

**IN THE HIGH COURT OF TANZANIA  
DODOMA SUB REGISTRY  
AT DODOMA**

**PC CRIMINAL APPEAL NO. 14 OF 2023**

*(Originating from Criminal Appeal No. 35 of 2023 of the District Court of Dodoma at Dodoma; arising from Dodoma District Primary Court at Chamwino Urban, Criminal Case No. 274 of 2023)*

**SOSPETER JACKSON MASIMA..... APPELLANT**

**VERSUS**

**SAIMON ENOCK.....RESPONDENT**

**JUDGMENT**

*Date of last order: 13/03/2024*

*Date of Judgment: 20/03/2024*

**LONGOPA, J.:**

This appeal challenges the decision of the District Court of Dodoma. District Court of Dodoma being the first appellate court was entertaining the appeal which originates from the decision of the Dodoma District Primary Court at Chamwino Urban which convicted and sentenced the appellant to serve six months in imprisonment and payment of compensation at the tune of 15,500,000/= for committing fraud on sale or mortgage of property contrary to sections 307 of the Penal Code, Cap. 16 R.E. 2022.

It was alleged that on 11.03.2023 appellant sold a piece of land to the respondent for 20,000,000/= in the presence of witnesses but after



the sell, respondent discovered that in that piece of land there were graves and another person who claims ownership of the same. As a result, the appellant was arraigned before the Dodoma District Primary Court at Chamwino Urban. The appellant denied the charges against him and the respondent side have a total of four witnesses to testify to establish the case against the appellant. Upon conclusion of the hearing of the case, the appellant was convicted and sentenced thereof.

Being aggrieved by both conviction and sentence, the appellant decided to challenge that decision by way of appeal in the District Court of Dodoma where the decision of Primary Court was upheld and the appeal was dismissed. Being aggrieved with such decision, the appellant decided to challenge that decision by way of appeal in this court as the second appellate court on three grounds, as reproduced hereunder for easy of reference: -

- 1. That, the trial court and appellate court erred in law and in fact by convicting the appellant while the respondent fail to prove the case beyond reasonable doubt.*
- 2. That, the trial court and appellate court erred in law and in fact for failure to consider the evidence tendered by the appellant which was strong and not contradictory.*
- 3. That, the trial court and appellate court erred in law and in fact by considering weak and contradictory evidence tendering by the respondent and his witnesses.*

Respondent replied, as reproduced hereunder for easy of reference: -

- 1. That ground number 1 of the petition is strongly disputed and the appellant shall prove thereof. The respondent vehemently states that the trial convicted the appellant as the case was proved as per standard required by the law.*
- 2. That ground number 2 of the petition is strongly disputed and the appellant shall prove thereof. The respondent vehemently states that this is a new ground of appeal as it was not raised at appellate.*
- 3. That ground number 3 of the petition is strongly disputed and the appellant shall prove thereof. The respondent vehemently states that this is a new ground of appeal as it was not raised at first appellate court.*

The appellant prays to this Honourable Court to allow this appeal. The respondent prays to this Honourable Court to dismiss the whole appeal with costs.

On 13/03/2024 when this appeal called for hearing, both the appellant and the respondent appeared in person. The parties submitted on the appeal briefly to support their respective positions.

In support of the appeal, the appellant stated that he did not commit the offence as the property he sold belongs to him. He stated that it is true that he received money from the respondent for the sale of his land. It was the appellant's view that he had all the documents that indicated he was the owner of the land. According to him, the court erred to hold that he was guilty of the offence of fraud on sale or

mortgage of property contrary to Section 307 of the Penal Code, cap 16 R.E. 2022.

The respondent on his submission stated that, the second and third grounds were not determined in the District court as the first appellate. The grounds were not determined in the primary court and the district court. He reiterated that the conviction and sentence was appropriately as the appellant was found guilty on the strengths of the prosecution case.

In his rejoinder, the appellant stated that he was not satisfied with the decision in lower courts as his evidence was sufficient enough to be acquitted.

