

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 26304 OF 2023**

**(Arising from Civil Case No. 39 of 2021 dated 4<sup>th</sup> July 2023 in the District Court of Ilala at Kinyerezi)**

**MOHAMED KAZAMALI.....APPELLANT**

**VERSUS**

**YUSUPH RASHID KANIKI.....RESPONDENT**

**JUDGEMENT**

*Date of last order: 14<sup>th</sup> February 2024*

*Date of Ruling: 22<sup>nd</sup> March 2024*

**MTEMBWA, J.:**

In the District Court of Ilala at Kinyerezi (hereinafter “the Trial Court”), the Respondent instituted a suit against the Appellant for the payment of Tanzanian Shillings 42,279,000/= being unpaid sum arising from an oral contract between the two. According to the Plaintiff, sometimes in 2019, the parties entered into an oral contract of which the Respondent had to supply the building materials (hardware products) to the Appellant on credit. That, the appellant was, in return, under duty to pay his debt to the Respondent.

The records reveal further that, such business relationship existed for some times. It could appear, in between, the Appellant's scale of debt went high as a result thereof, the Respondent's employees refused to advance the materials any further. The Appellant did not pay his debt. That prompted the Respondent who started to locate him. With the aid of the Ward Executive Officer, the Appellant was located at his house. Thereafter, as per the pleadings, the two entered into an agreement to settle the claimed sum in installments. Still, however, the Appellant was able to pay only Tanzanian Shillings 3,000,000/=. The Respondent had no option but to commence proceedings in a civil Court that ended in his favour.

During hearing, the Respondent arraigned three witnesses and tendered two exhibits. The Appellant, for reason of sickness, by the leave of the trial Court, tendered witness statement in view of ***Order XIX Rule 2 of the Civil Procedure Code, Cap 33, RE 2019***. He did not tender any exhibit. Having analyzed the evidence adduced, the trial Court resolved in favour of the Respondent. Dissatisfied, the Appellant has filed the following ground of appeal;

*That, the trial court erred in law and fact by trying Civil Case No. 39 of 2021 without pecuniary jurisdiction.*

When this matter was placed before me for order on 14<sup>th</sup> February 2024, Mr. Yohana Ayall appeared for the Appellant while the Respondent appeared in person. By consent, parties agreed to argue this Appeal by way of Written Submissions. I have gone through the records and noted that, parties adhered to the agreed schedule of which I personally subscribe.

Kickstarting, Mr. Ayall submitted that, according to ***section 18 (a) (iii) of the Magistrates Court Act, Cap 11, RE 2019***, all proceedings of civil nature for the recovery of the civil debt arising out of the contract (as the case in Civil Case No. 39 of 2021), if the value does not exceed Tanzanian Shillings 30,000,000/=, shall be tried by the Primary Court. He continued to note that, according to the pleadings, evidence and the Judgment of the trial Court, the Respondent paid to the Appellant Tanzanian Shillings 10,000,000/= prior to filing of the suit in the trial Court.

Mr. Ayall submitted further that, the initial total claimed sum was Tanzanian Shillings 42,279,000/= as such, by paying Tanzanian Shillings 10,000,000/= prior to the filing of the suit, the total substantive claim was no longer Tanzanian Shillings 42,279,000/= as alleged. He cited the case of ***MS Tanzania China Friendship***

***Textile Company Ltd Vs. Our Lady of Usambala sisters (2006)***

**TLR 70** where it was observed that it is the substantive claim and not general damage that determine the pecuniary jurisdiction of the Court.

By citing the case of ***Zuberi Augustino Vs. Anset Mgabe (1992) TLT 137***, Mr. Ayall argued that, specific damages must be pleaded and proved. He added that, in the Plaintiff specifically paragraph 12 thereof, the Respondent alleged to have written a demand letter to the Appellant claiming Tanzanian Shillings 39,000,000/= insisting that, the same should be paid or else, he will commence proceedings and claim Tanzanian Shillings 42,279,000/=. He was of the view that, the specific damages therefore, was Tanzanian Shillings 39,000,000/=. Since the Respondent in his testimony testified to have received a total of Tanzanian Shillings 13,000,000/=, it follows therefore that, the Appellant was indebted to the Respondent to the tune of Tanzanian Shillings 29,000,000/=. He then cited the case of ***Stambic Bank Tanzania Limited Vs. Abercrombie & Kente (T) Limited, Civil Appeal No. 21 of 2001, Court of Appeal at Dar es Salaam*** where the Court cited with approval the case of ***Bolog Vs. Hutchison (1950) A.C 515***.

Going out of the Appellant's ground of appeal, Mr. Ayall submitted that, the Plaintiff did not specify the amount payable. He added further that, the claim by the Respondent was not particularized or specified as required by the law. That, had the Respondent adhered to the law, he could have specified that, the total claimed sum was Tanzanian Shillings 29,000,000/=, which is within the pecuniary jurisdiction of the Primary Court. By citing the case of ***Fanuel Mantiri Ng'unda Vs. Herman Mantiri Ng'unda (1995) TLR 159***, Mr. Ayall observed that, the trial Court assumed the pecuniary jurisdiction which it did not have.

