IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA SUB- REGISTRY]

AT ARUSHA

CIVIL APPEAL NO. 55 OF 2023

STALWART LAW CHAMBER.....APPELLANT

VERSUS

TRANSWORLD AVIATION LTD.....RESPONDENT

JUDGMENT

19th February & 26th March, 2024

TIGANGA, J.

This Judgment is in respect of an appeal filed by the appellant, a Law Firm under the Stewardship of Mr. Peter Michael Madeleka, Advocate challenging the decision of the Court of the Resident Magistrates of Arusha in Small Claim Case No. 04 of 2023. In that case, the appellant was claiming to be paid a total of Tshs. 56,256,000/= equivalent to USD 24,000 and a compensation of Tshs. 43,744,000 which is equivalent to USD 18,662. He also claimed for costs to be assessed by the Court and any other relief which this Honourable Court will deem fit, just, and equitable to grant.

The claim was opposed by the reply to the statement of claim in which three points of preliminary objection were raised;

(i) That, the Court had no territorial jurisdiction for the purported cause of action that arose in Zanzibar where the Respondent resides and worked for gain.

(ii) That the Court has no pecuniary jurisdiction for a claim of over Tshs. 100,000,000/= inclusive of costs already spent.

(iii) That the purported claim was premature as per the Retainer contract clause which requires arbitration.

After hearing the same, the trial Court upheld the two points, that the Court had no territorial jurisdiction for the defendant who is the respondent herein resides in Zanzibar, and that the form used to file the claim did not indicate or plead the place where the cause of action arose.

Aggrieved by the decision, the appellant filed this appeal advancing three grounds of appeal as follows;

(i) That the learned Magistrate erred in law and fact for failure to consider the claimant's written submission against the respondent's raised preliminary objection and thus denying the claimant his right to be heard.

(ii) That the learned trial Magistrate erred in law and fact for failure to consider the dictates of the law governing the hearing and determination of small claim cases which prohibits technicalities in determining the right of the parties, and instead encourages substantive determination of the right of the parties.

(iii) That the learned trial Magistrate erred in law and in fact for suo moto raising and determining the issue of Rule 6 in the Magistrate's Courts Small claim procedure) Rules, 2023 G.N. No. 159 of 2023 without affording parties their right to be heard on the issue *suo moto* raised.]

He prayed the appeal to be allowed, the lower Court proceedings to be nullified, the Ruling be quashed and set aside as well as the order emanating from the said proceedings. The matter be remitted before another Magistrate to be heard on merit.

Parties were represented by Advocates, the appellant was represented by Mr. Peter Madeleka, a leading partner of the appellant, while the respondent was represented by Mr. Omary Gyunda, Advocate.

Hearing of the appeal was oral. Mr. Madeleka started with the third ground of appeal, that the matter was disposed on technicalities contrary to the law and that, the point upon which the decision of the trial court was based was raised by the trial Magistrate *suo moto* when she was composing the Ruling and decided it without affording the parties right to be heard. He reminded the Court of the principle in the case of **Wegesa Joseph Nyamaisa vs Chacha Muhogo**, Civil Appeal No. 161 of 2016

which was referred with approval in the case of **Said Mohamed Said vs Muhusin Amir and Another,** Civil Appeal No. 110 of 2020.

He said that guided by the record of the trial Court, he said, parties were not called upon to address the Court on the issue of where the cause of action arose. In his view that is a gross violation of the principle of natural justice. He said Rule 6 can be invoked only where the claim does not disclose the cause of action not where the cause of action arose has not been mentioned, and that the law directs the Court to allow the amendment so that the claim can show the cause of action. On that ground, he prayed for the appeal to be allowed.

On this, Mr. Omary Gyunda submitted his reply that, the ground of where the cause of action arose was not raised by the Magistrate *suo moto* when he was composing the Ruling it was argued by the parties when they were arguing the preliminary objection as it can be seen at page 3 of the Ruling. Therefore, the case cited herein above is distinguishable in the circumstances, so he prayed the 3rd ground to be rejected.

In resolving this ground, this Court will be guided by both the record and the argument presented by the parties in this appeal. The record is clear that the impugned decision is a result of the preliminary objections raised by the Respondent before the trial Court. As earlier pointed out the

objections were on territorial jurisdiction, pecuniary jurisdiction, and prematurity of the claim. There was no complaint raised in respect of the statement of claim that it does not show the cause of action or where it arose. That alone proves that the issue of where the cause of action arose is an alien in the matter for it was not raised as the preliminary objection and argued by the parties. It was thus as correctly submitted by Mr. Peter Madeleka raised in the course of composing the Ruling.

It is a principle of law that where a Court in the course of composing a ruling raises an issue *suo moto*, it should, before deciding to call the parties to address it on the *suo moto* raised issue. As already pointed out, regarding the issue of cause of action and where it arose, the parties were not heard.

As rightly submitted by Mr. Peter Madeleka it is now settled that the decision reached after parties have not been afforded an opportunity to be heard becomes a nullity, even if that decision would have been reached after the parties have been heard. This position has been affirmed by the Court of Appeal in the case of **Hashi Energy (T) Limited Versus Khamis Maganga,** Civil Application No. 200/16 Of 2020 (02nd November 2021) in which the Court relied on its previous decision in the case of **Mbeya-Rukwa Autoparts & Transport Ltd. vs Jestina George**

Mwakyoma, (Civil Appeal 45 of 2001) [2001] TZCA 14 (9 August 2001) in which facing an akin situation, the court of appeal held inter alia that,

> *"In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law and declares in part:*
>
> *(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu..."*

That said, this ground is meritorious, it is allowed. Now since this ground disposes of the appeal, I find no need to labour on the rest of the grounds, for doing so will serve nothing but academic exercise which is not the purpose for which this court was created. The matter be remitted before the trial Court for rehearing of the matter in accordance with the law.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 26th March 2024.

J.C. TIGANGA

JUDGE