

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL APPEAL NO. 01 OF 2022

(ARISING FROM THE RULING AND DRAWN ORDER OF THE DISTRICT COURT OF ILALA AT KINYEREZI, BY HON. LYANA, SRM, DELIVERED ON 28TH JANUARY, 2022 IN MISC. CIVIL APPLICATION NO.05 OF 2022)

BETWEEN

PIL TANZANIA LIMITED APPELLANT

VERSUS

ABDULKARIM KASSIM LEMA 1ST RESPONDENT

GHUANZOUH MOKHA TRADING

COMPANY LIMITED 2ND RESPONDENT

SUNRISE CARGO COMPANY LIMITED 3RD RESPONDENT

Date of Last Order: 12/4/2022

Date of Judgement: 25/04/2022

JUDGEMENT IN APPEAL

MAGOIGA, J.

The appellant, PIL TANZANIA LIMITED being aggrieved by the ruling and drawn order of the District Court of Ilala at Kinyerezi in Misc. Application No. 5 of 2022 has come to this court armed with two grounds of appeal against the whole of the ruling, namely:



1. That the trial court erred in law and fact by issuing interlocutory orders that have an effect of finalizing the suit by ordering release of the goods which are the subject matter of the main suit;
2. That the trial court erred in law and in facts by issuing interlocutory orders in matters which it is not vested with jurisdiction to determine.

On the strength of the above grounds, the appellant prays for this honourable court to allow the appeal by quashing the trial court's interlocutory orders, nullify the trial court proceedings in the main suit for want of jurisdiction, grant the reliefs claimed by the appellant in the trial court with costs.

The facts pertaining to this appeal are better to be stated for better understanding the gist of this appeal. The 1st and 3rd respondents imported 11 containers destined to Dar es Salaam from China and engaged the Chinese based company of GHUANZHOUH DINGZEN INTERNATIONAL FREIGHT to ship the consignment to Dar es Salaam to be cleared by Tanzania based companies of INCHCAPE SHIPPING SERVICES TANZANIA LIMITED, PIL TANZANIA LIMITED AND DIAMOND SHIPPING SERVICES LIMITED. The said consignment arrived in Dar es Salaam but the consignee have encountered difficulties in clearing them out due to willful refusal by

the 1st defendant (in the main suit and not in this application) despite paying all freight charges.

In the circumstances, the respondent instituted a suit before the District Court of Ilala and simultaneously made an application for orders, among others, for release and delivery of the consignment under Order XXVII Rule 10 of the CPC to the consignee. Upon hearing of the application inter parties on merits, the trial court granted the prayer as prayed with no order as to costs. The appellant aggrieved with the order, preferred this appeal, hence, this judgement in appeal.

The appellant is enjoying the legal service of Mr. Zacharia Daudi, learned advocate and the respondents are enjoying the legal services of Messrs. Daimu Halfani, Mashaka Ngole and Ms. Rosemary John, learned advocates.

Mr. Daudi arguing first ground in support of the appeal told the court the purpose of injunctions is to preserve or maintain status quo awaiting further steps to be taken in the suit in order to mitigate irreparable loss which cannot be adequately atoned by monetary compensation. In support of this point, he cited the case of DAWASA & AG vs. TAABU HASSAN AND




ANOTHER, MISC. LAND APPLICATION NO. 247 OF 2021 (HC) DSM (UNREPORTED).

According to Mr. Daudi, by the trial court granting release of the consignments which are also one of the prayers in the main suit amounts to determining the suit to its finality. Looking at the prayers in both the application and the main suit and what the trial magistrate ordered is improper, insisted Mr. Daudi.

On that note, Mr, Daudi urged this court to allow this appeal on this ground.

On the 2nd ground of appeal, Mr. Daudi argued that the trial court had no jurisdiction to entertain a dispute which relates to maritime services on two limbs. One, according to Mr. Daudi, maritime dispute, if any, was supposed to be determined by Tanzania Shipping Agency Cooperation (TASAC) under TASAC (Complaints Handling) Regulations, G.N. 338 of 2018 which lays down procedures on how dispute relating to maritime issues are supposed to be determined. The learned advocate for the appellant pointed out that regulations 5 and 6 are clear on how to handle such dispute and as such urged this court to find and hold that the district court had no jurisdiction to entertain the suit.



On the second limb, Mr. Daudi argued that, the given the amount claimed in this maritime dispute which is to the tune of Tshs.180,000,000/- was above the pecuniary jurisdiction of the district or Resident Magistrate's court which is limited to 70 million to a claim which the subject matter can be estimated at money value. According to Mr. Daudi, much as the case was of commercial significance, the court with jurisdiction is the High Court (Commercial Division) by virtue section 40 (3) (b) of the Magistrate Courts' Act, [Cap 6 R.E. 2019]. In support of this point, Mr. Daudi cited the case of **TABASAMU CLEARING AND FORWARDING COMPANY LIMITED vs. MWAJUMA URASSA MALYA t/a INAKUBALIKA STORE, CIVIL APPEAL NO. 13 OF 2020 (HC) DSM (UNREPORTED)** in which after finding that the transaction was involving sale of goods and concluded that it was a commercial significant case.

On the totality of the above reasons, Mr. Daudi urged this court to find merits in this appeal and allow it with costs as prayed.

