

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

(PC) CIVIL APPEAL No. 38 OF 2022

*(Arising from the District Court of Bunda at Bunda in Civil  
Appeal No. 24 of 2021; Originating from Bunda Urban  
Primary Court in Civil Case No. 13 of 2020)*

**GEORGE MIYAWA** ..... **APPELLANT**

*Versus*

**SASURA JOHN** ..... **RESPONDENT**

**EX-PARTE JUDGMENT**

05.04.2023 & 25.04.2023

**Mtulya, J.:**

In the present appeal, the parties had consented jurisdiction of resolving land matter of landlord and tenant relationship in civil court called **Bunda Urban Primary Court** (the primary court) in **Civil Case No. 13 of 2020** (the case) contrary to the law enacted in section 18 (1) (a) (i) of the **Magistrates' Courts Act [Cap. 11 R.E. 2019]** (the Act) and sections 3 & 4 of the **Land Disputes Courts Act [Cap. 216 R.E 2019]** (the Land Disputes Act), and mostly cited precedent of this court in **Pili Juma Bilali v. Abdullah Khalifa [1986] TLR 2011**.

On the 5<sup>th</sup> day of April 2023, **Mr. Baraka Makowe**, learned counsel for **Mr. George Mihaya** (the appellant) appeared in this court complaining that the primary court in the case had

determined civil dispute in land matters contrary to enactment in the indicated statutes and precedent of this court. In his opinion, in the present dispute the respondent had requested to hire a room for business purposes from the appellant and claimed to have paid Tanzanian Shillings Four Hundred Thousand (400,000/=Tshs). According to Mr. Makowe, the parties then moved forward to have landlord and tenant contract regulated by land law, but the trial court considered it as normal civil case regulated by civil law hence had determined the dispute without jurisdiction.

In order make his point understood, Mr. Makowe had cited the authorities in enactment of section 18 (1) (a) (i) of the Act and precedent in **Pili Juma Bilali v. Abdullah Khalifa** (supra) contending that parties cannot confer jurisdiction to the court at their wishes. Finally, Mr. Makowe prayed this court to quash proceedings and judgments of lower courts as the proceedings were a nullity for want of the cited law and directive of this court. In his opinion, the parties, if so wish, may pursue their remedies in an appropriate forum entrusted with powers of resolving land matters. On his part, the respondent had declined appearance to contest the point despite his presence in this

court on 7<sup>th</sup> September 2022 and proof of service of 28<sup>th</sup> February 2023.

I have scanned the record of present appeal and found that the respondent had initiated proceedings at the primary court on 14<sup>th</sup> April 2021 and produced the following materials in his allegation:

*...namdai Mdaiwa kiasi cha Tshs. 400,000/= ya*  
***Mktaba wa Chumba cha Biashara*** *kilichopo*  
*maeneo ya Sabasaba karibu na stendi mpya ya*  
*Bunda mjini ambazo nilimpa kama Kodi ya Mwaka*  
*mzima kuanzia tarehe 07/01/2021 had 07/01/2022,*  
***lakini mdaiwa amekatisha makubaliano***  
***hayo...Hivyo, naiomba Mahakama imuamuru***  
***Mdaiwa anilipepesa yangu kwani biashara yangu***  
***imefungiwa ndani ya chumba hicho.***

(Emphasis supplied).

After registration of all relevant materials in the case, the primary court noted at page 1 of its judgment delivered on 20<sup>th</sup> April 2021, that the dispute concerns landlord and tenant, but finally proceeded further to order the appellant to pay the respondent Tanzanian Shillings Two Seventy-five Thousand

(275,000/=Tshs) being payment of the remaining rent and costs of the case totaling Tanzanian Shillings Five Thousand Only (5,000/=Tshs).

The judgment aggrieved the appellant hence approached the **District Court of Bunda at Bunda** (the district court) and filed **Civil Appeal No. 24 of 2021** (the appeal), complaining that the primary court in the case had decided the matter without jurisdiction hence prayed the judgment be declared null and void. The district court had considered the matter and finally resolved at page 3 of the judgment that the appeal had no merit hence dismissed it with costs. The reasoning of the district court in the case is found at page 2 of the decision, that:

*...it is requirement of the law that the primary court cannot deal with land matters. It is forbidden under section 4 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019. However, during trial the appellant admitted to pay 400,000/=Tshs, the amount in which the appellant himself admitted to take from the respondent for renting...*

(Emphasis supplied).

