

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

(PC) CIVIL APPEAL NO. 24 OF 2023

(Originating from the Judgment and Decree of the Kariakoo Primary Court in Civil Case No. 83/2022 and appeal from the judgment and decree of the District Court of Ilala at Kinyerezi in Civil Appeal No. 26 of 2022)

METHOD ANTHONY MWIJAGE APPELLANT

VERSUS

JILIUS MMBAGA..... RESPONDENT

JUDGMENT

14th & 16th Nov, 2023

KIREKIANO, J.:

This is a second appeal the root of the parties' dispute originates from the loan agreement in which the appellant secured a loan from the respondent amounting to Tshs. 22,000,000/-. This deal was entered on 19/08/2021. It appears the appellant in this appeal side of the bargain was to refund the said loan to the respondent by 19/10/2021. The appellant defaulted and the respondent in this appeal sued the appellant at the Primary Court of Ilala at Kariakoo. The Primary Court adjudged the claims

against the appellant and also awarded Tshs. 300,000/= as general damages.

The appeal to the District Court was not successful. In that attempt, the appellant challenged the decision of the Primary Court faulting the trial court for failure to evaluate evidence but also he challenged the award of the general damages.

The District Court after reevaluating the evidence was convinced that there was documentary evidence in Exhibit J1 and J2 proving the loan agreement and also the general damages were properly awarded considering the respondent here clearly elaborated to the trial court efforts he took to claim back the loan and money. The District Court thus dismissed the appeal.

The appellant is dissatisfied he has preferred this appeal with one ground of appeal: -

- 1. That the Primary Court had no jurisdiction to hear and determine the Civil Case No. 83/2022 as the same was purely commercial in nature as the claim emanated from a contractual relationship based on a loan agreement.*

This appeal was heard by way of written submission and the appellant had service of Mr. Helmes Mutatina.

Mr. Mutatina was brief, he argued that given section 40 (3) of the **Magistrate Court Act Cap (1)** this claim falls within the jurisdiction of the District Court. He argued the dispute involved a contract based on a loan agreement according to him this was a commercial case given section 2 (iii) of the Magistrate Court Act Cap 11.

He thus prayed that this appeal be allowed and the judgment of the two Lower Courts be allowed.

The respondent responded that the dispute between the parties emanated from the contract in which the respondent loaned money to the appellant. This was well within the jurisdiction of the Primary Court in view of Section 18 (1) (a) (iii) of the Magistrate Court Act Cap 11.

The respondent was of the view that the application of Section 2 (ii) of this was misplaced since the dispute did not involve anything to do with commercial organization.

Now in this appeal, the question is whether the Primary Court has jurisdiction to entertain claims of loan accounting Tshs. 22,000,000/= and

whether the same was purely commercial. It is clear that this issue was not raised at the District Court, being a point touching legality of the proceedings the same may be raised at any stage even at this appellate stage and if so, it is the primary duty of this court to investigate the same.

MIS TANZANIA - CHINA FRIENDSHIP TEXTILE CO. LIMITED

Versus OUR LADY OF THE USAMBARA SISTERS (At Civil Appeal

No. 84 of 2002 (Unreported) when the court of appeal was faced with a similar scenario at the appellate stage on the jurisdiction of the trial court it held at p. 10 thus;

"But since it is about the jurisdiction of the Court, it can be raised at any stage even before this Court."

Now the jurisdiction of the primary court is conferred by law that is the **Magistrate Court Act Cap 11 [RE 2019]** under section *18-(1) A* *primary court shall have and exercise jurisdiction.*

(a) In all proceedings of a civil nature section 18 (1) (a)

i. n/a

ii. n/a

iii.

or the recovery of any civil debt arising out of contract,

if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and that the Primary Court shall have jurisdiction for recovery of a debt arising out of contract of the value does not exceed thirty million.

This is a common ground argued by the parties in their submission. The appellant counsel Mr. Mutatina went further to argue that the respondent's claims were purely commercial since the same emanated from a contractual relationship based on a loan agreement thus the Primary Court had no jurisdiction.

I have scanned the basis of the claims, the same as adjudicated by the two lower courts involving a loan. It is on record of the Primary Court that the respondent's plaint was;

"Namdai mdaiwa Tshs. 22,000,000 ambazo zimetokana na mkataba wa mkopo uliofanyika tarehe 19/08/2021 na mdaiwa alitakiwa anilipe fedha hizo tarehe 19/1/2021 lakini hakufanya hivyo".

This loan was acknowledged by the appellant and documentary Exhibit **J1** and **J2** were tendered to the effect that the appellant owed the

respondent Tshs. 22,000,000/=. There was nowhere indicated in the plaint or the documents tendered suggesting that the same was the contractual relationship of a business or commercial organization with other bodies within the meaning of Section 2 (iii) of the Magistrate Court Act as Mr. Mutatina intimated.

From the above, I find that the respondent's claim was normal civil debt. The same was within the jurisdiction of the Primary Court. In the end, I find that this appeal is deficient in merit the same is dismissed with costs.



A handwritten signature in black ink, appearing to be "A. J. Kirekiano", written over a horizontal line.

A. J. KIREKIANO

JUDGE

16/11/2023

COURT: Judgment delivered in the chamber in the presence of Mr. Mutatina for the appellant and in the presence of the respondent.

Sgd: A. J. KIREKIANO

JUDGE

16/11/2023