

**IN THE HIGH COURT OF TANZANIA
TANGA SUB-REGISTRY
AT TANGA**

CIVIL APPEAL NO. 17 OF 2023

(Arising from Civil Case No.05 of 2022 of the District Court of Korogwe at Korogwe)

FANIKIWA MICROFINANCE CO. LTD..... APPELLANT

VERSUS

YUSUPH ABDALLAH NASSIR..... RESPONDENT

JUDGMENT

Mteule, J.

18/03/2024 & 25/04/2024

The Appellant **Fanikiwa Microfinance Co. Ltd** is aggrieved by the Judgment and the Decree issued by the District Court of Korogwe hence preferred this appeal. He is faulting the trial court decision vide a memorandum of appeal containing three grounds which can be paraphrased into the following points:-

- 1. Error in the consideration and evaluating of evidence.*
- 2. Determination of the suit without a jurisdiction.*
- 3. Awarding special damages instead of the principal sum claimed by the Respondent/Plaintiff.*

In the District Court of Korogwe, the Respondent who was the plaintiff therein, filed a civil case claiming for payment of TZS 89,955,600.00 from the instant Appellant asserting it to be a rent accruing from 14/04/2021 to 13/05/2022. It was alleged that on 15th day of April 2016 parties covenanted a lease agreement where the Respondent demised his premise situated on **Plot No. 2 / Block J New Town Korogwe** to the Appellant for five years term which had to lapse on 14/4/2021. Further allegation told that after the end of the tenancy agreement, the Appellant continued to occupy the premises and never paid the rent and never renewed the tenancy agreement. In the result, the Respondent filed the suit in the District Court claiming for payment of **TZS 89,955,600/=** being rent accruing from 14/4/2021 to 13/5/2022, payment of interest of the principal sum at commercial rate of 12% per annum, payment of interest of the decretal sum at the court rate of 7% from judgment date to final payment, payment of general damages as may be assessed by the Court, costs of the case and any other relief (s) the Court deems just to grant.

Before the trial court, four issues were framed and addressed. The said issues are;

- 1. Whether the Plaintiff and the Defendant had tenancy agreement.*

- 2. Whether there is a breach of the agreement by the Defendant.*
- 3. Whether there is notice issued in respect of the termination agreement by the Defendant.*
- 4. What reliefs parties were entitled to.*

Regarding the first issue, the trial Court was satisfied from the testimony of both sides that there was a tenancy agreement between the Plaintiff and the Defendant. On the second issue, the Court found that there was no breach of contract on the reason that the contract ended on 31/04/2021 and the Defendant did not sign any other contract and did not pay another rent, thus there was no contract that was breached.

Regarding the third issue, the Court ruled that the Plaintiff's needed no notice and that there was no need for the Defendant to notify the Plaintiff if they did not intend to renew the contract.

Regarding the fourth issue, the Plaintiff was awarded special damages accruing from May 2021 to May 2022 which is twelve months at **TZS 800,000/=** times twelve (12 months) which was **TZS 9,600,000/=** being unpaid rents, in lieu of **TZS 89,955,600/=** as prayed.

The Plaintiff was also awarded **TZS 10,000,000/=** being general damages caused by the Defendant's limiting the plaintiff's access to his

premises. The Plaintiff was further awarded interest on the decretal sum at the rate of 12% per annum being special damages from the date of cause of action that is May 2021 to May 2022 and payment of interest of special damages at 7% per annum from the date of Judgment to full payment and the Defendant was ordered to pay the costs of the suit. That is what transpired at the trial Court which dissatisfied the Appellant leading to this appeal.

The appeal was argued by a way of written submissions. Now, in the appeal, the Appellant is represented by Mr. Emmanuel William Ndaga, Esq from ZAKE Advocates, whereas the Respondent is represented by Mr. Switbert Rwegasira.

Mr. Emmanuel Esq for the Appellant started to argue the second ground of appeal since it is an issue of law as it questions the jurisdiction of the trial court. He argued that the matter was a pure land case, as it was based on breach of lease agreement. He referred to the case of **Happiness Aloyce Minja vs Jacob Kiula**, Civil Appeal No. 218 of 2020, High Court of Tanzania, Dar es Salaam District Registry, at page 6 where the High Court regarded breach of a tenancy agreement as a land dispute pursuant to **Section 107 (2) (a) of the Land Act [Cap 113 RE 2019]**. According to Mr. Emmanuel Esq,

under **Section 107 (1) (a)**, an application for relief may be made to the District Court, but **Section 2 of the Act** defines Court as *".....any body established by or under any written law which is referred to in section 167 as having jurisdiction to determine land disputes."* He argued further that pursuant to **Section 2 and Section 167 (1) (c)**, the proper Court is the District Land and Housing Tribunal.