In his final analysis, Mr. Ayall was of the view that, the claimed sum in the trial court was generalized and did not exclude Tanzanian Shillings 10,000,000/= that was paid to the Respondent prior to the institution of the suit at the trial Court. That, the claimed sum of Tanzanian Shillings 42,279,000/= was generalized with the view to cloth the trial Court with pecuniary jurisdiction, Mr. Ayall argued. He lastly implored this Court to allow the appeal with costs.

In reply thereof, the Respondent submitted that, the trial Court had pecuniary jurisdiction to entertain the matter. By citing ***section 40 (2) (a) and (b) of the Magistrate Courts Act (Supra)***, the

Respondent continued to note that, the District Court held by a civil magistrate is mandated to hear the civil dispute in which the value of subject matter does not exceed Tanzanian shillings 300,000,000/= for immovable property and Tanzanian shillings 200,000,000/= if the subject matter is capable of being estimated at a money value. He added that, the amount claimed is within the pecuniary jurisdiction of the trial Court. He joined hands with the Appellant on the assertion that, it is the substantive claim that determine the pecuniary jurisdiction of the Court in view of the case of ***Tanzania China Friendship Company Ltd (supra)***.

The Respondent submitted further that, jurisdiction is a creature of the statute as such, it can be assumed or exercised on the basis of likes or dislikes. That, as the matter of practice, the court must be sure of the jurisdiction it possesses before determining the matter. He fortified his arguments by citing the case of ***African Banking Corporation Tanzania Limited Vs. Joeff Group Tanzania Limited, Civil Appeal No. 74 of 2022, High Court of Tanzania*** where the position in the case of ***the Commissioner General of Tanzania Revenue Authority Vs. JSC Atormredmetzoloto, Consolidated Civil Appeal No. 78 and 79 of 2018*** was reiterated.

The Respondent further argued that, in his Plea, he claimed the total sum of Tanzanian Shillings 42,279,000/= as specific damages which is within the pecuniary jurisdiction of the trial Court. He added further that, even if the Appellant paid some of the money, still, that did not oust the pecuniary jurisdiction of the Court to determine the matter. He lastly implored this Court to dismiss the appeal with costs.

Having dispassionately considered the pleadings, the evidence adduced during hearing and the rival submissions by the parties on appeal, I am now in the position to determine the appeal.

Well, this court being the first appellate Court has the duty to reevaluate the evidence on records and put it under critical scrutiny and come out with its own conclusion. In the case of ***Mapambano Michael @ Mayanga vs. Republic, Criminal Appeal no. 258 of 2015***, the court placed the special duty on the first appellate court as follows;

*The duty of the first appellate court is to subject the entire evidence on record to a fresh re-evaluation in order to arrive at decision which may coincide with the trial court decision or maybe different altogether.*

While guided by the above principle, it is a trite law also that, whoever alleges existence of any fact bears the duty to prove the same. This principle is gathered from sections 110, 112 and 115 of ***the Evidence Act, Cap 6 RE 2019*** and judicial precedents including the case of ***Manager NBC Tarime Vs. Enock M. Chacha [1993] TLR 228.***

From the submissions by the Appellant, it is clear that, there was a contractual relationship between him and the Respondent. He did not seem to dispute that as he did at the trial Court where he denied to have no idea on the claimed sum. In this appeal, the Appellant seems to confirm to the Respondent's assertion at the trial Court that he used to be supplied with the building materials (hardware products) on credit. He only defends himself by the assertion that he paid some amounts before the commencement of the suit at the trial Court. Since Exhibits **P1** and **P2** were received in evidence without objection, I join hands with the trial Court that, there was a contractual relationship between the parties. I see no reason to expound further on this.

Next, is whether the Appellant was indebted to the Respondent to the tune of Tanzanian Shillings 42,279,000/= . According to



paragraphs 7, 8 and 9 of the Plaint, having been supplied with the building materials on various occasions on credit, in the end, the Appellant failed blatantly to repay to the Respondent the sum of Tanzanian Shillings 42,279,000/=. In the prayer clause (prayer (b) thereof), the Respondent prayed for an order compelling the Appellant to pay the claimed sum. The trial Court was satisfied that, the Respondent proved his claim to the required standards and allowed the claim of Tanzanian Shillings 42,279,000/= in his favour. Here, I will hold my breath and look into the available records first.

From pages 24 to 25 of the typed script of the proceedings, the Respondent was recorded as follows and I quote in verbatim;

*So, I together with "mwenyekiti wa kata decided to locate him at his house upon arrived there, we met him, and we started conversation and, we agreed that, he will pay the debt in installment, but he asked us not to reveal the issue to his family, we went to another place, and we talked and we agreed that, he will pay tshs 3,000,000/= each month until he complete to pay the debt. The debt was tshs 42,000,000/=. We went again to "mwenyekiti" and "mwenyekiti" signed the agreement. Thereafter, he paid tshs 3,000,000/= for only one months, and he stopped paying and after that he brought me to his relative named Mohamed Mo, and the said Mohamed asked me to agree to be paid tshs 10,000,000/= so that I can withdraw the case, but I disagreed with their prayer/request. And I went back to "mwenyekiti wa kata" and I told him that*

