

TANZANIA / JUDGMENT

sheila elangwa shaidi vs wilfred moses lukumay 2019 tzhc 255 27 december 2019

COURT
TZHCDECIDED
27 December 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 203 OF 2018 (Originating from the District Court of Kinondoni in Civil Case No 104 of 2016 Judgment and Decree dated 08th June 2018 by Hon. Kasaiio RM) SHEILA ELANGWA SHAIDI..... APPELLANT VERSUS WILFRED MOSES LUKUMAY.....RESPONDENT

JUDGEMENT

Date of last Order: 22/10/2019 Date of Judgement: 27/12/2019 MLYAMBINA, 3 . The respondent herein had filed Civil Case No. 104 of 2016 against the appellant herein before the District Court of Kinondoni at Kinondoni. In that case, the plaintiff (the respondent herein) prayed for inter alia payment of Tshs.25,000,000/= being value for the development of leased land. It was claimed by the plaintiff that the plaintiff and the defendant (the herein appellant) had signed a lease agreement to invest in a piece of land situated at Mwanamboka Ilala Municipality. According to the respondent, they agreed that the respondent built one frame which was used to sell car accessories, build a frame for grocery and build a frame for car wash. It was agreed that the respondent stay for the duration of 8 years. The defendant received Tshs. 100,000/= for five years and they agreed the amount to be increased to 150,000/= as per lease agreement. The respondent operated his business, after two months the respondent was stopped only to note that the defendant entered agreement with the respondent while aware that he was compensated that land by the government for the project of Dar es salaam rapid transport. Upon hearing the matter, the trial Court granted the suit. The defendant was ordered to pay Tshs 25,000,000/= to the plaintiff being the value for the development of the leased land by construction of shops, pay Tshs 80 million as general damages, pay interest of the above at 12% per annum from dated of judgement until payment in full and costs. Being aggrieved with afore decision, the appellant lodged this appeal with eight grounds. One of the grounds of appeal is on jurisdiction of the trial Court. The appellant argued that the trial Court erred in law and in fact to entertain the matter whose jurisdiction is exclusively vested to the land Courts. It was the submission by the appellant, the relationship of the parties having signed the agreement remained that of the landlord and tenant hence a land matter. The appellant was of submission that section 7 of the Magistrate Courts Act confers original jurisdiction to the District Court in proceedings of civil nature other

than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other Court or Courts. Thus, the dispute at hand followed within the parameters of Section 167 of the Land Act No. 4 of 1999 (R.E2002) as it involved relationship of the landlord and a tenant. In view of the appellant, even if the District Court had jurisdiction to try the matter, it suffered lack of pecuniary jurisdiction to entertain the same as the pecuniary jurisdiction of the District Court is provided under Section 40 (2) (a) and (b) of the Magistrate Court Act as amended by Act No. 3 of 2016 of the Written Laws (Misc. Amendment) Section 20 of the Amendment that Amended Section 18 of the Magistrate Court Act provides The Pecuniary Jurisdiction of the Primary Court to be tshs 30 Million for movable properties and Tshs 50 million for immovable properties. As such, the suit ought to have been instituted in the Court of lowest grade. To back up such position, the appellant cited the case of Denja John Botto, Ernest Kisandu and Ramadhani Mauiid v. Umoja wa Wafanyakazi Biashara Ndogo ndogo Maiiimoja/ Civil Appeal No. 157 of 2018. In reply, the respondent submitted that the jurisdiction point of law was raised in the trial Court by the appellant in a way of a preliminary objection and it was dismissed. The appellant was of submission that this is a commercial case intended to claim relief from investment and loss of business it was the respondent's view that, though the cause of action raised in respondent's plaint in the trial Court emanate from a lease agreement, it thoroughly raised a commercial transaction between the parties in form of investment . Thus, a branch of the lease contract was on issues of investment and loss of business. On the pecuniary jurisdiction, the respondent was of position that the pecuniary jurisdiction of commercial cases is established under Section 40 (3) (a) and (b) of the Magistrate Courts Act. Notwithstanding subsection (2), the jurisdiction of the District Court in relation to commercial cases, be limited to in proceedings for recovery of immovable property, to proceeding in which the value of the property does not exceed Fifty Million shillings and in proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed thirty million shillings. It was the respondent settled view that Section 40 (3) (a) and (b) of Magistrate Court Act has not been amended by Act no. 3 of 2006 of the Written Laws (Misc. Amendment) and therefore it does not amend the pecuniary jurisdiction of the Primary Court in regards to commercial cases. From the afore submissions and the records, I must observe that the issue of jurisdiction can be raised at any stage including at appeal stage (see the case of Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters (2006) TLR 70). The guiding principle for the Court to assess whether it has jurisdiction or not were laid down in the case of Rombo Green View Investment Ltd V. Cadasp Tanzania Ltd, High Court of Tanzania, Land Division, Land Case No. 268/2008 (unreported) the Court observed: "The first thing you look at the pleaded facts that may constitute a cause of action and two you look at the relief (s) claimed and see whether the Court has power to grant them and whether they correlate with the cause of action." Upon considering the cause of action and the relief (s) claimed in the plaint, I noted the suit, though have an element of tenancy it was purely based on commercial transaction between the parties in form of investment as such, the trial Court had jurisdiction to grant the relief sought. Above all, the appellant does not dispute that he received compensation from the government but out of reasons known to him, the appellant entered into agreement with the respondent over the same property, such behaviors cannot be condoned