The Counsel further argued that the trial Court erred in treating the matter as a breach of contract while at large, the contract was governed by the **Land Act [Cap 113 RE 2019] at Part IX** which governs lease agreement and not normal contract governed by the **Law of Contract Act [Cap 345 RE 2019]**. He cemented that whenever there is a general and specific law, specific law prevails. He referred to the case of **Quality Inspection Services INC JAPAN vs Public Procurement Appeals Authority and 3 others**, Miscellaneous Cause No. 45 of 2022, High Court of Tanzania, Main Registry at Dar es Salaam, at page 22.

Mr. Emmanuel Esq added that pursuant to **Section 4 (1) of the Land Disputes Courts Act [Cap 216 RE 2016]** the trial Court lacked jurisdiction since the provision restricts magistrates' court established by the **Magistrates' Courts Act** to exercise civil jurisdiction in any

matter under the Land Act and the Village Land Act unless otherwise provided by the Land Act.

Mr. Emmanuel Esq argued that the matter could fall under commercial case, but pursuant to **Section 40(3)(b) of the Magistrates' Courts Act [Cap 11 RE 2019]** the Court lacked pecuniary jurisdiction since the value of the matter exceeded seventy million shillings. He referred to the amendment done to the **Magistrate Courts Act** via **Act No. 4 of 2004, Section 2 of the Act** which added a definition of a commercial case and **Section 40** at which a new subsection (3) was added to cover all transactions which are commercial in nature.

Expounding on what constitute Commercial Dispute, Mr. Emmanuel Esq cited the case of **National Bank of Commerce Limited vs Maisha Mussa Uledi (Life Business Centre)**, Civil Appeal No. 501 of 2022, (CAT) unreported at page 8 and 9, where at page 8 a commercial case was defined as follows;

"A civil case involving a matter considered to be of commercial significance including, but not limited to:

- i. The formation of business or commercial organisation.*
- ii. The contractual relationship of a business or commercial organisation with other bodies or person outside it.*

- iii. The liabilities of commercial or business organisation or its official arising outside its commercial or business activities.*
- iv. The liabilities of a commercial or business person arising out of that person's commercial or business activities.*
- v. Restructuring or payment of commercial debt by or to business or commercial organisation."*

Basing on the above authority, Mr. Emmanuel is of the opinion that the matter in the district court was not within the pecuniary jurisdiction of the commercial case.

In response to the Appellants submission on the second ground of appeal, the Respondent's counsel Mr. Switbert Rwegasira argued that the District Court had jurisdiction to determine the suit pursuant to **Section 107 (1) (a) of the Land Act [Cap 113 RE 2019]**. He argued that **Section 4 of Cap 216** (supra) has a saving provision that grants jurisdiction to District Courts established under the **Magistrates' Courts Act** over lease disputes. He referred to the case of **Arnold Moshi and Another vs Sherwa Company Limited and Another**, Land Case No. 125 of 2019, High Court of Tanzania at Dar es Salaam (unreported) where the Court considered issues falling under **sub-part IV of Part IX of the Land Act** particularly **Section 107(1)**

(b); relief (s) to which are provided for under **Section 109 (2) (a)** as issues of which jurisdiction is vested on the District Court.

The counsel further referred to the case of **Mawata Ayambar vs Samira Abdallah Salim**, Misc. Civil Application No. 498 of 2023, High Court of Tanzania at Dar es Salaam (unreported) where the Court held that the District Court had concurrent jurisdiction with Land Courts under **Section 167 of the Land Act**. According to him, **Section 107 (1) of the Land Act** specifically mentions the District Court. He argued that it was not the intention of the legislature to use the word District Court to mean the District Land and Housing Tribunal and that had it been so, there would have been an amendment as the one done under **Section 50 of the Land Act** vide **Section 13 of Act No. 11 of 2005** under which the phrase "*in the court having jurisdiction*" was substituted with the word "*District Land and Housing Tribunal or District Court.*"

Regarding the issue of matter being a commercial case, the counsel submitted that the dispute was a Civil Case, thus the District Court was vested with jurisdiction to determine the matter.

Having heard parties on the ground challenging the jurisdiction of the District Court, I will determine this ground first. As rightly observed by

Mr. Emmanuel Esq, the issue of jurisdiction being a legal issue needs to be determined at the very initial stage of the matter. In the case of **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009, CAT at Arusha at page 7 it was held that;

"Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."

Thus, it is right and crucial to consider such a legal issue firstly even before going to state what counsels submitted regarding the other factual and evidential grounds. Therefore, what follows is an ascertainment as to whether the District Court had jurisdiction to try the suit which involved tenancy agreement. If this issue is answered affirmatively, then I will consider the other issues by as well, analysing the parties' submissions thereto.

In addressing the second ground concerning jurisdiction, I have gone through the evidence adduced by both parties at the trial Court including **Exhibit P1** which is the lease agreement. I become satisfied that parties were not at issue concerning the existence of the tenancy agreement between them as well, no dispute that the dispute falls under Part IX of the Land Act. Reading the Complaint under Paragraph 3 and item (i) of the reliefs claimed by the Respondent in the District

Court, the claim was for rent arising from the tenancy agreement. This is a matter within the ambit of the Land Act from Part IX which deals with leases. It is under this part of the Land Act where Section 107 (1) is found guiding determination of matters arising therefrom. It offers options for applications from there to be lodged in the district Court.

