

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

AT DAR ES SALAAM

CIVIL REFERENCE NO. 25 OF 2023

**(Arising from the decision of the District Court of Temeke at Temeke in Civil
Revision No 07/2023 before Hon Mwankenja, SRM**

BETWEEN

JACOB JOSHUA OKUKU.....APPLICANT

VERSUS

ELLY EZEKIEL JOSHUA.....RESPONDENT

RULING

02nd November & 16 November, 2023

CHUMA, J:

Through an order dated 29/05/2023, the Resident Magistrate in charge of Temeke District Court, sought the directives of this Court, following an order of the same court by Hon. Mwankenja, SRM dated 26/05/2023 in Civil Revision No. 07 of 2023 who, having found that he had no jurisdiction to entertain the matter, ordered the matter to be remitted to the Resident Magistrate in charge for her necessary orders hence this ruling.

The brief facts, gathered from the trial court, show that the Revisional proceedings (Civil Revision No. 07 of 2023) before the District Court were

opened by the court suo motu following a complaint letter lodged by the applicant on 16/03/2023. The complaint was against the decision of the Primary Court of Temeke dated 13/07/2022.

The record further shows that, on 16/05/2023 when the aforesaid revision came before the presiding magistrate (Hon Mwankenja, SRM) for hearing, the presiding magistrate, suo motu, required the parties, who were all present, to address him on the issue of whether the court had jurisdiction to entertain the application. Having heard the parties, he found that in terms of the *Magistrates Courts (Variation of the Designation of the District Court for Matrimonial Matters and Probate and Administration Causes) Order 2021 GN. 641/2021*, the District Court of Temeke has been ousted from its jurisdiction to determine matrimonial and probate matters. In the end, he concluded as follows:

"Now what has exercised my mind however how the matter should proceed from here? should the revision be struck out or the letter of complaint be returned to the applicant and be ordered to file the same to a proper province? Having considered the matter, I have concluded as follows: For justice to smile the matter deserves and is hereby remitted before Hon assigning authority for (sic) to see if (sic) can exercise powers to return or transfer the matter (sic) be presented to the District Court of Temeke at Temeke One Stop Centre which should have been inaugurated."

On 2nd November, 2023 parties unrepresented addressed this court on the trial court's findings subject to the present reference. They all exhibited their

awareness of the existence of the District Courts service at One Stop Judicial Centre. They also insisted that the ordinary District Court at Temeke has jurisdiction to try the matter however they thought that the matter better be entertained at One Stop Judicial Centre.

As can be noted above, the trial magistrate posed those important questions that were necessary in his decisions but remained unanswered, and instead, he remitted them to his fellow magistrate to decide. The immediate issue is whether trial court decisions have all contents of a valid decision within the meaning of Order XX Rule 4 of the Civil Procedure Code, Cap 33 R.E.2019. The said Rule provides that:

*"A judgment shall contain a concise statement of the case, the points for determination; **the decision**, thereon and the reasons for such decision" (Emphasis added)*

In the case of **Metro Petroleum Tanzania Limited ad 3 Others v. United Bank of Africa**, Civil Appeal No. 147 of 2019 the Court of Appeal, having cited the above provision, said that *"though the cited provision refers to the judgment, but in our view, the principle therein is applicable in any type of decision in court following the hearing of a matter."*

In view of the cited provision, one of the basic principles in the administration of justice is the duty of the court to determine conclusively all important questions raised before it. I find it appropriate to refer to the persuasive observation of the Supreme Court of Zambia on the contents of a judgment of the trial court as reflected in **Kunda and Another v. The People** [1980] ZMSC 100, thus:

*" We must however, stress for the benefit of the trial courts that every judgment must reveal a review of the evidence where applicable, a summary of the argument and submission if made, the findings of fact, the reasoning of the court on the facts and authorities if any, to the facts. **Finally, the judgment must show the conclusion.**"* (Emphasis supplied)

I subscribe to the observations above. Equally, in the case at hand, the omission of the trial magistrate to resolve those important questions that he posed prejudiced the parties. On this, I am supported by the decision of the Court of Appeal in the case of **Stanislaus Ruhaga Kasusura and Attorney General vs Phares Kabuye**, [1982] TLR 338.

Had it not for the issue of jurisdiction which I am about to discuss, I would have ended here by remitting the case file to the trial magistrate with the direction that a proper decision be composed in line with the law. The issue of jurisdiction which calls for its determination is whether the trial court was correct in holding that the Ordinary District Court of Temeke had been ousted from its jurisdiction by GN. 641/2021.

In resolving this issue, I think I should start by discussing the general Jurisdiction of the District Court. It needs no overemphasis that the establishment of the District Court and its Jurisdiction is a creature of the statute. It is established under section 4 of the Magistrates' Courts Act which stipulates that:

4.-(1) There is hereby established in every district a district court which shall, subject to the provisions of any law for the time being

in force, exercise jurisdiction within the district in which it is established.

(2) Subject to subsection (3), the designation of a district court shall be the district court of the district in which it is established.

(3) The Chief Justice may, by order published in the Gazette, vary the designation of any district court.

(4) The variation of the designation of a district court or of the area within which such court may exercise jurisdiction, shall not affect the jurisdiction of such court to continue the hearing of, or to determine, any proceeding commenced before it prior to such variation.