I have perused the records from Dodoma District Primary Court at Chamwino Urban and that of District Court of Dodoma on this matter as well as considered the submissions by the parties to ascertain whether the appeal before me is meritorious. To be able to find out the validity or otherwise of this appeal, this Court had to ascertain if the two subordinate courts were versed with requisite jurisdiction to entertain the matter at hand.

On 12.4.2023 before the Dodoma District Primary Court at Chamwino the accused was charged under Section 307 of Penal Code R.E 2022. That section is reproduced hereunder for easy of reference: -



*307. Any person who, being a seller or mortgagor of any property or being the advocate or agent of a seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—*

*(a) conceals from the purchaser or mortgagee any instrument material to the title, or any encumbrances;*

*(b) falsifies any pedigree on which the title depends or may depend; or*

*(c) makes any false statement as to the title offered or conceals any fact material thereto,*

*is guilty of an offence and is liable to imprisonment for five years.*

It is a common knowledge that criminal jurisdiction of the Primary Court Magistrate is drawn from the Magistrates Courts Act, Cap 11 R.E. 2022. Section 18(1) and Part I of the First Schedule list all offences under the Penal Code which Primary Court Magistrates are authorized to try. Section 307 is not among the scheduled list. Such absence of the offence from which the appellant was charged and convicted from the list of offence triable by primary court raises doubts whether the procedure was proper in the first instance.

It is my considered view that the jurisdiction of the Primary Court is vested to the Court despite the level of the magistrate presiding over such criminal offence. The jurisdiction is not vested on individual but the

court. I state so as I am fully aware that record indicate that the matter was presided over by the Senior Resident Magistrate.

Since section 18(1)(c) and First Schedule to the Magistrates Courts Act were not adhered to by the Senior Resident Magistrate presiding over the matter in the primary court, it is certainly that procedure was not adhered to. It appears that primary court erred in entertaining the matter which it has no jurisdiction. The First Schedule lists all the offences under Penal Code and other law that are within the mandate of the Primary Court. It states that:

*18.-(1) A primary court shall have and exercise jurisdiction (c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act.*

In that respect, since the question of jurisdiction is of such paramountcy in any court proceedings that it is fatal to ignore it. Any Court presiding over a matter which it has no jurisdiction, such proceedings and decision would be illegal in law.

The issue of jurisdiction was analysed in a detailed manner in the case of **Patrick William Magubo vs Lilian Peter Kitali** (Civil Appeal 41 of 2019) [2022] TZCA 441 (18 July 2022) (TANZLII), where the Court of Appeal stated that:

*It is common ground that jurisdiction of courts is a creature of statute and is conferred and prescribed by the law and not otherwise. The term "Jurisdiction" is defined in Halsbury's Laws of England, Vol. 10, paragraph 314 to mean: - "...the authority which a 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." From the above extract and considering the fact that jurisdiction of courts is conferred and prescribed by law, it is therefore a primary duty of every court, before venturing into a determination of any matter before it, to first satisfy itself that it is vested with the requisite jurisdiction to do so.*

The decision of the Court of Appeal reveals that: First, the jurisdiction is entrusted to a Court by a law that establishes that court or other law that would categorically state that such court is empowered to handle a particular issue. Second, jurisdiction entitles the Court to decide or otherwise. Third, the court must ascertain before hearing a matter if it has jurisdiction or otherwise.



In case a court entertain a matter without being clothed with requisite jurisdiction, all the proceedings and resultant decision have no force of law as they are based on nullity.

