

TANZANIA / JUDGMENT

Peter Judgment

COURT
TANZLII

DECIDED
29 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE SUB-REGISTRY OF
MWANZA AT MWANZA PC. CIVIL APPEAL NO. 21568 OF 2024 (Arising from Civil Appeal No. 6776
of 2024 in the District Court of Magu at Magu by Hon E.J. Kimaro PRM original from Civil Case
No. 77 of 2023 Kisesa Primary Court before Hon. Magesa) PETER MALOLE
MAJIGE APPELLANT VERSUS MOSHI ISSA NKOYE
..... RESPONDENT

JUDGMENT

13th & 29th November 2024 CHUMA, J The Appellants above mentioned being aggrieved by the
decision of the District Court of Magu at Magu in Civil Appeals No. 6776 of 2024 appealed to this
court advancing three grounds of appeal as follows;

1. That the first appellate Court erred in law to decide in favor of the appellant while his claim
originated from the agreement which was not valid in the eyes of law.
2. That the first appellate court erred in law by dismissing the appeal without considering that
the trial court had no power to determine the matter.
3. That the first appellate court erred in law for failure to consider that the weight of evidence
of the appellant was heavier than that of the respondent. In this appeal, Mr. Joseph's
advocate appeared for the appellant 1 while Mr. Kabula's advocate represented the
respondent. Arguing for the appellant in the first ground Mr, Joseph's advocate stated that,
the main cause of this dispute though the trial court never established is on a tenancy
contract. After the breach of the said contract, the case was lodged with the primary court.
The proceedings reveal that the appellant was a tenant to a disputed area who did sublease
to the respondent as well. However, the proceedings do not reveal the owner of the disputed
area. Hence the appellant represented himself as a landlord despite being a tenant as well.
Section 89(1) (i) of Land Act Cap 113 prohibits the tenant from subleasing the area unless
there is written consent to that effect from the Land Lord. Since the proceedings do not
reveal the existence of such consent, then the purported tenancy agreement was illegal and
void. If there was such consent the respondent had to prove so in court that he had such
written consent. The first appellate court stepped into the same error as that done by the
trial court. On the second ground, Mr. Joseph argued that since the cause of action is based

on a tenancy agreement, the first appellate court ought to have considered the issue of jurisdiction. The Land Act under section 107

- (2) (a) provides that in case of dispute for breach of tenancy agreement 2 such dispute amounts to a Land dispute. This is because under section 109 of the same Act, in case of legal conflict between a lessor and lessee, any of them can commence a suit against the other at the court dealing with the land matters. Section 2 of the Act defines the meaning of the Court having jurisdiction to determine land dispute under section 167 of the Land Act. The referred Court has been mentioned under section 167(1). To support his submission, he invited this court to the case of Happiness Aloyce Minja Vs. Jacob Kiula Civil Appeal No. 218 of 2020. The court in this case held that the fact that the dispute arises from the tenancy contract, it is a land matter and therefore the District Court of Kilombero had no jurisdiction to entertain. On the last ground, it was contended that, despite the non-framing of issues, even in its judgment the trial court on page 4 issued orders against the respondent, but the court issued the same without proof from the respondent in this case. This is because the appellant explained that he used to provide rent money along with improvements to the said building or hut but the respondent denied that the money received was a contribution towards the cost of lawyers to conduct the case concerning the disputed area. But also the claimant herein respondent denied having 3 and rental agreement. At the end of the dispute, the court ordered the disputed area to be disposed of by selling it. If the agreement in question existed or was in place, it was the responsibility of the claimant(respondent herein) to prove its existence. The witnesses just said they witnessed the respondent issuing money to the appellant as per page 2 of the trial court judgment. The court erred in finding that the amount of TZS. 1,700,000/- was for rent. The appellant denied the existence of the rent rate purported by the respondent. GN No. 66 of 1972 insists on the weight of evidence whose judgment is entered in favor of against that of the losing party. The contract was not submitted to substantiate the allegation of the tenancy agreement which according to the appellant ended in September 2022. He concluded his submission by appealing this court to allow the appeal with cost. Mr. Kabula's advocate in response started by subscribing to the submission of Mr. Joseph on a non-existence of written agreement on tenancy contract between the parties but through the evidence indicates that by practice the tenancy relationship existed between them as per page 2 of the trial judgment. The evidence on record reveals that the appellant took TZS. 1,700,000/- into consideration to issue the respondent a business place. The appellant received the money while knowing that he was not the owner of that area and that the area was ready sold. Page 4 three of the first appellate court, last paragraph, indicates a transaction between the two in which the appellant received the money from the respondent but he was stopped from running the business there by the owner of that place. Is that scenario that triggered the respondent to claim his due before the court. On the second point, the Learned advocate stated that the trial court had jurisdiction to determine the matter because there was no justification for whether the dispute was on land. This is because the received money was not explained its purpose. Hence the trial court had the power to entertain the respondent's claims on the return of the money handed over to the

