THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA

(CORAM: HON. AUGUSTINE RWIZILE)

PC CIVIL APPEAL NO. 12 OF 2023

ALICE SESEYE .... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

LAMECK CHAHITA .... RESPONDENT / DEFENDANT

<u>JUDGEMENT</u>

Fly Notes

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Facts

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Ratio Decidendi

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23rd of May 2024

Hon. RWIZILE.:

It was Civil Case No. 94/2022 at Ujiji primary court, the appellant successful instituted a civil suit against the respondent over the claim of TZS 12,129,057.00. The respondent admitted the claim when it was read and explained to him. Time for appeal elapsed while the respondent started paying in instalments. The appellant filed an application for execution. The house of the respondent was attached to recover the debt. It was at that moment the respondent filed Misc. Civil application No. 13 of 2022 for extension of time to file an appeal out of time, which was granted. He then successful filed Civil Appeal No. 8 of 2023 before the District Court. Upon full hearing of the appeal, the decision of the trial court in Civil case No. 94 of 2022 of Ujiji Primary court was nullified, and a retrial was ordered. Being aggrieved, the appellant filed this appeal advancing 4 grounds of appeal to wit;

1. That the appellate court erred in law and in fact for holding that the appellant had no cause of action basing on the civil procedure code (cap 33 R.E 2022) which is not applicable in the matter that originates from the primary court.

2. That the appellate court erred in law and in fact for hearing and determining the case while the appeal was filed out of time

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3. That the appellate court erred in law and in fact for hearing and determining the appeal while the appeal was overtaken by events.

4. That the appellate court erred in law and in facts by appealing against the consent judgment.

Mr. Msasa learned advocate represented the appellant while Mr. Kigonga advocate was for the respondent.

Supporting the appeal on the first ground, it was orally submitted that the Civil Procedure Code does not apply in primary courts. He added, the first appellate court erred when made a reference to Order VIII of the Civil Procedures Code (CPC) in arriving at a conclusion, that cause of action was not shown. He said, the discussion should be in line with the Civil Procedure in primary court Rules GN.310 of 1964.

Submission on the second ground of appeal was that the appeal before district court was filed out of time. Elaborating further, he said that, the appeal was filed on 29.3.2023, while at the trial court, the judgment was delivered in the year 2022. The learned counsel submitted that appeal from primary court to the district court is 30 days. In his view, the respondent did not seek for extension of time before filing that appeal, therefore, according to him, it was filed out of time.

Submitting on the third ground of appeal, it was stated that the appeal was overtaken by events. When the appeal was lodged, he added, the appellant had already executed the decree at the primary court to its finality.

Lastly, the learned counsel submitted that this appeal is wastage of time for the reason that the respondent admitted the debt and promised to pay in instalments. He finally asked, the appeal to be allowed.

Opposing the appeal on the 1st ground, it was the submission of the respondent's counsel that the CPC is applicable in primary courts, if there is a lacuna in GN. No. 310 of 1964.

Submitting on the 2nd ground that the appeal was within prescribed time as it was filed after an application for extension of time was granted via Misc. Civil Application No. 13 of 2022 and given 14 days to file an appeal.

It was briefly submitted on the 3rd ground that execution was not yet done. On the 4th ground, it was that where there is no cause of action, there is no consent judgment. He added that the plaintiff did not prove even the contract leading to the debt.

Having heard the parties, I think, I have to start with the second ground which touches the jurisdiction of the court, I have this to say, the advocate for the appellant was misconceived, it is true that the respondent did not file appeal to the district court in time, he filed an application for extension of time in Misc. Civil application No. 13 of 2022 and the same was granted. Therefore, it is not true that the appeal was filed out of time.

On the first ground. I agree with the appellant that in the Civil Procedure Code is not applicable in the primary court.

The first appellate court in arriving at its decision, relied on the facts that cause of action was not disclosed. The test to gauge if the cause of action was not disclosed was the Civil Procedure Code, the phrase hereunder as reflected on page 4 of the judgement.

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"I wish to refer the relevant provision of the law that deals with cause of action. In this regard, I will specifically refer to Order VII Rule of the Civil Procedure Code Cap 33 R.E 2022. This order requires the plaintiffs who move the courts by suits, to plead particulars in their plaint to disclose a cause of action."

Dealing with appeal originating from primary court, the Court of Appeal held in the case of **Agness Simbambili Gabba vs David Samson Gabba**, (CAT), Civil Appeal No. 26 of 2008, on pages 9-10, that; -

"In any case, even if, for the sake of academic argument, it were assumed that the pending suit was the probate matter from the Primary Court, then section 79 of the CPC would not have applied because the CPC does not apply in matters arising from Primary Courts."

Also in the case of **Julius Petro vs Cosmas Raphael,** 1983 TLR. 346 (CAT) at page 350 that; -

"For one thing let it be made clear that the Civil Procedure Code Act No. 49 of 1966 does not apply to the High Court when hearing appeals originating from Primary Courts. The Act No. 49 of 1966 applies to the High Court, R.M.'s Court and District Court when they exercise original civil jurisdiction…"

In primary courts, when dealing with matter of civil nature, the law applicable is the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, GN 312 of 1964 and The Magistrate's Courts (Civil Procedure in Primary Courts) Rules.), GN. 310. Therefore, in dealing with the appeal of this nature, the appellate court will resort in the law and rules applicable in that court to see whether they were complied with. I find merit in this ground of appeal. I have to comment further that this being the second appeal, this court is not entitled to re-evaluate the record and evidence of trial court to find, if the cause action was disclosed or not. I am saying so because, I consider one cannot perfectly decide on the cause of action without examining the record and evidence available. The extract in the pleadings before the trial court does not sufficiently show, prima facie that there is no cause of action.

The 3rd ground of appeal has no merit. Execution was done as it is indeed stated but the house was still in place and could be capable of evaluation in monetary terms if the court found fault in the whole process paving way to the decree.

The 4th ground is on consent judgement or judgement on admission. It was argued that such judgements are not appealable. Even though the advocate did not cite any provision so barring appeals in the circumstances, it is usually the case that, a consent judgment is not appealable unless one party to the suit can prove that he was forced into such consent through fraud. However, there may be instances where consent judgement may be appealed. It may be when parties agree they misunderstood the terms of the agreement defined by the judgement in admission. In general, a consent judgment is where all parties to a case agree to a judgment, then, the court signs and executes. It is not rather a determination of rights but a recital of an agreement and therefore not ordinarily appealable.

From the foregoing, I find merit in this appeal. The decision of the first trial court is hereby quashed, and orders set aside. I make no order as to costs.

Hon. AUGUSTINE RWIZILE

Dated at **KIGOMA ZONE** this 23rd of May 2024.

AUGUSTINE RWIZILE

JUDGE OF THE HIGH COURT

Hon. AUGUSTINE RWIZILE