The judgment dissatisfied the appellant hence approached this court for second appeal complaining for the same issue and this time invited Mr. Makowe to argue the appeal and cite legal authorities, as indicated above. The laws enacted in section 18 (1) (a) (i) of the Act and section 4(1) of the Land Disputes Act have restricted primary courts from hearing and determining civil cases concerning land disputes. Similarly, section 3(2) of the **Land Disputes Act; section 167 of the Land Act** [Cap. 113 R.E. 2019] and section 62 of the **Village Land Act** [Cap. 114 R.E. 2019] vest exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land to specific land courts, namely: the Court of Appeal; the High Court; the District Land and Housing Tribunal; the Ward Tribunal; and the Village Land Council.

It is fortunate that there is in place the precedent of this court in **Pili Juma Bilali v. Abdullah Khalifa** (supra) regulating circumstances, like the present one. In the indicated decision, this court had resolved that: *A primary Court has no jurisdiction over a dispute on the terms of a contractual tenancy.* This court believed that:

*The jurisdiction of primary courts arises where the law applicable is customary law or Islamic law, or*

*where jurisdiction is otherwise conferred by statute. The present case arises out of a landlord and tenant agreement which related to premises situated in a rent restriction area and there is no provision conferring jurisdiction on primary courts in that sphere.*

The issue of jurisdiction of courts has been considered in a bundle of precedents of this court and the Court (see: **Flora Atieno Akulo v. Fredrick Oluoch Ayiera**, Land Appeal Case No. 9 of 2023; **Shyam Thanki & Others v. New Palace Hotel** (1972) HCD 92; **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 and **Richard Julius Rukambura v. Isaack Ntwa Mwakajila & Another**, Civil appeal No. 2 of 1998). In the precedent of **Shyam Thanki & Others v. New Palace Hotel** (supra), this court had resolved that:

*...all courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is elementary that parties cannot by consent give a court jurisdiction which it does not possess.*

The undisturbed position of the Court is that the issue of jurisdiction is paramount and can be raised at any point during the proceedings, even at an appeal stage. The Court at page 5 in

the judgment in **Richard Julius Rukambura v. Isaack Ntwa Mwakajila & Another**, Civil Appeal No. 2 of 1998), had resolved that:

*The question of jurisdiction is paramount in any court proceedings. It is so fundamental that in any trial, even if it is not raised by the parties at the initial stages, it can be raised and entertained at any stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it.*

Regarding the appropriate available remedies in such circumstances, the Court at page 10 of the precedent had resolved that: *the trial court in this case had no jurisdiction to entertain the claim. It follows as night follows day that the proceedings both in the trial court and subsequent appeal were a nullity.* On why the Court decided so, the reply is found at page 12 in the precedent of **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009, that: *the court had travelled beyond its jurisdiction which expressly ousted by specific forums established by the law.*

It is therefore important for courts to check their jurisdiction at the commencement of proceedings as it is advised by the full

court of the Court of Appeal in the precedent of **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda & Two Others** [1995] TLR 155, that:

*The question of jurisdiction for any court is basic. It goes to the very root of the authority of the court to adjudicate upon cases of different nature. In our considered view, the question of jurisdiction is so fundamental that the 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. This should be done from the pleadings. The reason for this is that it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case. For the court to proceed to try a case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as null and void on grounds of lack of jurisdiction when it is proved later as matter of evidence that the court was not properly vested with jurisdiction.*



The primary court in the case did not borrow this advice. It did not properly peruse the pleadings before it in search of the jurisdiction or decided to decline the same hence travelled beyond its jurisdiction ousted by several indicated laws at page 4 of this judgment.

The appropriate remedies available under such circumstances are obvious as the proceedings and judgment are a nullity. I am therefore moved to set aside the entire proceedings and quash judgment and any other orders emanated from the nullity proceedings. It is for that reason this appeal is declared successful without costs to meet justice of the parties.

The reasons of declining costs in the instant appeal are obvious. The fault in the case was initiated by the lay person respondent and blessed by learned minds of the lower courts, and in any case, during the hearing of this appeal, the respondent had declined appearance to protest the appeal suggesting that he conceded the reason of appeal.

Accordingly ordered.




A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the right.

F. H. Mtulya

**Judge**

25.04.2023

This Judgment was pronounced in Chambers under the Seal of this court in the presence of the appellant, **Mr. George Miyawa** and in the absence of the respondent **Mr. Sasura Johnson**.



F. H. Mtulya

**Judge**

25.04.2023