

TANZANIA / JUDGMENT

20190514 TZHC Dar es Salaam 1

COURT
TZHCDECIDED
14 May 2019

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM DISTRICT
REGISTRY) AT DAR ES SALAAM CIVIL APPEAL NO. 85 OF 2017 (Originating from the decision of
the District Court of Temeke in Civil Case No. 49 of 2015) HOLLAND FARM
LIMITED 1st APPELLANT MOHAMED AHMED ALLY
2ND APPELLANT Versus MILKCOM DAIRIES (T) LIMITED RESPONDENT

JUDGMENT

B.R. MUTUNGI, J: The appellants were aggrieved by the decision of the District Court of Temeke (the trial court) in Civil Case No. 49 of 2016. In the event, a total of three grounds of appeal have been raised against the said decision. These are; 1

1. That, the learned trial Magistrate dealt with the matter without being vested with the requisite jurisdiction to entertain and determine the proceedings and therefore the decision reached is a nullity.
2. That, the judgment which was entered in favour of the respondent was illegally procured for considering hearsay evidence, in the determination of the case. ~ ~
3. That the learned trial magistrate dealt with the matter without notifying the appellant hence lack of awareness of ex parte judgment which denied appellant natural justice. In the trial court, the respondent successfully sued the appellants and the court ordered the following:
 1. The prayer for a refund of Tshs. 50,000,000/= is granted (sic)
 2. Payment of court interest on decretal amount at the rate of 7% per annum from the date of judgment till the date of payment in full.
 3. Costs. The said decision was made ex parte against the appellants, though they attempted to pray the matter heard inter parties. Following the said decision, they are now seen before this court on appeal. On 2/4/2019 when the appeal was called for hearing, Mr. Isaack Zake and Mr. Buberwa learned Counsel appeared for the appellants and respondent respectively. Mr. Zake opted to abandon the 2nd and 3rd grounds of appeal, hence he argued the 1st ground only. Mr. Zake submitted the respondent had sued the appellants and claimed a refund of Tshs. 50,000,000/=, an interest of 20% per annum from January to

the date of judgment, court interest 7% per annum from the date of judgment and payment in full. He went further by submitting that the alternative attachment of the landed property located at Kigamboni, Tuamoyo was placed as a security. 3 I ' Mr. Zake was of the view the trial court was supposed to ascertain as to whether it had jurisdiction to entertain the suit. He suggested the court had no such jurisdiction to entertain the matter since it was a land matter. The plaint filed therein ought to have been rejected under Order VII Rule 11 (c) of the Civil Procedure Code [Cap. 33 R.E 2002]. He ~thus---praye-d-th-e-d-ecisi on of--t-h-e-trieil-ectJ rt- b-e-C1-tJes-hed-- - and set aside. Mr. Buberwa 1n reply thereto basically objected Mr. Zake's stance. He argued the trial court had jurisdiction to entertain the matter since the claim of Tshs. 50,000,000/= was proper and within the pecuniary jurisdiction of the court. All that the respondent wanted was the refund of Tshs. 50,000,000/=; The alternative was such that, if his money is not returned, then the property pleaded as security be sold. 4 . ' In rejoinder, Mr. Zake reiterated to what he pressed in his submission in chief. The issue is whether the appeal has merits or otherwise. From the above summary as submitted by the two learned advocates, and upon a thorough perusal of the court record, it is observed the suit in the trial court was filed on 27/5/2016 and the reliefs prayed for were as follows;

1. For a refund of Tshs. 50,000,000/=
2. Payment of commercial banks interest at the rate of 20% per annum from January, 2015 up to the date of judgment.
3. For payment of court interest on the decreatal amount at the rate of 7% per annum from the date of judgment till the date of payment in full.
4. Alternatively attachment and sale of the landed property known as TMKJDGNJTMyl /37, Tuamoyo, Kigamboni pledged as security by the second defendant to the plaintiff.
5. Costs of the suit. 5
6. Any other relief this Honourable court deems fit to grant be so granted. [Emphasis is mine] The appellants (defendant) did supply a tractor which was not according to the specifications earlier agreed on between the parties. Upon rejection, the appellants collected the rejected tractor from the respondent and have not been able to comply with the respondent's (plaintiff) instruction or refunded the amount paid to them. After several follow ups the second appellant pledged his landed property situated at Tuamoyo Kigamboni with number TML/DEN/TMY7 /37 as security for payment of the same due to the respondent. Having summarized the material facts of the dispute, it 1s settled that the subject matter was the refund of Tshs. 50,000,000/= paid to the first appellant by the respondent to purchase a tractor. In other words, it was a simple 6 transaction between the parties. There was no mortgage arrangement created. The alternative stated was a way of settling the claim of Tshs. 50,000,000/= advanced to the first appellant. In view thereof this was a normal civil case, which in no way can be termed a land case subject to the Land Disputes Court Act Cap 216 RE 2002 as submitted by Mr. Zake learned Counsel. The same is envisaged by section

3(1) and (2) of the Act (Cap 216) as follows, "(1) Subject to section 167 of the Land Act Cap. 113*, and section 62 of the Village Land Act Cap. 114*, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.

(2) The Courts of jurisdiction under subsection (1) include:

(a) The Village Land Council:

(b) The Ward Tribunal; 7

(c) The District Land and Housing Tribunal:

(d) The High Court (Land Division);

(e) The Court of Appeal of Tanzania." It was thus proper for the respondent to have filed his case in the trial court, which was clothed with the requisite jurisdiction, this not being a landed matter. The appeal is hence dismissed with costs for lack of merits. It is so ordered. ~ u B.R. MUTUNGI JUDGE 14/5/2019 Read this day of 14/5/2019 in presence of Loveless Charles (Clerk) for the appellants and in absence of the respondent. B.R. MUTUNGI ;J"". 8

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