

IN THE COURT OF APPEAL OF TANZANIA
AT SONGEA
(CORAM: NDIKA, J.A., KEREFU, J.A., And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 148 OF 2021

MADUHU SANG'UDI INVESTMENTAPPELLANT

VERSUS

KASONZO CAR HIRE COMPANY.....RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania,
at Songea)**

(Moshi, J.)

dated the 9th day of May, 2019

in

DC Civil Appeal No. 07 of 2018

.....

JUDGMENT OF THE COURT

21st & 24th August, 2023

RUMANYIKA. J.A.:

In the Resident Magistrate's Court of Songea at Songea (the trial court), Maduhu Sang'udi Investment, the appellant (the plaintiff then) unsuccessfully sued Kasonzo Car Hire Company, the respondent in Civil Case No. 18 of 2015. It sought a declaratory order that the respondent has breached a contract of transportation of goods. It thus, claimed TZS. 81,162,600.00 being the specific damages. Also, it prayed for general damages of TZS. 20,000,000.00 interest and costs incidental thereto. At

the end of it all, the respondent was declared a winner. The appellant was ordered to pay it TZS 81,162,600.00 being specific damages and TZS. 5,000,000.00 as general damages, interests and costs of the suit.

The factual background of the matter tells that, on 24th June, 2014 the parties executed a written contract between them for the respondent to transport 1250 metric tonnes of maize from the National Food Reserve Agency (the NFRA) Songea at Songea to the NFRA Dodoma at Dodoma in favour of the appellant. The appellant had to do a downpayment of TZS. 40,000,000.00. On 26th June, 2014, the respondent began to collect maize and ferried it from Songea to Dodoma, as agreed.

However, it is alleged that, the appellant did not pay the agreed sum of money whereas on, or by 9th August, 2014, the respondent had transported 676.355 tonnes of maize and the cargo safely delivered to the appellant. It is further asserted that, not only the appellant did not pay, but also it did not assign any reasons for such failure. The respondent issued the appellant demand notices, but they were not honoured. Consequently, the respondent sued the appellant before the trial court, for breach of contract as indicated above.

Upon being served with the plaint, the appellant filed a written statement of defence with a counterclaim mainly seeking a declaratory order that the respondent breached the contract, payment of TZS. 49,340,000.00 the money paid by the appellant to the respondent in advance and TZS. 100,000,000.00 as general damages.

Upon closure of the prosecution's case on 22/12/2016, neither D.P. Ndunguru learned counsel, nor appellant appeared before the trial court. It is further alleged that, their default persisted, despite a number of adjournments of the case to allow their appearances. Eventually, the trial court was satisfied and found that, the respondent's case was proved on the balance of probabilities. It got the judgment and decree and reliefs as highlighted above.

Not happy with the trial court's decision, the appellant appealed to the High Court of Tanzania at Songea, with eleven grounds but again, it lost both the war and battle.

Still aggrieved with that decision, the appellant is before the Court with a memorandum of appeal comprised of ten (10) grounds. However, for reasons that will shortly come to light, we need not recite them herein.

At the hearing of the appeal on 21/08/2023, Messrs. John James and Eliseus Ndunguru, learned counsel appeared representing the appellant and respondent respectively.

Upon taking the floor, Mr. James intimated that he would only argue the second ground of appeal which is to the effect that:

"That, the High Court erred in upholding the decision of the trial court's decision while it lacked jurisdiction to entertain such a commercial case."

Expounding on this ground, Mr. James contended that, the respondent wrongly instituted a commercial case claiming TZS. 81,162,600.00 in the trial court, since that case, he argued, it should have been instituted in the High Court, Commercial Division. Since the substantive claim, as stated in the plaint at pages 199-202 of the record of appeal exceeded the limit of TZS. 30,000,000.00 set under section 40(3) (b) of the Magistrate's Court Act, Cap 11 (the MCA). He also asserted that, the difference of TZS. 51,162,600.00 therefore, is far beyond the said limitation, the requisite pecuniary jurisdiction of the trial court. For the foregoing, Mr. James implored the Court to allow the appeal with costs, nullify the proceedings and quash decisions of the two courts below.

Replying, Mr. Ndunguru conceded to Mr. James' submission that, indeed the trial court usurped pecuniary jurisdiction of the High Court, Commercial Division. Also, he had no qualms with the proposed resultant orders. However, he prayed to be spared from costs reasoning that, the issue of jurisdiction was not raised before the trial court.

