

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MWANZA
AT MWANZA**

CIVIL APPEAL NO. 52 OF 2023

(Arising from Matrimonial Cause No. 01/2023 of the District Court of Misungwi, Original Civil Case No. 37 of 2022 in the Primary Court of Bukumbi)

LUCAS FREDNAND MUHANGWA-----APPELLANT

VERSUS

RUTH ONESMO GIBE-----RESPONDENT

JUDGMENT

4th October & 17th November 2023

ITEMBA, J.

This appeal was preferred by the appellant against the decision of the District Court of Misungwi. Brief facts leading to this appeal are that; parties herein, once cohabited between 2011 and 2015. It was the appellant who moved to the respondent's house. When their relationship went sour, the appellant filed a civil case before Bukumbi Primary Court claiming among others, a compensation of TZS. 11,320,500/= being the costs he invested on buildings and developing the residence of the respondent. After the determination of their case, the trial court managed to establish that there was a concubinage relationship between parties who acquired properties on such times they were living together and decided in favour of the appellant who was to be compensated by the respondent at a tune of 11,320,500/=.



Dissatisfied, the appellant appealed before the District Court of Misungwi whereas after the determination of the appeal, the 1st appellate court found the appeal partly had merit and substituted the order of trial court of compensation at a tune of 11,320,500/- to the tune of TZS 2,000,000/-. The appellant could not see justice and decided to appeal before this court with four grounds of appeal that: -

- 1. That the District court erred in law and fact to make a finding and based its judgement in favour of the Respondent that the receipt evidence tendered by the Respondent on trial had more weight than that of the Appellant without evaluating the monetary amount carried by the said Respondent's receipts.*
- 2. That the District court erred in law and fact by failure to evaluate and appraise evidence on record that the investment put on the disputed premises and the evidence produced by the Respondent at trial did not tally or displace the greater evidence of the Appellant.*
- 3. That the District court erred in law and fact to give weight to receipt evidence of the Respondent carrying minimal amount and wrongly disregarding documentary and oral evidence of the Appellant carrying greater amount tallying the investment attached to the disputed premises.*
- 4. That the District Court erred in law and fact to award the Appellant two million plus two million Tshs which was admitted by the Respondent denying him the balance out of Tshs 9,320,500/= which was awarded by the trial court.*



At the hearing, both parties were present, the appellant had the services of Mr. Adam Robert and the respondent afforded the representation of Mr. Arsen Molland both learned counsels. Mr. Robbert prayed to abandon the 1st ground and submitted for the 2nd, 3rd and 4th grounds. On the second ground of appeal, he argued that, before the trial court, the appellant was able to prove his allegations. That, he submitted different contracts to prove that he sold his plots valued at TZS 13,600,000/- so as to develop the respondent's house. He added that, other exhibits were receipts on the purchase of building materials and electrical installation. He also maintained that, the evidence of the appellant was corroborated with that of SM1, SM2 and SM3. He went on that; the respondent had only managed to produce a receipt of TZS 2,500,000/- which she sold the plot to develop her house.

On the 3rd ground of appeal, he claimed that, the 1st appellate court erred in denying the appellant 9,320,500/-

Arguing the 4th ground, he made a reference to the 2nd and 3rd grounds insisting that the appellant had managed to prove his case through witnesses and by producing exhibits as against the weak evidence of the respondent. Insisting that the kind of relationship between the parties is governed by **sections 61, 70 and 71** of the **Law of Marriage**



Act Cap 29 RE: 2019, he urged the court to allow the appeal and award the appellant accordingly.

Mr. Molland opposed the appeal. Relying on the case of **Isaya L. Chengula v Frank Njika** Civil application No. 487 of 2020, he claimed that page 13 of the trial court's judgment and page 6 of the 1st appellate court's judgment, reveal that, the claim is on the investment made on land. He expounded that, **section 2 of the Land Dispute Courts Act Cap. 216** defines Land to include buildings and permanent structures affixed on land which are excluded under **section 18(1)(a) of the Magistrate's Courts Act** to be dealt for by the Primary Courts. In that regard, he claims that, the Primary Court had no jurisdiction to entertain the dispute. He referred to the submissions by the appellant's counsel that the appellant invested on the plot of the respondent including making bricks and digging pit latrine which supports that the claim was over investment on land which the Primary Court lacks jurisdiction.

The respondent's counsel argued further that, the dispute between parties was wrongly considered as matrimonial and even if it was matrimonial, still the Primary Court lacks jurisdiction. He insisted that because the appellant confirmed that the respondent had a subsisting marriage, there could not be a marriage on top of the other. Referring to **section 75 of the Law of Marriage Act**, he insisted that the Primary



Court had jurisdiction limited to customary and Islamic marriages only. He therefore prayed for the appeal to be dismissed and all the proceeding and orders of the primary court be set aside.