In the case of **Onesmo M. Oscar vs Petro & 4 Others** (Civil Appeal 63 of 2021) [2022] TZHC 13369 (30 September 2022), the High Court of Tanzania, at Mwanza Sub Registry on pages 8-10 summed up the issue of jurisdiction in the following terms:

*To begin with, the first issue related to jurisdiction of court. It is very crucial. Time-and-again, it has been held by courts that jurisdiction is one of such important points of law which cannot be dealt with sparingly. It really calls no magic to establish whether or not a particular court is empowered by law to preside over the matter. Jurisdiction of any court is a statutory garment. That is, every court is given mandate under specific piece of legislation.*

Also, in the case of **Director of Public Prosecutions vs ACP Abdallah Zombe & Others** (Criminal Appeal No. 254 of 2009) [2013] TZCA 497 (8 May 2013)(TANZLII), at page 8, the Court of Appeal stated that:

*It is settled law in our jurisprudence that as far as judicial proceedings are concerned, the issue of jurisdiction is very fundamental...question of jurisdiction*





*is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.*

In the circumstances, the proceedings and judgment of the subordinate courts are null and void from the beginning. The reason is simple that the trial court was not mandated to try the offence for which it had no jurisdiction. Similarly, the first appellate Court entertained an appeal and confirmed the findings of the primary court that was based on nullity for lack of requisite jurisdiction. In the case of **Director of Public Prosecutions vs ACP Abdallah Zombe & Others (supra)**, at pages 9-10, the Court of Appeal restated that proceedings and decision arising from Court without jurisdiction are regarded as incompetent. It stated that:

*We should quickly add that this Court always first makes a definite finding, on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings. Incompetence of proceedings takes many forms. It may arise out of the proceedings being time barred, being wrongly instituted; instituted in the wrong court or forum, a competent court being wrongly moved, citing a wrong number of the case in which the challenged decision emanates, etc*



Having noted that trial court lacked prerequisite jurisdiction to entertain the matter under section 307 of the Penal Code, Cap 16 R.E. 2022, this Court cannot determine grounds of appeal that are preferred by the appellant and resisted by the respondent. They are based on incompetent decision which cannot be entertained.

In case the trial court would have possessed requisite jurisdiction, this court as the second appellate court would be entitled to entertain matters which were raised in first appellate court. It is a settled legal position that the second appellate court should confine itself to matters that were deliberated in the first appellate court. It cannot address grounds of appeal that were not raised in the first appellate court. This was the decision in the case of **Godfrey Wilson vs Republic** (Criminal Appeal 168 of 2018) [2019] TZCA 109 (6 May 2019) (TANZLII), where the Court stated that:

*...the Court does not consider new grounds raised in a second appeal which were not raised in the subordinate courts. For this reason, we will not consider grounds number one to number five of the appellant's grounds of appeal. This however, does not mean that the Court will not satisfy itself on the fairness of the appellant's trial and his conviction.*

Further, in the case of **George Maili Kemboge vs Republic** (Criminal Appeal 327 of 2013) [2014] TZCA 203 (30 October 2014) (TANZLII), the Court stated that:

*In the event and on the basis of the settled legal position demonstrated by the Court, grounds 2 and 3 having been raised for the first time in a second appeal are not legally before us for determination and therefore lack merit.*

In conclusion, this appeal must succeed not on basis of merits of the grounds preferred but on the fact that both the trial and first appellate court entertain the matter without considering the jurisdiction of the primary court to try the matter. The proceedings before the trial and first appellate courts are nullity thus void ab initio.

Primary court would have been mandated to entertain the matter if the same was preferred under the offence of Obtaining goods by false pretences contrary to Section 302 of the Penal Code or Cheating contrary to Section 304 of the Penal Code as under the First Schedule to the Magistrates Courts Act, Cap 11 R.E. 2022 those offences can be tried by the primary courts. Alternatively, the offence of fraud in sale or mortgage of property contrary to section 307 of the Penal Code would have been instituted before a District Court as it has jurisdiction to try it. At this juncture, it is my humble view that the proceedings and judgment of both the trial and first appellate courts being marred with illegalities for lack of jurisdiction deserve one conclusion to be quashed





and the sentence thereof set aside for being nullity. I proceed to nullify the proceedings of both the trial and appellate courts and set aside the sentence and order entered against the appellant herein. In case the parties are interested to pursue their respective rights either of them is entitled to so by initiating the same at appropriate legal forum.

It is so ordered.

**DATED at DODOMA** this 20<sup>th</sup> day of March 2024



*Longopa's*  
**E.E. LONGOPA**  
**JUDGE**  
**20/03/2024**