

**IN THE HIGH COURT OF THE REPUBLIC OF TANZANIA  
(GEITA SUB REGISTRY)**

**AT GEITA**

**CIVIL APPEAL NO. 4448 OF 2024**

*(Arising from Judgment and Decree of the Geita District Court in Civil Appeal No. 27 of 2022,  
Originating from Civil Case No. 106 of 2022 at Katoro Primary Court)*

**1. PAULO DAUDI  
2. DAUDI MASAGA.....APPELLANTS**

**VERSUS**

**KAPAYA DOTTO.....RESPONDENT**

**RULING**

*Date of last Order: 8/4/2024*

*Date of Ruling 16/4/2024*

**MWAKAPEJE, J:**

The Appellants herein express dissatisfaction with the decisions rendered by the District Court of Geita, entered in favour of the Respondent, one Kapaya Dotto, in Civil Appeal No. 27 of 2022, which was delivered on 14 April 2022.

It is succinctly averred that a dispute arose between the Appellants and the Respondent subsequent to their entry into an agreement, whereby the Appellants allegedly breached its stipulations. This dispute was adjudicated by the Primary Court of Katoro, which ruled in favour of the Respondent. Subsequently, the Appellants pursued an appeal against the

said decision before the District Court of Geita, which culminated in an unfavourable outcome for them. Dissatisfied with the verdict of the first appellate court, on the 13<sup>th</sup> May 2023, the Appellants lodged a Petition of Appeal, which was duly received by the High Court at Mwanza Sub Registry. However, prior to the disposition thereof by the High Court, Sub Registry of Mwanza, the Appellants lodged their appeal before this Sub Registry of the High Court at Geita for determination.

The appeal was conducted through written submissions, with both parties being represented by learned advocates. Mr Yonna Shekifu represented the Appellants, whereas Mr Beatus Emmanuel and Ms Elizabeth Msechu represented the Respondent.

Before determining their appeal, on 8<sup>th</sup> April 2024, when the matter was scheduled for necessary orders after submissions were completed, I found out that the Petition of Appeal had been filed in the High Court Sub-Registry of Mwanza. Hence, I invited the learned advocates from both parties to address me on whether this court had jurisdiction over this matter, as no one had raised such concerns earlier.

Mr. Yonna Shekifu, the learned counsel for the Appellants, contended that the Court, through its judicial officers, transferred the case to the

High Court Sub Registry of Geita, thereby conferring jurisdiction upon said court. Additionally, he asserted that since high courts possess unlimited jurisdiction, the High Court Sub-Registry of Geita was competent to entertain the appeal. He concluded by emphasising the inequity of penalising the Appellants for the court's purported oversight.

Conversely, Ms. Msechu succinctly rebutted her counterpart's assertions, contending that in the absence of a transfer order from the High Court Sub Registry of Mwanza to the High Court Sub Registry of Geita, the latter lacked jurisdiction to determine upon the appeal. Accordingly, she prayed for the dismissal of the appeal.

It is axiomatic that jurisdiction constitutes a fundamental and statutory principle of law. Any trial, appeal, or inquiry conducted without proper jurisdiction renders such proceedings null and void. In the case of **Shyam Thanki & Others vs New Palace Hotel** (1972) HCD No97, it was stated that:

*"All the courts in Tanzania are created by statutes, and their jurisdiction are purely statutory. It is an elementary principle of law that parties cannot by consent give a Court a jurisdiction that it does not possess"*

In the instant appeal, the District Court rendered its decision on 14<sup>th</sup> April 2022. The Appellant lodged his appeal with the High Court Sub Registry of Mwanza on 13<sup>th</sup> May 2023. Notably, as this court stated in an earlier case of **Eliface Mgonya vs Faustine Madebele** (Land Appeal No. 28307 of 2023) [2024] TZHC 344 (22 February 2024), so I reiterate in this appeal that:

*".....at the time of filing, there was no High Court Registry situated in Geita until the 1<sup>st</sup> day of December 2023, as instituted by the order of the Chief Justice published in the **Government Notice No. 853B dated 22<sup>nd</sup> day of November 2023**. The aforementioned Government Notice stipulates that:*

