

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA

PC. CIVIL APPEAL NO. 5 OF 2023

*(C/F Civil Appeal No 10 of 2022 before Karatu District Court at Karatu originating
from Civil Case No 11 of 2022 before Mang'ola Primary Court)*

ZAINABU KHALIDIAPPELLANT

VERSUS

GWANDU JOHN RESPONDENT

JUDGMENT

31st July & 30th October, 2023

KAMUZORA, J.

The Respondent herein sued the Appellant before the Primary Court of Mang'ola at Karatu (herein to be referred to as the trial court) claiming for Tshs 1,300,000/= which the Respondent paid as consideration for lease of the Appellant's land for purpose of farming. It was the claim by the Respondent that when he wanted to cultivate the leased farm, he was stopped by another person who also claimed that the same land was leased to him by the Appellant. It was on that account, the Respondent decided to claim for reimbursement of his money from the Appellant but in vain. He then decided to institute a civil

suit against the Appellant before the trial court. In her defence, the Appellant claimed that, it was the Respondent who neglected the farm after the same was leased to him thus, could not claim for reimbursement. The trial tribunal decided in favour of the Respondent that the Appellant breached the contract hence, she was ordered to reimburse Tshs 1,300,000/= to the Respondent. Being aggrieved by the trial court's decision, the Appellant unsuccessfully appealed to district court of Karatu at Karatu (the 1st appellate court) in Civil Case No. 11 of 2022. She then preferred second appeal to this court on the following grounds: -

- 1) That, the 1st Appellate Court erred in law and in fact when upheld the decision of the trial court without considering Appellant's evidence which shows the Respondent entered into a contract with the Appellant.*
- 2) That, the 1st Appellate court erred in law to uphold the decision of the trial court without considering the terms and condition agreed by parties in the said contract.*
- 3) That, the 1st Appellate court erred in law and in fact to uphold the decision of the trial court without considering that the trial magistrate erred for relying on allegation raised by Respondent that the Appellant entered into another contract over the said farm without exhibit tendered before the court.*

4) That, the 1st Appellate court erred in law and in fact to uphold the decision of the trial court without ascertaining that the trial magistrate erred in declaring that the Appellant breached the contract entered by the parties which expired on December 2021.

5) That, the Appellate court erred in law and in fact to uphold the decision of the trial court without considering that the trial magistrate erred in deciding the case while the amount claimed in the opening sheet was different from the amount in the proceedings.

Hearing of appeal was by way of written submissions and parties complied to the submissions schedule. As a matter of legal representation, the Appellant was dully represented by Mr. Hamisi Mkindi, advocate from Legal and Human Right Centre while the Respondent appeared in person.

In outset, the counsel for the Appellant drew the attention of this court to the jurisdiction of trial court to determine the matter. He submitted that jurisdiction issue is so fundamental and can be raised at any stage of proceeding even at the appellate stage. He referred this court to the case of **Tanzania Revenue Authority Vs. TANGO Transport Company Ltd**, Civil Appeal No 84 of 2009(Unreported). He was of the view that, since the cause of action was on breach of

agreement/contract and the subject matter was land, Mang'ola Primary court lacked requisite jurisdiction to entertain it. He insisted that dispute resolution mechanism for land matters is established under section 4(1) of the Land Dispute Courts Act Cap 216 R.E 2019 and Section 167(1) of the Land Act Cap 113 R.E 2019 and Part IX of the Land Act Cap 113 R.E 2019 and section 3 (1) Land Disputes Court Act Cap 212 R.E 2002. To him, jurisdiction on dispute related to lease is conferred to the land tribunal by the law. He also referred the case of **Esther Bhoke Bega & Daudi Nyakarungu Vs. Roza Kirutu & Mangazeni Bega**, Civil Appeal No 28 of 2020, **Shyam Thanki and others Vs. New Palace Hotel** [1971] 1 EA 199, **Fanuel Mantiri Ng'unda Vs. Herman Mantiri Ng'unda** [1995] TLR 159 and insisted that, the trial court entertained land matter which it had no jurisdiction to deal with.

Reverting to the grounds of the appeal, the counsel for the Appellant argued jointly the 1st to 4th grounds while the 5th ground was argued separately. Arguing in support of the first four grounds, the counsel for the Appellant submitted that it is undisputed fact that the Appellant and the Respondent had contractual agreement to hire land for farming activities. The controversy was on the date the dispute arose as between 2020 and 2021.

Pointing the Respondent's complaint before the trial court, the counsel for the Appellant submitted that the dispute between parties was based on contractual agreement to hire land for farming activities for 2020 season and not 2021. That, before the trial court, no evidence was tendered to substantiate that parties had contract and that the amount of Tshs. 1,000,000/= was paid as rent for hiring the land. That, the trial court was wrong to rely on exhibit PE1 which was an agreement between the Appellant and one Faustine Siay who was not a party to the suit. That, in absence of any written contract, the remained evidence is hearsay evidence. He insisted that, if parties have reduced their agreement into writing, no evidence on oral agreement or statement shall be admitted for purpose of contradicting, varying, adding or subtracting from its terms. That, the trial magistrate was wrong to rely on oral evidence to contradict documentary evidence contrary to Regulation 14(1) of the Magistrate's Courts (Rules of Evidence of Primary Courts) regulations GNs 22 of 1964 and 66 of 1972. He insisted that since nothing was presented to show that the agreement was vitiated by fraud or duress or mistake in writing, subsequent oral agreement which cancels or modifies written agreement is unmaintainable. Reference was made to the case of **Haruna**

Chakupewa Vs. Patrick Christopher Ntalukundo (PC) Civil Appeal
No 10 of 2021.

On the fifth ground, the counsel for the Appellant submitted that, the trial court failed to justify the basis of its decision ordering the Appellant herein to pay Tshs 1,300,000/= to the Respondent. He contended that, parties are bound by their pleadings and cannot allowed to depart from the pleadings. To prop this point, the counsel for the Appellant referred the case of **Martin Fredrick Rajab Vs. Ilemela Municipal Council & another**, Civil Appeal No 197 of 2019 [2022] TZCA 434. In conclusion, he urged this court to allow the appeal with costs.

Responding to the jurisdiction issue, the Respondent submitted that jurisdiction was a new issue not dealt with by the trial court or first appellate court. To him, raising issue of jurisdiction at this stage is a surprise to both the Respondent and the court as it is not the common court practise. He referred the case of **Registered Trustees of the Baptised Convention of Tanzania @ Jumuiya kuu ya Wabatisti Vs. James Kasomi & 4 others**, Misc. Civil Application No 35 of 2021 (Unreported).

On the Appellant's argument based on the provision of section 3 (1) Land Disputes Court Act Cap 212 R.E 2002, the Respondent submitted that such provision is irrelevant to this case which is centred on fraudulent procurement of Respondent's consent to get money. He insisted that there was no any issue of ownership of land thus, the trial court was seized with jurisdiction to determine the case. He added that case laws cited by the Appellant were irrelevant and cannot be applied to determine fraudulent cases. He maintained that, since the dispute between the parties was on contractual obligation, the trial court was seized with jurisdiction to determine the case. He referred this court to the case of **Msibazi Creek Housing Estate limited & 3 others Vs. Diamond Trust Bank Tanzania PLC**, HC at DSM (Unreported).

Responding to the 1st to 4th grounds, the Respondent submitted that the Appellant acknowledged in his grounds over the existence of legal agreement between parties for hiring farm for farming activities. That, there is no dispute that there existed a contract between parties herein but there was failure to perform the said contract because the Appellant hired the same farm to another person one, Faustine Siay. To him, the trial magistrate properly analysed and scrutinized the evidence of the Appellant.

On the 5th ground, the Respondent submitted that the submission by the Appellant is an afterthought as the Appellant did not dispute the additional amount at the trial court when the claim was read over to her. That, since the Appellant admitted that the contract was executed between her and the Respondent, the first appellate court was right as the trial court properly followed the procedure in awarding the Respondent the amount of Tshs 1,300,000/=.

In a brief rejoinder, the counsel for the Appellant reiterated his submission in chief and added that it was wrong for the trial court to order the Appellant to pay the amount with no any legal justification. He referred the case of **Martin Fredrick Rajab Vs. Ilemela Municipal Council & another**, Civil Appeal No 197 of 2019 TZCA 434.