According to Mr. Rwegasira, the suit was instituted under this **section 107 (1) supra**. In his view, this provision requires the said application to be lodged in district Court and according to him, the filing of the lease dispute in the District Court of Korogwe was pursuant to **section 107 (1) (a) supra** which in his view, confers jurisdiction to the District Court. This is vehemently disputed by the Mr. Emmanuel Esq.

From the foregoing, what I note as a departure point amongst the parties is the interpretation of **section 107 (1) (a) of the Land Act**. According to the Respondent, the provision allows the filing of a dispute arising from a lease agreement in the District Court something which the appellant does not agree with. To easily appreciate the gist of this provision, I reproduce it hereunder. It provides:

"107.- (1) An application for relief may be made to a district Court-

(a) In a proceeding brought by the lessor for an order of termination of the lease"

Parties' controversy mainly lies on the word "district Court" which features at **sub section (1) of section 107**. The question in dispute is, did the legislature mean the words "District Court" in **section 107 (1)** to mean the District Court established under the Magistrate Court Act? This will have to take us to the interpretation provision of the Land Act. Reading **section 2 of the Land Act [Cap 113 RE 2019]**, it defines "Court" to mean:-

"..... any body established by or under any written law which is referred to in section 167 as having jurisdiction to determine land disputes."

From that meaning, it is important to unveil what is in **Section 167** supra. It provides:-

"167-(1) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of this Part, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say:-

(a) the Court of Appeal;

(b) the High Court;

(c) The District Land and Housing Tribunal;

(d) Ward Tribunals;

(e) Village Land Council."

From the above contents of section 167 supra, the district Court is not among the courts listed in the meaning of the interpretation of "court" under **section 2 supra**. This means, courts under the Land Act includes the District Land and Housing Tribunal and the District Courts established by the Magistrates Court Act is not in the list. Therefore, my interpretation construes that tribunal at the level of the district must be what was envisaged by the words district Court in section 107 (1) supra since whenever the word "court" is mentioned in the Act, takes us to the list of institutions named in Section 167 supra.

The above provisions of the Land Act have to be read together with **Section 4 of the Land Dispute's Courts Act [Cap 216 RE 2019]**

which provides;

"4.-(1) Unless otherwise provided by the Land Act, no magistrates' court established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act."

The above section provides no leeway for the Magistrates' Courts to exercise jurisdiction on matters under the Land Act and Village Land Act if no clear direction from a provision in the Land Act or the Village Land Act to direct otherwise. The answer to the above question therefore in my considered view is that the act did not mean the words district Court under section 107 (1) to mean the District Court established under the **Magistrate Court Act**. Otherwise, it would have unambiguously so specified in the Act.

Conversely, the Appellant's argument to relate the matter with a commercial dispute, in my view, pursuant to **Section 2 of the Magistrate's Court Act [Cap 11 RE 2019]** there was no sufficient proof that it was a commercial case since item (ii) of the Magistrates' Court Act requires that a contractual relationship should be between a business or commercial organisation with other "bodies" or "*person outside it.*" The Appellant's argument at this point is therefore misplaced.

The authorities referred to by the parties seems to conflict each other but they are all High Court decisions with persuasive effects. I am inclined to borrow a leaf from the decision of **Happiness Aloyce Minja**, cited supra by the Appellant's counsel due to my above

interpretation to **sections 2, 107 and 167 of the Land Act** as well as section **Section 4 of the Land Dispute's Courts Act supra**.

The above discussion concludes the issue of jurisdiction to the effect that the district court does not have jurisdiction to try a land dispute in the nature of the one which give rise to the instant appeal.

The above finding on the issue of jurisdiction with respect to the second ground of appeal suffices to dispose of this appeal. I shall therefore, not proceed to determine the first and the third grounds of appeal so as the second, fourth and sixth issues raised in this appeal. In finality, the appeal is allowed due to lack of jurisdiction in the district court to determine the matter. Consequently, the proceedings of the district court are hereby nullify and the Judgment and Decree therefrom is quashed and set aside for want of jurisdiction. Shall any party be still interested to pursue the dispute; he is at liberty to do so in the District Land and Housing Tribunal. It is so ordered.

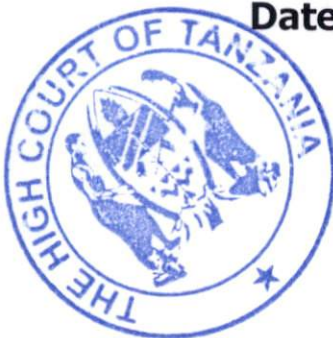
Dated at Tanga this 25th day of April, 2024.



KATARINA REVOCATI MTEULE

JUDGE

25/4/2024



Court:

Judgment delivered in the absence of both parties who were duly notified.



A handwritten signature in blue ink, appearing to read "Katarina Revocati Mteule".

Katarina Revocati Mteule

Judge

25 April 2024