(5) The Chief Justice may, if in his opinion it is in the public interest so to do, by order published in the Gazette, confer upon a district court established for any district, jurisdiction over any other contiguous district or districts and where such order is made, such district court shall have concurrent jurisdiction in relation to the district for which it is established and also in relation to such other district or districts as may be specified in the order.

It is also important to state that while section 4(1) of the MCA above establishes the Ordinary District Court, its jurisdiction to try various cases is vested to it by other provisions of the law including the Law of Marriage Act, the Probate and Administration of Estate Act and the Magistrates' Courts Act.

On the other hand, it is worth noting that GN. No. 641/2021 the *Magistrates Courts (Variation of the Designation of the District Court for Matrimonial Matters and Probate and Administration Causes) Order 2021*. GN. 641/2021 did not establish the District Court of Temeke at One Stop Judicial Centre rather varied the designation of the District Court of Temeke sitting at One Stop Judicial Centre in matrimonial and probate matters by extending its jurisdiction to all of Dar es Salaam Region. The pertinent question is whether the said GN by vesting the jurisdiction to that court to determine those cases, ousted the jurisdiction of the Ordinary Court mandated by statute.

Before going further, I think it is necessary to direct my mind to the essence behind the establishment of the One Stop Judicial Centre at Temeke. It should be emphasized that its purpose was to enhance expeditious and proper administration and management of cases relating to the family. A similar purpose was stated by the Court of Appeal in the case of **National Bank of Commerce Limited vs. National Chicks Corporation Limited and 4 Others**, Civil Appeal No. 129 of 2015 (CAT at Dar Es Salaam) when the Court was discussing the purpose of establishing Division of High Court. On page 29 it states:

"...the purpose of establishing divisions or registries is to facilitate the administration and dispensation of judicial functions. They are meant to enhance expeditious and proper administration and management of certain categories of cases. We note therefore that establishment of registries of the High Court in the Regions which we administratively refer them as High Court Zones or a Division of

the High Court dealing with a certain category or categories or classes of cases or disputes is founded on the spirit of expediency. That is, the need to expedite adjudication of certain categories of cases. (Emphasis supplied)

As was to the Commercial and Land Division, the purpose of establishing One Stop Judicial Centre was founded on the spirit of expediency. That is the need to expedite adjudication of the specified category of cases. On that basis, I insist that the designation by the Chief Justice of the District Court of Temeke One Stop Judicial Centre and by vesting it jurisdiction to try the specified cases was not meant to oust the jurisdiction of the Ordinary District Court on those matters vested to it by statutes. In similar circumstances, the Court of Appeal in the case of **National Bank of Commerce Limited vs. National Chicks Corporation Limited and 4 Others** (supra) was faced with almost similar issue when it was discussing the jurisdiction of the High Court in Land matters. In its decision on page 24, it stated:

"It is plain that while the High Court is a creature of the Constitution, the registries and divisions of it are a creature of Rules and **the provisions of the Rules cannot override the provisions of the Constitution**. That said, we have found ourselves constrained to differ with Mr. Kamara's forceful submission that the Commercial Court has no jurisdiction to adjudicate land matters." (Emphasis supplied).

With profound respect, the trial magistrate's approach in refusing to entertain the matter on the ground that the District Court jurisdiction was

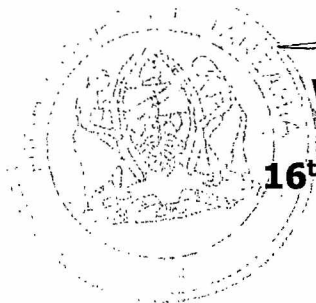
ousted is out of context so to say. On this, I wish to advise all magistrates to develop a mechanism that will ensure that the litigants are properly advised on the benefit of utilizing the forum of One Stop Judicial Centre for its realization. In the event cases lodged in ordinary District Court, the parties should not be thrown out on the pretext of lack of jurisdiction. Instead, the parties should either be advised to withdraw and file the same in the centre; otherwise, if they insist such a case should be heard to its finality by the very court. Similar advice was made by the Court of Appeal in the case of **National Bank of Commerce Limited vs. National Chicks Corporation Limited and 4 Others** (supra) at page 31 where it was held:

"However, we wish to advise the responsible authority, that there should be placed a mechanism which will ensure that litigants are appropriately advised to lodge in other registries matters not specifically assigned to a particular Division so as to ensure that the purpose for which the Divisions are established is not paralyzed. In the event a case not of the division's specialization is instituted in any of the divisions, the parties should not be thrown out as was the case herein in the pretext of lack of jurisdiction. Instead, the parties should either be advised to withdraw and file the same in another court competent to try it; otherwise, such a case should be heard to its conclusion."

In the end, it is my view that a reading of the Magistrate Courts Act and other relevant statutes as I have amply demonstrated above, dispel the doubt that the Ordinary District Court of Temeke had jurisdiction to adjudicate the matter. In similar circumstances, since the complaint sought

to challenge the decisions of the Primary Court, the District Court of Temeke One Stop Judicial Centre in its appellate and revisional jurisdiction had jurisdiction to entertain the matter.

Guided by the above observation, I proceed to quash the trial court's proceedings, and decision and set aside its order for herein above stated reasons. I was about to order a fresh hearing before another magistrate competent to try it there at, however, as earlier said since both parties indicated their willingness and or redness the matter be entertained at One Stop Judicial Centre. Therefore, I order and direct that the matter be determined by the District Court at Temeke One Stop Judicial Centre. Owing to the nature of the matter, parties to bear their own cost.




W.M. Chuma, J

16th November, 2023