*Mohamed Kazamali refused to pay the debt, and he asked me to lodge the case before this court (sic).*

From the quoted passage, it is clear that the Appellant was only able to pay Tanzanian Shillings 3,000,000/= being one of the agreed installments out of the claimed sum. He refused a proposal to receive Tanzanian Shillings 10,000,000/= in order to withdrawal his case, probably at, as per the records, "*mwenyekiti wa kata*". The records are silent on whether the Respondent received the stated sum of Tanzanian Shillings 10,000,000/= prior to the commencement of the suit at the trial Court. In that stance, I cannot blindly assume that, the stated sum was paid to Respondent by the Appellant, otherwise, there would be no need of having court records.

The Appellant should blame himself for playing a game by pleading to have no idea of the claimed sum. In his Written Statement of Defense dated 28<sup>th</sup> June 2021 and the Defense Witness statement dated 16<sup>th</sup> April 2023, the Appellant claimed to be unfamiliar with the Respondent with regard to hardware business. He said, he knows the Respondent as a broker at Kariakoo. That was, totally, a big mistake. He could have highlighted on the nitty gritty of the agreement including the fact that the Respondent received the sum of Tanzanian

Shillings 10,000,000/= prior to commencement of the suit at the trial Court. He could have also testified to that effect and that would have assisted the trial Court to look into it. In such circumstance, it is never too late to hold that, such assertion is an afterthought and unfounded.

From the quoted passage above, I am of the considered opinion that the trial Court would have arrived at the conclusion that the Appellant is indebted to the Respondent the total sum of Tanzanian Shillings 39,279,000/= and not otherwise because during hearing, the former conceded to have received Tanzanian Shillings 3,000,000/= out of Tanzanian Shillings 42,279,000/=. As said before, there is no records revealing that, he also received the sum of Tanzanian Shillings 10,000,000/= from the Appellant.

Having so observed, the last issue to determine is whether the trial Court had pecuniary jurisdiction to determine the matter. I don't think if this needs to detain us long here. The Appellant submitted that, before the commencement of the matter at the trial Court, the Respondent conceded in his Demand Letter to claim the sum of Tanzanian Shillings 39,279,000/=. That, there is evidence that the Appellant paid to the Respondent the sum of Tanzanian Shillings

10,000,000/= . As such the total substantive claim was supposed to be Tanzanian Shillings 29,000,000/= within the pecuniary jurisdiction of the Primary Court.

The Appellant further argued in length that, the Respondent failed to particularize and or specify his claim in the Plaint. He added that, the claimed sum was not specifically pleaded and ultimately proved. In the outset, with respects to the appellant's counsel, that was not one of the grounds of appeal. It has been brought by way of written submissions without leave of this Court. I will therefore disregard it.

In my considered opinion, the Appellant totally misconceived the subject on what determines the pecuniary jurisdiction of the Court. While he agrees that the pecuniary jurisdiction of the Court is determined from the substantive claim as revealed by the pleadings, especially the Plaint, he erroneously went further to implore this Court to find that, the same can be determined from the evidence of the parties or correspondences. He even submitted on the Demand Letter served to the Appellant by the Respondent which is neither attached to the pleadings nor tendered in Court during hearing. With respects that was unfounded as the pecuniary jurisdiction of the Court is not

determined from the correspondences by the parties before or after the commencement of the suit. It is determined from the substantive claim as revealed by the pleadings, in this case, the Plaintiff.

According to ***Order VII rule 1 (i) of the Civil Procedure Code, Cap 33, RE 2019***, the plaintiff must, among others, include a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits. It follows therefore that, the Court will derive its pecuniary jurisdiction to determine the matter from the value of the subject matter or the substantive claim and not otherwise.

As observed before, there is no evidence that the Appellant paid to the Respondent the sum of Tanzanian Shillings 10,000,000/=. Such evidence would have been brought into records by the Appellant, if any. Again, even if he was so paid before the commencement of the suit, that would not have been considered at the time of determining the pecuniary jurisdiction of the Court because it did not feature in the Plaintiff. According to the Plaintiff, the Respondent claimed the sum of Tanzanian Shillings 42,279,000/=. I don't see anything persuading me to join hands with the Appellant's assertion that, the trial Court had no pecuniary jurisdiction to determine the matter. In fine, the trial court

was ceased with pecuniary jurisdiction to determine the matter in view of **sections 18 (1) and 40 (2) (a) and (b) of the Magistrate Courts Act (supra)**. I therefore find that the ground as raised is devoid of merit and I continue to dismiss it.

In the result, save for the alterations made on the decretal sum which is now **Tanzanian Shillings 39,279,000/=** payable to the Respondent, the appeal is disallowed. The Judgement and Decree of the District Court of Ilala at Kinyerezi in Civil Case No. 39 of 2021 is hereby upheld. The Respondent shall recover his costs.

I order accordingly.

Right of appeal explained.

**DATED at DAR ES SALAAM** this 22<sup>nd</sup> March 2024.



**H.S. MTEMBWA  
JUDGE**