IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

PC CIVIL APPEAL NO. 2376 OF 2024

(C/F Civil Appeal No.03 of 2023 of Rombo District Court; Original Shauri la Madai Na. 01/2023 of Mengwe Primary Court)

SIFAEL MOSHI ..... APPELLANT

VERSUS

ELINAIKE SIFAEL MOSHI..... RESPONDENT

JUDGMENT

12/06/2024 & 24/06/2024

SIMFUKWE, J.

This is the second appeal. The factual background of the matter, briefly, is that the respondent instituted a civil case against the appellant before Mengwe Primary Court (the trial court), claiming TZS 1,300,000. The appellant, Sifael Moshi, allegedly cut down 16 trees from the farm without

the respondent's consent while he had deserted the respondent for more than twenty years. The farm trees were under the care of the respondent. The trial court decided in favour of the respondent, ordering the appellant to pay TZS 1,300,000 and TZS 5,000 as court fees. The appellant, being aggrieved by the said decision, unsuccessfully appealed to the District Court of Moshi at Moshi (first appellate court). Still aggrieved, the appellant preferred the instant appeal under the following grounds:

1. *That, the first appellate court strained into an error for holding that the trial court had no jurisdiction to hear and determine the matter.*
2. *That, the first appellate court erred in law and fact for failure to observe that the trial court erred in law and fact for evaluating the evidence basing on the provision of the* ***Law of Marriage Act****, despite the fact that the suit before it was not a matrimonial case.*
3. *That, the first appellate court erred for failure to rule on act by the learned trial magistrate issuing orders not pleaded by the respondent.*
4. *That, the first appellate court misdirect itself for relying on the provision of* ***Tanzania Evidence Act*** *in determining the appeal before it whereas the same is not applicable to the suit in Primary Court.*

On account of the above grounds of appeal, the appellant prays this court to allow the appeal, quash the judgment and orders of the lower courts, and order that the costs of this suit be borne by the respondent.

When the appeal was called for hearing, both parties were unrepresented. The appellant urged this court to adopt his grounds of appeal and consider them in its decision.

Opposing the grounds of appeal raised by the appellant, the respondent claimed that the appellant deserted her for 24 years and is cohabiting with another woman at Holili. In 2020, he went to the respondent's homestead as a thief and cut down all the trees. She reported the matter to local government leaders who assisted her. She further instituted a case before Mengwe Primary Court, which was decided in her favour. The respondent continued to lament that the appellant is mistreating her because she has no children.

In his brief rejoinder, the appellant submitted that the trees he cut down were his property and he had authority over them. He explained that before cutting those trees, he sought a permit because they were falling on the

house of his sibling. He explained further that the source of the problem is the farm, which his wife and sibling want to deprive him. The dispute was reported to the clan and discussed. Moreover, the appellant contended that there was no proof that the cut trees were worth TShs. 1,300,000/= as no valuation report was tendered.

I have carefully examined the lower court records and the submissions for and against this appeal. Since there are concurrent findings by the two courts below, this court will not disturb such findings unless there is a misapprehension of evidence, violation of some principles of law or practice, miscarriage of justice, existence of obvious errors on the face of the record, or misdirection or non-directions on the evidence. This has been stated in numerous decisions, including the famous case of **Amrathlar Damadar and Another v. A.H. Jariwalla [1980] TLR**. Recently, the Court of Appeal upheld this principle in the case of **Shakila Lucas vs. Ramadhani Sadiki** (Civil Appeal No. 349 of 2020) [2024] TZCA 36 (14 February 2024) Tanzlii at page 12, stating that:

> *"Ordinarily, a court can rarely interfere with concurrent findings of facts by two courts below save where there are*

mis-directions or non-directions on the evidence, or where there was a miscarriage of justice or a violation of some principle of law or practice…"

I will start with the first ground of appeal, which faults the trial court and the first appellate court on the issue of jurisdiction. It is trite law that the jurisdiction of the court is created by statute. The court cannot assume jurisdiction not conferred by law. In the case of **Yohana Balole vs. Anna Benjamini Malongo**, Civil Appeal No. 18 of 2020, CAT, the Court deliberated on the concept of jurisdiction, stating that:

"It is common ground that jurisdiction of the court is a creature of statute and is conferred and prescribed by the law and not otherwise. The term "jurisdiction" is defined in Halsbury's Law of England, Vol. 10 paragraph 314 to mean "….the authority which the court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. The limits of this authority are imposed by the statute. charter or commission under which the court is constituted, and may be extended or

restrained by similar means. A limitation may be either as to the kind and nature of the claim or as to the area which jurisdiction extended or it may partake of both these characteristics."

