

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB - REGISTRY)
AT MOROGORO

PC. CIVIL APPEAL NO. 08 OF 2023

(Arising from the decision of the District Court of Kilombero in Civil Appeal No. 21 of 2022 before Hon B.L. Saning'o, RM dated 13/01/2023), & Originating from the decision of Ifakara Primary Court in Civil Case No. 51 of 2022)

JAMAL MWASHAAPPELLANT

VERSUS

RAPHAEL RICHARD MARKO RESPONDENT

JUDGMENT

5th Oct, 2023 & 7th Febr, 2024

M.J. Chaba, J.

On 25th July, 2022, the respondent, Raphael Richard Mark successfully sued the appellant before Ifakara Primary Court (the trial Court) for payment of TZS. 9,700,000/=. It is on record that, after a full trial, the trial Court ordered the appellant, Jamal Mwashha to pay the respondent the sum of TZS. 9,413,000/=. However, the appellant was totally unhappy with the decision of the trial Court, hence he preferred an appeal in the District Court of Kilombero, at Ifakara (first Appellate Court) where the District Court upheld the decision of the trial Court and blessed the orders that stemmed therefrom, and proceeded to dismiss the appellant's appeal with no order as to costs.



Still dissatisfied with the decision of the first Appellate Court, the appellant has knocked the door of this Court and lodged the instant appeal raising four grounds of appeal reproduced hereunder:

1. That, the first Appellate Court erred in law and fact for its failure to reexamine well the evidence and properly re-analyses the same, hence lead to miscarriage of justice.
2. That, the first Appellate Court erred in law and fact to agree with the trial Court and ordered the appellant to pay the respondent the sum of TZS. 9,413,000/= while the remaining balance shall contain with remaining work so there is no proof if the remaining work was accomplished by respondent.
3. That, the first Appellate Court erred in law and fact for its judgment to end in favour of the respondent, while the respondent has no *locus to standi*.
4. That, the first Appellate Court erred in law and in fact to decide the case being aware that the agreement between the parties was uncertain.

When the matter was called on for hearing of the appeal on the 24th August, 2023, the appellant appeared in person, and unrepresented whilst the respondent enjoyed the legal services of Ms. Donatila Teendwa Antoni, learned advocate. With parties' consent, I ordered the appeal to be argued and disposed of by way of written submissions. Being unrepresented, the appellant prepared

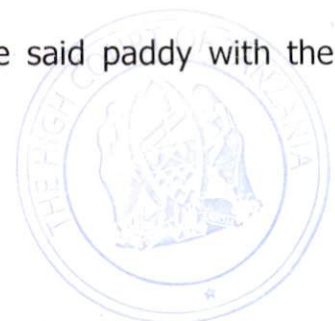


and filed his own submission while the respondent's submission was drawn and filed by Ms. Donatila Teendwa Antoni, learned advocate.

Submitting in support of the first ground, the appellant contended that, the first Appellate Court failed to re-examine and re-analyse the evidence adduced before the trial Court, as in its judgment at page 9, paragraph 1, the first Appellate Court admitted the fact that, the agreement entered between the appellant and the respondent was uncertain for a reason that, one among the parties who entered into the contract had no capacity to enter into the said contract which renders the contract itself to be void and lacking capacity of being enforceable in the eyes of the law. He stated that, it is not in dispute that the appellant herein has intention to pay the remaining sum / amount but what the appellant disputes, is the person who is correctly supposed to be paid.

As regards to the second ground, the appellant averred that, in their agreement between JATU PLC and the appellant herein, they agreed that the respondent had to harvest 100 acres of paddy for the amount of TZS. 9,700,000/= but surprisingly, the other party to a contract did not perform his duty.

On the third ground, the appellant elaborated that, the respondent has no *locus standi* to stand in this matter as he is just an employee of the said JATU Company, hence he is not a proper person to sue on behalf of the Company. He said, while entering into an agreement for harvesting the said paddy with the



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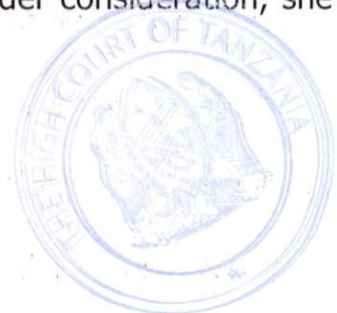
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respondent, he believed that such an agreement was entered into between him and the Company and not the respondent as an individual. He said, that is why when he made pre-payment, the respondent issued him with the Company's receipt bearing the names of JATU PLC, meaning that the agreement was between the appellant and the said Company (JATU PLC).