On the part of the respondents, Mr. Halfani argued in opposing this appeal on the 1st ground that, the instant appeal is against interlocutory order which is barred from being appealed against under section 74 (2) of the Civil Procedure Code, [Cap 33 R.E. 2019]. According to Mr. Halfani, the order

subject of this appeal did not determine the suit to its finality but was an order which is allowable under Order XXXVII Rule 10 of the CPC. Mr. Halfani pointed out that, the order was not injunction but release order and no objection was taken that the court had no jurisdiction to order release of the goods. The learned advocate went on to argue that, even looking at the prayer, subject of this appeal, was not a substantive prayer in the suit but a consequential prayer and much as they don't deny the goods belongs to the respondents, the court was justified to order so.

Mr. Halfani argued further that, even if it can be found that the prayer is similar but maintained that it did not determine the suit to its finality because there other prayers pending for determination before the trial court. To support his position cited the case of CHAMA CHA WALIMU TANZANIA vs. AG, CIVIL APPLICATION NO. 151 OF 2018 (CAT) DSM (UNREPORTED) in which it was held that there was no other issue remaining for determination by the court.

On that note, urged this court to dismiss this ground for want of merits with costs.



On the 2nd ground, it was the reply of Mr. Halfani that the issue of jurisdiction was raised at the main suit and is pending for determination by the trial court. Therefore, this court cannot determine a point pending before the subordinate court and which was not an issue before trial court.

Without prejudice to what argued above, Mr. Halfani argued that looking at the plaint, the claims of the respondents, are, among others, willfully refusal of the release of the goods. Also on commercial significance, it was the trial court to determine and the issue of commercial significance is pending before the District court.

As to regulations of the TASAC, Mr. Halfani argued that they don't apply where one of the parties is outside the country. In other words, they did not oust the jurisdiction of the court, insisted Mr. Halfani. Lastly on section 40(3) (b) of the MCA, Mr. Halfani argued that, this point was not an issue before the lower court and the high court cannot entertain it now.

On that note, Mr. Halfani urged this court to dismiss this appeal with costs.

In rejoinder, Mr. Daudi maintained his earlier submissions on the 1st ground.

As to the second ground, he argued that the issue of TASAC is a point of law that can be raised anytime, even, on appeal.



The learned advocate for the appellant reiterated his earlier prayers.

The noble duty of this now is, to determine the merits or otherwise of this appeal. I will start with the 1st ground and then will go to the second ground. In the 1st ground of appeal, the issue for determination is whether the ruling of the district court of Ilala at Kinyerezi finally and conclusively determined the case to its finality.

Having carefully followed and dutifully considered the rivaling arguments of the learned advocates for parties, gone through the prayers in the plaint and the prayers in the chamber summons, I unreservedly agree and associate myself with the arguments of Mr. Halfani that the ruling subject of this appeal did not determined the suit to its finality, hence, purely an interlocutory order which is barred to be appealed against. The bar is set out in section 74 (2) of the CPC. The said section provides as follows;

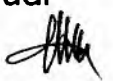
Section 74(2) Notwithstanding the provisions of subsection(1), no appeal shall lie against or made in respect of any preliminary or interlocutory decision or order of the district court, Resident Magistrate's court or any other tribunal, unless such decision or order has effect of finally determining the suit. (Emphasis mine).



There is no dispute that the ruling subject of this appeal was an interlocutory decision and the order given was not the only prayer in the main suit. Much as there are other prayers which are yet to be determined, then, a mere grant of one prayer alone it cannot be said that alone, even if granted, amounts to determining the suit to its finality. Guided by the wisdom of the CAT in the case of CHAMA CHA WALIMU TANZANIA vs. AG (supra), in which it was held that where the order or ruling or interlocutory order leave the suit with no other issue remaining for determination by the court that amounts to finality of the decision.

However, in this appeal, there are other remaining issues for determination which makes this appeal falling within the barred interlocutory decisions or orders.

The arguments by Mr. Daudi that what was granted was an injunction, hence, was meant to preserve the parties from further injuries, was misplaced and misconceived because what was granted was not an injunction but an order for release of the containers to the last named party, who according to the record, are the 1st and 3rd respondents and no dispute that were the consignees. On that note, I find the arguments by Mr. Daudi



very far from convincing me to hold otherwise because the instant appeal arise from an order barred by law from being appealed.

On the foregoing reasons, this ground is devoid of any useful merits and is hereby dismissed.

Going to the second ground of appeal, which was couched that the trial court had no jurisdiction to try the suit as such prayed that, this court be pleased to find and hold so and proceed to nullify the ruling of the District court.

Having carefully followed and dutifully considered the rivaling submissions of the legal trained minds of the parties on this point, but with due respect to Mr. Daudi, much as there is no incompetent appeal before me as held above in ground number one, which is a point of law as well, I find no justification to continue determining an incompetent appeal on the point of law raised.

Also, much as the issue of jurisdiction has been raised in the main suit and is pending for determination by the trial court, I feel unsafe to preempt the trial court's determination on this point. I am quite alive and aware that a point of law can be raised at any time, even on appeal, but in my considered opinion, there must be a competent appeal for the court to determine the



point. In this appeal, the order subject of this appeal is barred, hence, denying this court an opportunity to consider it at all now.

That said and done, the entire appeal is devoid of any useful merits and same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated at Dar es Salaam this 25th day of April, 2022.



A handwritten signature in black ink, appearing to read "S. M. Magoiga". The signature is fluid and cursive, with a prominent loop at the beginning and a long horizontal stroke extending to the right.

S. M. MAGOIGA

JUDGE

25/04/2022