Rejoining, the appellant's learned counsel insisted that the trial court had jurisdiction as the dispute was on the breach of the contract of marriage. He insisted that the cause of action was neither land nor matrimonial rather on a compensation on the investment done by the appellant on the plot owned by the respondent.

After going to the parties' pleadings, the court's records and submissions by the parties' learned counsels, I proceed to determine whether the appeal has merit. Before I venture to the grounds of appeal, I will first determine the issue of jurisdiction so raised and submitted by the respondent's learned counsel whereas the appellant's learned counsel also had a chance to respond.

As it stands, jurisdiction is a general power of the court to deal with a matter which is conferred to by a statute. As stated in **R. S. A. Limited vs Hanspaul Automechs Limited Govinderajan Senthil Kumal** Civil Appeal No. 179 Of 2016, thus, since the jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage.



The respondent's learned counsel raised the issue of jurisdiction claiming that the matter was determined by the court which according to the nature of the cause of action and the law, had no jurisdiction to entertain the matter. It was his averment that, the cause of action arose from the investment on the plot of land and therefore, it was to be dealt with accordingly with the laws in respect of the cause of action and the trial court is barred to entertain the same under section 18(1)(a) of the Magistrate Courts Act Cap 11 RE: 2019.

In determination of the issue of jurisdiction raised, first I will determine what is the cause of action and whether the trial court had jurisdiction to determine the matter. In doing so, I perused the trial court's records specifically on the claim form which instituted the matter before the trial court (*Fomu Madai-2*) and it reads: -

HABARI YA MADAI KWA UFUPI

"ninamdai dhamani ya uwekezaji niliofanya kwenye kiwanja chake chenye ukubwa unaokadiriwa wa hatua 20-15 upana na urefu ambapo nilinunua vifaa vya ujenzi na kuweka mafundi jumla ya dhamani yote ni Tsh. 11,320,500/= (milioni kumi na moja, laki tatu ishirini elfu na mia tano) Pamoja na gharama za shauri."

The certificate of claim is explanatory that the cause of action was a result of the claim of the costs of investment on a plot of land which was developed by the appellant. At the trial, the appellant testified that he was cohabiting with the respondent from 26/03/2011 and he made



improvements and investments on the plot of the respondent. That, in July 2020, their relationship ended as he came to know that the respondent was a wife to another man. His claim was not on the relationship, rather, on the costs of development and investments he made at the respondent's plot. As to what constitutes a cause of action, *Mulla on Civil Procedure, 13th Edition*, gives synopsis cause of action that:

"A cause of action" means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgement of the Court. In other words, it is a bundle of facts which are taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possible accrue.

See also: **Domin P. K. G. Mshana V Almasi Chande** Civil Case No. 68 of 1994. Reading through the claim form which initiated the matter subject to this appeal, it is clear that the appellant claimed against the respondent costs of development on the plot of land of the respondent. To find out whether these facts connote that the cause of action arose from land as claimed by the respondent learned counsel, I refer to what constitutes land as defined for under **section 2 of the Land Law Cap 113 RE: 2019** which states:-

"land" includes the surface of the earth and the earth below the surface and all substances other than minerals or petroleum



forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.

From what constitutes to land as defined above in relation to the appellant's claims before the trial court, there is no doubt that the cause of action arose from land. Having confirmed that the cause of action arose from land, the issue is whether the primary court has mandate to deal with such issues. The law confers jurisdiction to the primary court under **section 18(1)(a) of the Magistrates' Courts Act** Cap.11 RE: 2019 where there are proceedings of civil nature and where the law applicable is customary law or Islamic law.

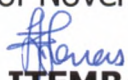
From the above findings, the trial court lacked jurisdiction to entertain the matter between the parties herein. For that reason, all the proceedings, decisions and orders thereof become nullity.

In the circumstance, the appeal is allowed. I proceed to nullify the proceedings, decisions and orders of both the trial court and the first appellate court. I give no order as to costs because the appeal is disposed based on the ground raised by the respondent.

It is so ordered.

DATED at **MWANZA** this **17th** of November, 2023.




L. J. ITEMBA
JUDGE.

Judgment delivered via audio conference this 17th Day of November 2023, in the presence of Ezekiel James holding brief for Adam Robert and Arsen Molland learned counsels, for the applicant and respondent respectively and Ms. Gladys Mnjari, RMA.



L. J. ITEMBA
JUDGE.