indeed, the matter being of commercial in character, the District Court had jurisdiction to entertain the same in terms of Section 40

- (3) (a) and (b) of the Magistrate Court Act Cap 11 (R.E. 2002) The other six grounds of appeal are:
3. That, the trial Court erred in law and in fact in determining the question of title of ownership of the appellant on the leased land hence arriving at erroneous and contradicting decision that the appellants title of ownership of the leased land has been revoked and sold to DART without considering the fact that he has no jurisdiction to decide on question of land ownership and without evidence on record to justify his findings.
 4. That, the trial Court erred in law in relying on exhibit PI and P2 without following the rule and procedure of handling and admittance of documents tendered in evidence hence delivering a decision which is not a judgement in law.
 5. That, the trial Court erred in law by awarding the respondent Tshs 25,000,000/= in terms of special damages without underscoring the fact that there was no evidence or proof on record to prove his findings.
 6. That, the trial Court erred in law by imposing an exorbitant amount in terms of general damages without underscoring the fact that there was no evidence or proof on record to justify the imposed amount of Tshs 80,000,000/=.
 7. That, the trial Court erred in law and in fact by imposing 12% interest in decreed sum from the date of judgement until payment in full.
 8. That, the trial Court failed to evaluate the pleadings the testimonies of witness and tendered exhibits hence arrived at erroneous decision that the appellant was in breach of lease agreement/contract without considering final submissions of the appellant. Wherefore, the appellant prayed that the appeal be allowed, judgement and decree of the trial District Court of Kinondoni be quashed and set aside, costs of this appeal be borne by the respondent and any other relief (s) this honorable Court may deem fit and just to grant. The afore six grounds of appeal calls for determination of the issue; whether the trial Court properly analyzed and evaluated the evidence and exhibits before reaching its impugned decision. As correctly argued by the appellant it is true under order XIII Rule 4 (1) of the civil procedure code, the document annexed to the pleading, when tendered and admitted must be endorsed. However, that abnormally alone cannot render the whole decision unjust because there is no dispute on the authenticity of exhibit PI and P2. On the point of general damages of 80 million, the appellant has maintained that the trial magistrate relied on wrong principle in awarding exorbitant general a damage without justifiable reasons. In view of the appellant, the trial Court should have involved chief government valuer for making valuation prior issuing the order of compensation. In view of the findings that, as properly replied general damages cannot be granted after valuation by the chief government valuer. It is the discretion of the Court in granting general damages but it has to be fair, just and not

aimed at enrichment. 8 The principle in the case of the Cooper Motors Corporation Ltd v. Moshi/Arusha Occupational Health Services (1990) TLR 96 must be observed in the instant case I find the 80 million general damages was not justified at all. Considering the entire evidence and the length of time, the general damages is reduced to 50 million. On the 12% interest, I do agree that it was within the Court discretion in awarding it. In my found view, the appellant been found liable on the decretal sum of 25 million and general damages justified the Court to give interest rate of 12% from the date of judgement till when the same is executed. In the final order the appeal is partly sustained on the issue of general damages which is reduced up to Tshs 50 million. The rest of the orders are sustained. Costs of this appeal be shared. Judgement pronounced and dated 27/12/2019 in the presence of counsel Godfrey Ntubika for respondent also holding brief for Counsel Ngowi for the appellant. MLYAMBINA UDGE 27/ 12/2019 10

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