In his rejoinder, while reiterating his submission in chief, Mr. Ndunguru contended that, an issue of jurisdiction could be raised at any stage much as this is not his first time to raise it. He referred us to page 63 of the record of appeal to support his position.

Mr. Ndunguru's concession apart, for better determination of the 2nd ground, we find it appropriately convenient to define what a commercial case is. Under the relevant part of section 2 of the MCA it is defined as:

"...a civil case involving a matter considered to be of commercial significance including but not limited to-

(iii) the contractual relationship of a business or commercial organization with other bodies or persons outside it;..."

(Emphasis added).

When the emboldened words above are considered along with the facts of the case as stated earlier, we have no doubt that the parties' agreement had a commercial significance. The follow up question thus, is whether the trial court had jurisdiction to entertain the suit. On that aspect, section 40(3) of the MCA reads:

"Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited to-

- (a) N/A.*
- (b) (b) in the proceedings where the subject matter is capable of being estimated at a monetary value, to proceedings in which the value of the subject matter does not exceed thirty million shillings."***
(Emphasis added).

The above quotation considered, we wish to state clearly that it is common knowledge that a District Court and, in this case the Resident Magistrates' Court have concurrent jurisdiction.

As stated earlier on, the matter at hand involved a claim of TZS. 81,162,600.00, over and above TZS.30,000,000.00 the amount permitted under section 40(3)(b) of the MCA. This suffices to say that, on

08/07/2015 when the respondent instituted the suit, the trial court acted beyond its pecuniary jurisdiction. Saying so, we are fortified with the stance we took in a similar case of **National Bank of Commerce Limited v. Maisha Mussa Uledi (Life Business Centre)**, Civil Appeal No. 501 of 2022 [2023] (29 March 2023; TanzLII). In that case the Court stated that, before, and after the coming into force of the Written Laws (Miscellaneous Amendments) Act, 2016 (No.3 of 2016) on 8th July, 2016, the pecuniary jurisdiction of the trial court in relation to commercial cases remained TZS. 30,000,000.00.

It is for the foregoing reason that we accede to the learned counsel's common proposition. That is for being a proper position of the law much as we agree with Mr. James that, the issue of jurisdiction is never time-barred. We agree with the learned counsel's submission that, the trial court's decision and the resultant order is a nullity. Equally so, are the proceedings and decision of the High since it was based on a nullity. See- **National Bank of Commerce Ltd** (supra).

As regards the issue whether the appellant deserves costs of the appeal or not, the law is generally settled, as stipulated under section 30(1) of the Civil Procedure Code, Cap 33, that costs follow the event,

however discretionary powers which courts may have. See- our decisions in **Vijay Shantilal Chohan v. Abdul Shakule Halday And Another**, Civil Appeal No. 105 of 2013 (unreported) and **Njoro Furniture Mart Ltd v. Tanzania Electric Supply Co. Ltd** [1995] T.L.R. 205. In the latter case we stated that:

*"undoubtedly in our opinion, costs are within the discretion of the Court as stated in S.30 of the Civil Procedure Code, 1966...**It has, however, long been established by the Courts that costs normally follow the event. See cases of Kioka Ltd vs. De Angelis [1969] EA 7 Moreover, ..."where the Court directs that costs shall not follow the event, the Court shall state its reasons in writing".***
(Emphasis added).

The event in this appeal being that it is allowed though on account of the trial court having assumed the jurisdiction and rendered the respective proceedings to be a nullity.

In conclusion, based on the foregoing endeavour on the 2nd ground, we allow the appeal. Accordingly, we nullify the proceedings and quash the judgments and decrees of the two courts below. Should any of the parties desire to pursue the matter, let the suit be instituted afresh before a court

with competent jurisdiction to try it. Considering the circumstances of the case, we make no order for costs. It is so ordered.

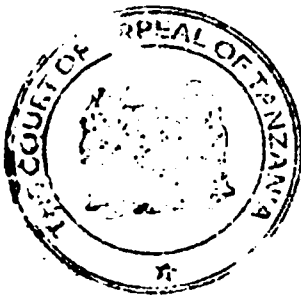
DATED at **SONGEA** this 24th day of August, 2023.

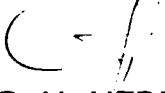
G. A. M. NDIKA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 24th day of August, 2023 in the absent of the Appellant duly notified and Mr. Eliseus Ndunguru, learned Counsel, for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL