed Tshs.300,000,000/-. Based on that, he prayed the Court to dismiss the application with costs.

Rejoining, Mr. Ndulila contended that paragraph 8 of the affidavit stated about the pecuniary jurisdiction and hence his submission in that regard was premised on that paragraph. He argued further that the claim in the suit that led to the impugned judgment was monetary and not about the mortgaged property. He reiterated his prayer that the application be granted.

Having heard the parties and gone through the records, I wish to determine the matter at hand by first restating the cardinal principle that the jurisdiction of the courts is a creature of the statute and that parties are incapable of conferring jurisdiction to the courts. The principle was

well elucidated in the case of **Commissioner General of Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (CAT Unreported) where the Court of Appeal had this to state:

*'Jurisdiction is a creature of statute and as such, it cannot be assumed or exercised on the basis of likes and dislikes of the parties.'*

That being the position, I think it is relevant to this Court to determine the nature and value of the suit that led to this appeal. By doing so, the Court will put itself in a position to determine the contentious issue as to whether the Resident Magistrate's Court had jurisdiction to determine the matter. In so doing, I will consult the plaint that was filed by the respondent when instituting the case. According to the plaint, the suit arose out of the breach of the loan agreement between the parties. The value of the suit, as per paragraph 6 of the plaint, was Tshs.288,490,337.09/-.

The established principle is that the value of the suit is determined by the substantive claim stated in the plaint and not otherwise. This means that the value of the claim cannot be ascertained from reliefs prayed by the plaintiff or damages. **See: M/S Tanzania China Friendship Textiles Ltd v. Our Lady of Usambara Sisters** (Supra).

Fortified by the position taken by the Court of Appeal in the above-cited case, it is my holding that the nature of the suit was the breach of the loan agreement and the claim was Tshs.288,490,337.09/- as rightly contended by Mr. Ndiluka and not mortgaged houses, as contended by Mr. Michael.

Arrived at this juncture, I thought it prudent to consult the Magistrates' Court Act with a view to ascertaining whether the Resident Magistrate's Court was clothed with the jurisdiction to determine the suit that bred this application. Starting with section 41(1), the section provides that the Resident Magistrate Court has concurrent jurisdiction with the District Court. It reads:

*'A court of a resident magistrate shall have and exercise jurisdiction in all proceedings in respect of which jurisdiction is conferred by the Second Schedule to this Act and any law for the time being in force on a court of a resident magistrate or on a district court presided over by a resident magistrate or a civil magistrate, in the exercise of its original jurisdiction.'*

Section 41(2)(b) reads:

*'(b) in other proceedings where the subject matter is capable of being estimated at a money value, to*

*proceedings in which the value of the subject matter does not exceed two hundred million shillings.'*

According to section 40(2)(b) when read together with section 41(1) of the Magistrates' Courts Act, the pecuniary jurisdiction of the Resident Magistrate's Court, when determining a suit involving subject matter capable of being estimated at money value, is not exceeding two hundred shillings.

As I have already pointed out, the substantive claim in the suit that led to this appeal was Tshs.288,490,337.09/-. Given that, the trial court had no jurisdiction to entertain the suit. In other words, the suit was incompetent before the trial court. In taking this view, I am persuaded by the course taken by this Court in the case of **Felix Isidory Ngowi and Another v. John Alfred** (Supra) where this Court had this to state:

*'... this matter was filed and tried by the court of no jurisdiction. In the upshot, I find the irregularity for lack of jurisdiction is fatal and incurable at law, such fatality has therefore vitiated the proceedings and decision reached by the trial court.'*

Inspired by that passage, the revisionary powers of this Court are invoked to the extent of quashing and setting aside the proceedings and orders of the trial court. Any party interested in displaying and using legal

muscles may find his way to the court of competent jurisdiction. Order accordingly. Right To Appeal Explained.

**DATED** at **MWANZA** this 29<sup>th</sup> day of September, 2023.



**KS KAMANA**

**JUDGE**