THE HIGH COURT (GEITA SUB-REGISTRY ESTABLISHMENT)  
ORDER,

- 1. This Order may be cited as the High Court (Geita Sub-Registry Establishment) Order, 2023 and shall come into force on the **1<sup>st</sup> day of December, 2023**.*
- 2. There is hereby established the **High Court Sub-Registry of Geita**" (emphasis supplied)."*

Thus, there is no doubt that this High Court Sub-Registry came into existence when the same was declared to be operational on the 1<sup>st</sup> day

of December 2023. This simply means anything filed before that date is invalid before this Court as it did not exist.

Upon scrutiny of the present appeal, it is evident that it was lodged on 13<sup>th</sup> May 2023 at the High Court Sub-Registry of Mwanza. Nevertheless, before its determination at the High Court Sub-Registry of Mwanza, where it was appropriately initiated, the appeal was abruptly transferred to this Registry on 5<sup>th</sup> March 2024, purportedly under the guise of the High Court Sub-Registry of Mwanza.

From that observation, it is clear to me that since the present appeal was previously filed in the High Court Sub-Registry of Mwanza, the same cannot be accommodated here as this Court lacks jurisdiction to entertain it. At this juncture, it is incumbent upon me to assert that the transfer of this appeal to this Court appears to have been motivated by convenience rather than adherence to legal imperatives, a practice which cannot be countenanced.

The contention put forth by the learned counsel for the Appellants, suggesting that the appeal was transferred to this Court pursuant to directives from court officials, is untenable in the absence of corroborative documentary evidence. Pursuant to Section 110 of the

Evidence Act, Cap. 6 R.E. 2019, the burden of proof rests upon the party making the assertion. This deficiency in evidentiary support reduces his contention to mere conjecture, as elucidated in the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha** (Civil Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019).

The power to transfer proceedings from one Registry of the High Court to another is conferred under Rule 7(4) of the High Court Registries Rules, G.N. No. 164 of 1971, as amended periodically (hereinafter referred to as "the High Court Registries Rules"). The aforementioned provision stipulates as follows:

*"The court may at any time, on application or on its own motion, transfer any proceedings from one Registry to another, and any proceedings so transferred, and all documents shall be filed accordingly."*

As delineated by the language employed in the Rules, the transfer of proceedings may be either through formal application or at the discretion of the Court. Crucially, such a transfer necessitates the issuance of a transfer order. Absent such an order, the transfer is deemed improper, thereby precluding the matter from being entertained in the purportedly transferred court.

Hence, I am compelled to dissent from the Appellant's assertion, contending that this Court holds jurisdiction to determine upon the appeal on the basis that both the High Court Sub-Registry Mwanza and that of Geita fall within the purview of High Courts. It is an established principle that a petition of appeal is invariably heard and determined at the registry where it was initially lodged. Despite the shared designation as High Courts, it is patently irregular for the appeal to be lodged in this Registry when it has already been filed in another High Court registry, namely Mwanza.

Accordingly, the Court is precluded from assuming jurisdiction it does not possess. Therefore, it is imperative that legal proceedings adhere meticulously to proper jurisdictional and procedural prerequisites to uphold the principles of fair and orderly administration of justice. Should the Appellants elect to pursue their appeal, they are advised to do so at the registry where the Petition of Appeal was initially filed, namely the High Court Sub-Registry of Mwanza. Alternatively, they may adhere to statutory mandates to duly lodge the appeal in the sub-registry of this Court.

In light of the foregoing and for the reasons expounded herein, I abstain from venturing upon the present appeal. Concomitantly, I hereby strike out the appeal for want of jurisdiction. In the circumstances of this matter, I make no order as to costs.

It is so ordered.

**DELIVERED** at **GEITA**, this 16<sup>th</sup> April 2024.



**G.V. MWAKAPEJE**  
**JUDGE**

This ruling is delivered this 16<sup>th</sup> April 2024 in the presence of Mr Beatus Emmanuel, a learned advocate and the 1<sup>st</sup> Appellant.



**G.V. MWAKAPEJE**  
**JUDGE**