As regards to the fourth and last ground of appeal, the appellant relied upon the provision of section 29 of the Law of Contract Act [Cap. 345 R.E. 2019] and proceeded to argue that, the agreement entered between the appellant and the respondent was void due to its uncertainty in the eyes of law, hence it cannot be performed.

On the strength of the above submission, the appellant prayed the Court to allow the appeal with costs and order that the judgment of the first Appellate Court be quashed and set aside.

Responding to the appellant's submission, Ms. Donatila Teendwa Antoni, learned advocate for the respondent commenced her submission by referring this Court to the holding of the Court of Appeal of Tanzania in the case of **Richard Julius Rukambura Vs. Issack Ntwa Mwakajila & Another**, Civil Application No. 3 of 2004, CAT at Mwanza (unreported), where the Court observed that, matters regarding jurisdiction can be raised at any stage of the proceedings. She went on stating that, during her scrutiny of the matter under consideration, she



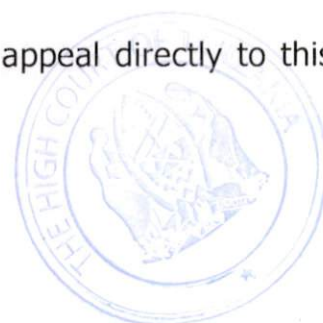
revealed a serious illegal departure to the governing legal procedures that had been committed by the appellant which prompted her to raise an objection. She averred that, the respondent's preliminary objection (PO) is based on the matters associated with the jurisdiction of this Court to entertain and determine the appellant's appeal on merits, in as much as the manner it was lodged in this Court.

Elaborating her contention, the learned advocate referred this Court to the provision of Section 25 (3) and (4) of The Magistrates' Court Act [Cap. 11 R.E. 2019] which provides that: -

"Section 25 (3) - Every appeal to the High Court shall be by way of petition and shall be filed in the District Court from the decision or order in respect of which the appeal is brought; and

(4) Upon receipt of a petition under this section, the District Court shall forthwith dispatch the petition, together with the record of the proceedings in the Primary Court and the District Court to the High Court".

Guided by the above cited provision of the law, Ms. Donatila accentuated that, after perusing the appellant's appeal, she discovered that the appellant contravened the requirements of the law as he filed this appeal directly to this



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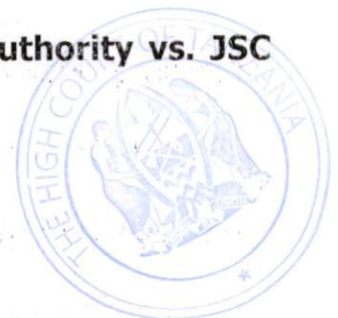
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Court (High Court of Tanzania, Morogoro Sub-Registry) on 13th day of February, 2023. To put more weight on her contention, Ms. Donatila cited the case of **Kikundi cha Wanawake wa Nguvu (Tausi Tengewa) Vs. Aziza Mtaalamu & 4 Others (Civil Appeal No. 35 of 2022) [2023] TZHC 21010 (18 September 2023)** (Extracted from www.tanzlii.org), where this Court observed that:

"...Now, taking cognizance of the above cited authorities and guiding provisions of the law, it is my considered view that, non-compliance with the mandatory legal procedural requirement in particular, direct institution of an appeal against the decision of the District Court exercising its appellate Jurisdiction over matters originating from Primary Court to the High Court is incurably fatal and cannot be salvaged by the overriding objective principle...."

Besides, as to the consequences of violating the relevant procedural requirements of the law, Ms. Donatila invited this Court to take inspiration from the decision of this Court in the case of **Michael Joachim Tumaini Ngalo vs. Jitesh Jayantil Ladwa (Civil Case 18 of 2021) [2022] TZHC 13881 (7 October 2022)**, which cited the decision of the Court of Appeal of Tanzania in the case of **Commissioner General Tanzania Revenue Authority vs. JSC**



Atomredmetzoloto (Armz) (Consolidated Civil Appeals 78 of 2018)

[2019] TZCA 533 (16 April 2019), wherein the Court of Appeal of Tanzania

(the CAT) observed that: -

"Jurisdiction is a creature of statute and as such, it cannot be assumed or exercised on the basis of likes and dislikes of the parties. That's is why the court has in number of occasions insisted that the question of jurisdiction is fundamental in court proceedings and can be raised at any stage even at the appellate stage. The court suo moto can raise it, in adjudication the initial question to be determined is whether or not the court or tribunal is vested with requisite jurisdiction."

The Court further stated that:

"An appeal is a creature of law where a person intending to lodge an appeal before the higher Court must do so in accordance with the law".

Based on the above precedent, the respondent's advocate prayed this Court not to hesitate to struck out the appellant's appeal with costs for being incompetent before the Court.



1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for ensuring the integrity of the financial statements and for providing a clear audit trail. The text also mentions that proper record-keeping helps in identifying any discrepancies or errors early on, which can be corrected before they become more significant.

2. The second part of the document focuses on the role of internal controls. It explains that these controls are designed to prevent and detect errors or fraud. The document lists several key components of internal controls, such as segregation of duties, authorization requirements, and regular reconciliations. It stresses that a strong internal control system is essential for the reliability of the financial reporting process.

3. The third part of the document addresses the issue of transparency and disclosure. It states that companies should provide clear and concise information to their stakeholders, including investors and creditors. This involves disclosing not only the financial results but also the risks and uncertainties that could affect the company's performance. The document highlights that transparency is a key factor in building trust and confidence in the company's financial statements.

4. The fourth part of the document discusses the importance of staying up-to-date with changes in accounting standards and regulations. It notes that the accounting profession is constantly evolving, and companies must adapt to these changes to ensure compliance and accuracy. The document provides a list of recent updates and offers suggestions for how companies can stay informed, such as attending seminars and consulting with professional advisors.

5. The fifth part of the document concludes by summarizing the key points discussed. It reiterates that maintaining accurate records, implementing strong internal controls, and providing transparent disclosures are all essential for ensuring the reliability and integrity of the financial reporting process. The document ends with a call to action, encouraging companies to take these steps seriously and to work together to improve the overall quality of financial reporting.

On my part, instead of further reproducing and/or summarising what the learned advocate for the respondent submitted against the grounds of appeal raised by the appellant while responding to his submission, I find it apt to firstly deal with, and determine the point of preliminary objection as Court traditions and practice demands so to do, taking into account that both parties submitted for and against on this point of objection.

By way of rejoinder, the appellant responded to the raised point of objection and argued that the respondent has purposely omitted a crucial part of the section in order to deceive the Court. To fortify his stance, he reproduced the provision of section 25 (3) and (4) of the Magistrates' Courts Act [Cap. 11 R.E. 2019] and stated that, the law clearly provides thus:

"25 (3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought:

Provided that, the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.



(4) Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court”.

In view of the appellant, a mark of punctuation (:.) in any sentence gives power and priority to the part of the sentence after punctuation. It was his argument that, the Director of Public Prosecution (the DPP) appears only when any part in the case has been prosecuted on criminal offence and that, as long as the instant case is a civil case, the prosecutor is not required to file an appeal.

On the basis of his submission, the appellant urged this Court not to entertain the PO raised by the respondent’s advocate and proceed to determine the appellant’s petition of appeal on merits.

I have impassively examined and considered the parties’ contending submissions, the records of the lower Courts and the record of this appeal in line with the raised point of objection. It is obvious, in my considered view that, the contentious issue for consideration, determination and decision thereon is as to whether the appellant was justified to file this appeal directly to this Court.

To begin with, I am mindful of the fact that, reading from the Court records, it is crystal clear that, the instant appeal stemmed from the decision of the Primary Court of Ifakara in Civil Case No. 51 of 2022, where upon being



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes, as well as the use of specialized software tools. The goal is to ensure that the data is both reliable and easy to interpret.

The third part of the document focuses on the results of the analysis. It shows that there is a clear trend in the data, which suggests that the current strategy is effective. However, there are also some areas where improvements can be made, particularly in terms of efficiency and cost reduction.

Finally, the document concludes with a series of recommendations for future work. These include the need for continued monitoring and evaluation, as well as the implementation of new technologies to further streamline the process.

The following table provides a summary of the key findings from the analysis. It shows that the overall performance has improved significantly over the last year, with a 15% increase in revenue and a 10% decrease in expenses.

Category	Q1	Q2	Q3	Q4
Revenue	120,000	135,000	150,000	165,000
Expenses	100,000	95,000	90,000	85,000
Profit	20,000	40,000	60,000	80,000

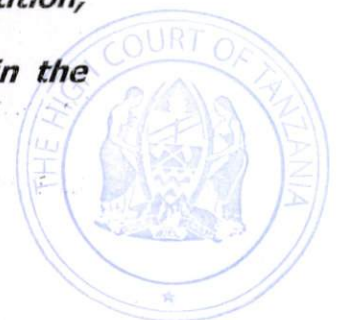
Based on these results, it is recommended that the company continue to invest in research and development to stay ahead of the competition. Additionally, it is important to maintain a strong focus on customer service and satisfaction, as this is a key driver of long-term success.

dissatisfied with such decision, the appellant herein unsuccessfully appealed to the District Court of Kilombero, at Ifakara, hence the present appeal which was lodged directly in this Court in contravention with the mandatory procedural requirement provided for under section 25 (3) and (4) of the Magistrate's Courts Act (supra) as well as Rules 4 (1) & (2) and 5 (3) & (4) of The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules GN. No. 312 of 1964. Whereas; Section 25 (3) and (4) of The Magistrates' Courts Act (supra) provides thus: -

"Section 25 (3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought:

Provided that, the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court".

(4) Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the



primary court and the district court, to the High Court. [Bold is mine].

On the other hand, Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1964 (GN. No. 312 of 1964), articulates under Rule 4 (1) & (2) and 5 (3) & (4) thus:

"Rule 4 (1) Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the high court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent.

4 (2) Every petition of appeal to the High Court shall be filed in duplicate.

5. Registration of appeals:

(1) NA;

(2) NA;

(3) When a petition of appeal to the High Court is filed in the district court, the district court shall cause the date of filing



to be endorsed on the petition before dispatching it to the High Court.

(1) When a petition of appeal is received in the High Court, it shall immediately be numbered and entered in a register to be kept for that purpose".

At the outset, I wish to state that, this appeal is lacking in merits and the same need not detain me much as its filing in this Court contravened the law as indicated hereinabove. This position of the law was well interpreted by the Court of Appeal of Tanzania in the case of **Sophia Mdee vs. Andrew Mdee & 3 Others**, Civil Appeal No. 5 of 2015, CAT sitting at Arusha (unreported), where the CAT made the following observations at pages 8-9, I quote: -

"The starting point is the procedure as to how and where an appeal is lodged in the High Court on matters originating from Primary Courts. S. 25 (3) & (4) which falls under Part III of the Act provide the answers. It reads:

(3) Every appeal to the High Court shall be by way of petition and shall be filed in the District Court from the decision or order of which the appeal is brought;

(4) Upon receipt of a petition under this section, the district court shall forthwith dispatch the petition together



with the record of the proceedings in the primary court and the district court, to the High court."

The CAT went on expounding further that: -

"...From above it is clear that if one intends to appeal in the High Court from the decision or order of the district court in matters originating from primary courts, he has to lodge his petition of appeal in the district court which handed down the decision and the district court shall immediately forward the same to the High Court".

Reverting to the matter under consideration and guided by the principles of law and the authorities referred to hereinabove, I tend to agree with the learned advocate for the respondent that, the appellant illegally departed from the ambit of the governing procedural law as to how and where an appeal is supposed to be lodged in this Court, in particular, on matters originating from Primary Courts. In this regard, the respondent's advocate was right when she averred that, upon discovering the anomaly for filing the present appeal, it prompted her to spank the instant appeal with the PO as hinted above.

In the upshot, based on the above analysis and the cited precedents, I find and hold that, the PO raised by the Ms. Donatila Teendwa Antoni, the learned advocate for the respondent is meritorious. In the premises, I proceed to struck



out the appeal for being incompetent before this Court. If the appellant is still interested to pursue for his right, he is at liberty to file his appeal in accordance with governing procedural laws and subject to the Law of Limitation Act [Cap. 89 R.E. 2019]. Each party shall bear its own costs.

It is so ordered.

DATED at **MOROGORO** this 07th day of February, 2024.



M. J. Chaba

Judge



07/02/2024

Court:

Judgment delivered in Chambers this 13th day of February, 2024 in the presence of Appellant who appeared in person and unrepresented, and in absence of the Respondent and his advocate.




S. P. KIHAWA

DEPUTY REGISTRAR

07/02/2024

Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.


S. P. KIHAWA



DEPUTY REGISTRAR

07/02/2024