I have considered the rival submissions and the record before this court and before demining the merit of this appeal, I will first deliberate on the issue of jurisdiction of the trial court raised during the submission by the Appellant. It is a well-known principle that jurisdiction being the creature of statute is a fundamental factor to be considered by any court before hearing any matter. The aim of doing so is to ensure that the court has requisite jurisdiction before embarking into determining any

case before it as was held in the case of **Shyam Thaki and other Vs. New Palace Hotel (Supra)**.

I understand that the counsel for the Respondent challenged the determination of that issue on account that issue of jurisdiction was not an issue before the lower courts. I agree with the Respondent, and it is undisputed fact that issue of jurisdiction of the trial court was neither raised before the trial court nor before the 1st appellate court. However, it has been stated in number of cases by this Court and the Court of Appeal that issue of jurisdiction can be raised at any stage of the proceedings including appellate stage as it touches on the very root of any matter. See, **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters**, [2006] TLR 70.

The practice requires that, where a party raises any issue over the jurisdiction of the court, parties be accorded chance to address the same before proceeding with any other matter. This is so done in order to accord parties the right to be heard on the raised issue and ensure that they are not taken by surprise. The Appellant in this application raised jurisdiction issue during hearing of the appeal that proceeded by way of written submissions.

Upon realising that issue of jurisdiction was raised and argued in the parties' submissions, this court before proceeding in composing a judgment, invited parties to address the court on jurisdiction issue. In her address to this court, the Appellant insisted that the dispute between them was over land lease thus, it was not proper for her to be summoned before the primary court. The Respondent on the other hand think that it was proper for him to institute a case before the primary court because he was claiming for refund of his money and not land. He contended that the Appellant leased her land to him but before he could cultivate it, he discovered that the same land was leased to another person. He opted to claim for refund of his money thus, to him, there is no dispute to refer to the land tribunal.

Having complied to the procedural requirement and heard the parties on the issue of jurisdiction, I will proceed to determine the jurisdiction issue based on the principle set by the Court of appeal that jurisdiction issue can be raised at any stage and even at appellate stage and still be determined. It is clear from parties' submissions that while the Appellant believe that the trial court lacked jurisdiction to hear and determine dispute between them as it was related to land, the Respondent insisted that the trial court was clothed with jurisdiction to

hear and determine the matter before it which to him, was purely contractual matter and not land matter.

From the record, the dispute between parties emanated from agreement to lease the land for farming activities. By its nature, lease agreement for land permits a tenant to develop or use the leased land during the period of the lease and after the lease period the tenant return land to its owner. In most of our communities in Tanzania, the most frequently used land leases in agriculture are cash rent lease and the crop-share lease and sometimes, hybrid lease. Both types of leases involve different forms of definite rental rate. In a typical cash rent lease, the tenant is obligated to pay a set price per acre for the leased land. With crop share lease, the landlord receives a share of crops produced in exchange for the use of land by the tenant. For hybrid lease, it is the combination of cash and crop-share leases which provide greater flexibility for the parties. I have decided to discuss issue of land lease to capture a true fact of matter in dispute.

In the matter at hand, there is undisputed fact that parties entered into cash rent lease as the Respondent claimed to have paid money for leasing the land. However, there is other evidence showing that the Appellant signed a hybrid contract with another person in which she was

receiving cash for rent and at the same time, sharing crops with that person.

Going through the record, there is no dispute that the cause of action emanated from contractual relationship of hiring/leasing the farm for farming activities. While I agree that the relationship between parties was contractual, no one can avoid to see that the subject matter of their contract was land. The law under section 3 Land Disputes Court Act Cap 212 R.E 2002 is clear that any dispute related to land has to be determined by the land court and not otherwise. The contention by the Respondent that it was not a land matter merely because the dispute was not related to ownership of land is unfounded. Land dispute is not confined only to dispute over ownership. Any dispute related to land or anything attached to land including dispute over rent on any land or premise attached to land, is land dispute.

I therefore find that the trial court lacked jurisdiction to deal with the dispute whose subject matter was land. In that regard, the proceedings before the trial court were a nullity. Since the appeal before the district court emanated from nullity proceedings, it cannot be left to stand.

The appeal is therefore allowed by quashing and setting aside the proceedings and judgment of the two lower courts and any order resulting therefrom. Parties if still interested, can institute a suit in the proper court/tribunal with competent jurisdiction. No order as to costs is made in considering that the Appellant enjoyed legal aid.

DATED at **ARUSHA** this 30th day of October, 2023.




D.C. KAMUZORA

JUDGE