appellant. Lastly, the respondent managed to prove his claim and his evidence was stronger and weightier than that of the appellant. In the course of giving that money to the appellant, other witnesses witnessed it for instance Issa Haji and Petro Amos for respondent in this appeal as per page 2 of the trial court judgment. The very evidence contradicted that of the appellant who alleged to have received only TZS. 200,000/-. Since the two witnesses saw that transaction hence their evidence was heavier than that of the appellant. Mr. Kabula then urged this court to dismiss this appeal with cost. 5 In his rejoinder, Mr. Joseph's advocate stated that despite his admission of the non-existence of a written tenancy agreement but admitted the existence of practice by the parties renting to each other the disputed premise without having written consent by the Land Lord. It was not proper to disregard the law dictates to avoid unnecessary conflict. As to the testified witness who alleged to have seen the transaction, it was his submission that even the witness's evidence does not reflect to having seen receipt of TZS. 1700000/- for running the business. On the referred page 2 of the trial court judgment on the second paragraph the named witnesses never explained what Mr. Kabula was trying to explain before this court. Whether the received money was for rent lacks merit for being not reflected on record or evidence. See also page 3 first paragraph. On 10.3.2023 where the appellant according to Mr. Kabula received it while knowing that the place is not his. This fact is also disputed because its use is explained by the appellant on page three first paragraph. The appellants' evidence is quite clear that their tenancy agreement ended in September, 2022. As to a denial by Mr. Kabula that the suit at the trial court was not on the land issue but rather on obtaining money by false pretense, in his 6 view lacks merit. This is because the claims itself indicates that the same emanates from the rent payment. Parties are bound by the pleadings. He disputed the fact that the appellant received that money for personal use or rather by false pretence they ought to have sued for that criminality. On the assertion that the dispute was not a land dispute. The respondent in his evidence stated that he gave the appellant that money for rent payment which surprisingly contradicts the submission of Mr. Kabula. He insisted that the cause of action is on the tenancy agreement. Hence the trial court had no power to determine. On the last ground of appeal, Mr. Kabula submitted that the respondent established his case via his witnesses on the received TZS. 1,700,000/- by the appellant, but the witness explained otherwise about the use of that money. It was his submission that the amount received is only TZS. 200,000/- for the cost of the legal service to the advocates. Having heard the parties' competing submissions and my careful perusal of the record, the main issue that calls for determination is whether the instant appeal has merit. In the course of determining this appeal, I feel compelled to start with the second ground of appeal on jurisdictional concerns advanced by 7 the appellant. Having gone through the trial court record and the party's submission, what comes to my attention is that the central issue in dispute or rather cause of action as rightly submitted by Mr. Joseph advocate for the appellant is on the tenancy agreement. This fact however contested by Mr. Kabula in his submission asserting that the received money did not explain its purpose. Hence the trial court had the power to entertain the respondent's claims on the return of the money handed over to the appellant. I feel unable to join hands with Mr. Kabula in his argument because what is required is the cause

of action which is apparent on record including claims to be a tenancy agreement. His argument is then out of context. The above findings take me to a pertinent question on whether the trial court had jurisdiction to entertain claims over tenancy agreements. It is the position of law that, under section 107(2)(a) of the Land Act Cap. 113 R.E 2019 the conflict in tenancy agreement amounts to a land dispute. Section 109(2) of the Land Act Cap. 113 R.E 2019 provides that in case of legal conflict between the lessor and lessee, any of them can commence a suit against the other at the court dealing with the land & matters. The above provision is applicable in land cases and not ordinary civil matters. Likewise, section 167(1) and section 2 of the Land Act Cap. 113 R.E 2019 prescribes the courts vested with exclusive jurisdiction to determine land disputes including, the Court of Appeal, the High Court, the District Land and Housing Tribunal, Ward Tribunal and Village Land Council. For the foregoing provision of law, it is quite clear that the Primary Court does not fall within the realm of the courts mandated to entertain land disputes. Thus, being the case, the trial court had no jurisdiction to determine the instant matter. The impact of assuming powers that one does not possess was discussed by the Court of Appeal of Kenya in the case of Owners of Motor Vessel Lillian Vs. Caltex Oil Kenya Limited (1989) where inter-alia it was held though persuasively that; "Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing ". A similar position was stated in the case of Jumanne Leonard Naqana @ Azori Leonard Nagana & another Vs. The Republic, 9 Criminal Appeal No. 515 of 2019 Court of Appeal of Tanzania at Musoma (unreported) it was observed thus: "The fate that befalls the proceedings and a decision made without jurisdiction is a nullity. Even where a court decides to exercise a jurisdiction which it does not possess, its decision amounts to nothing". In the spirit of the foregoing, the whole trial in both the Primary Court and the District Court is void ab initio for want of jurisdiction as herein above explained. In the upshot, I quash the two lower court proceedings and set aside the resulting decisions and orders. The parties are at liberty to institute the matter in a proper forum as herein above explained. This ground suffices to dispose of this appeal without venturing to the rest of the grounds. The appeal is then allowed. Owing to the nature and circumstance of this matter, I will make no order as to cost. I so order DATED at MWANZA This 29th day of November, 2024. W.M. CHUMA JUDGE 10 The Judgment delivered in court before both parties in dispute in persons this 29th day of November 2024. C. KISONGO DEPUTY REGISTRAR 11

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