In this case, the appellant claimed that the trial court had no jurisdiction to entertain the matter without specifying which type of jurisdiction he was referring to. However, the records of the first appellate court reveal that the appellant contended that the trial court had no jurisdiction to entertain the matter since the conflict concerning tree harvesting is a land dispute.

I have carefully examined the records of the trial court, specifically the form known as *"FOMU YA MADAI-2."* This form, among other things, contains facts that explain the cause of action, which enables the primary courts to determine whether it has jurisdiction to entertain the matter or not. For easy reference, I hereby reproduce the content of the form:

"……HATI YA MADAI

(kanuni ya 15 (1) (2) ya Kanuni za Mashauri ya Madai Mahakama za Mwanzo)

HABARI YA MADAI KWA UFUPI (lini, yametokea wapi, thamani/kiwango cha madai):

Mdai anamdai mdaiwa Tsh 1,300,000/= inayotokana na miti aliyokata shambani kwao kuanzia mwaka 2020 hadi sasa.

Mali/kiasi kinachodaiwa 1,300,000/=”

Based on the above facts found in the stated form, it is my firm view that the trial court had jurisdiction to entertain the matter since the amount claimed by the respondent, TZS 1,300,000/= as compensation for trees cut by the appellant, falls within the pecuniary jurisdiction of the trial court as per **section 18(1) (a) (i), (ii) and(iii) of the Magistrates Courts Act**, Cap 11 R.E 2022. Moreover, the records of the trial court clearly indicate that the parties were not disputing ownership of land.

Concerning the second ground of appeal, the appellant faulted the trial court for evaluating evidence based on the provisions of the **Law of Marriage Act**, Cap 29 R.E 2019, while the suit before it was not a matrimonial cause. In determining this issue, I first reviewed the trial court's judgment and found that the trial court magistrate, at page 2, determined whether the

appellant and the respondent were spouses. In addition, at pages 4 and 5 of the trial court judgment, the trial magistrate referred to **sections 114(3) and 59(1) of the Law of Marriage Act,** Cap 29 R.E 2019 to determine the issue of matrimonial property. I reiterate that the cause of action was in respect to Tshs 1,300,000/- as compensation for the trees which the respondent claimed that were cut by her husband.

Before the trial court, the appellant did not dispute that the respondent was his wife, as reflected at page 10 of the trial court proceedings. Apart from that, it was undisputed fact that the appellant deserted the respondent for more than 20 years, leaving her to take care of the land, including the alleged trees cut by the appellant. From these undisputed facts and the findings of the trial court, it is evident that the trial magistrate used the provisions of the **Law of Marriage Act** to determine facts that were not in dispute. Therefore, it is my strong opinion that the use of the **Law of Marriage Act** was not fatal, as the trial magistrate used it to determine undisputed issues.

It caught my attention that in his oral submission, the appellant narrated to this court that the cut trees belonged to him. With due respect to the appellant, before the trial court, he did not raise such evidence. Therefore,

raising such evidence at this stage is an afterthought. Even if the trees belonged to him, given the fact that he had deserted the respondent he was not allowed to cut trees without seeking consent from his wife who was taking care of the trees.

On the third ground of appeal, the appellant faulted the first appellate court for failing to note that the trial court issued an order not pleaded by the respondent. I have read carefully the orders of the trial court vis-à-vis the prayers of the respondent in her pleading (Form No. 2). At page 13 of the trial court judgment, the court ordered the appellant to pay a sum of Tshs 1,300,000/= as claimed by the respondent in her pleading and Tshs 5,000/= being the cost of filing this suit. From the foregoing orders, I failed to see an order that was not pleaded but granted by the trial court

On the last ground of appeal, the appellant complained that the first appellate court misdirect itself by relying on the provision of the **Tanzania Evidence Act** in determining the appeal before it.

At page 5 of the first appellate court judgment, the trial Magistrate applied **section 111 of the Evidence Act**, Cap 6 R.E 2019. The argument of the

appellant is valid as evidence in primary courts is governed by the **Magistrates' Courts (Rules of Evidence in Primary Court) Regulations** G.N No. 22 of 1964 and **G.N No. 66 of 1972**. However, the provisions of **section 111 of the Evidence Act** and **Rule 6 of the Primary Court Evidence Rules** are in Pari Materia. The two provisions establish that the standard of proof in civil cases is based on balance of probabilities.

That said and done, as the second appellate court, I find no reason to fault the concurrent findings of the two courts below. Thus, I hereby dismiss this appeal without costs. It is so ordered.

Dated and delivered at Moshi this 24th day of June, 2024.

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

24/06/2024