

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

CIVIL APPEAL NO.64 OF 2020

(Arising from the Resident Magistrates Courts of Mwanza at Mwanza in Civil Case No.70 of 2018)

WILLIAM JACKSON MAGERO..... APPELLANT

VERSUS

CHARLES RICK MULAKI RESPONDENT

JUDGMENT

Date of last Order: 16.02.2021

Date of Judgment: 19.02.2021

A.Z.MGEYEKWA, J

The appellant, William Jackson Magero is appealing against the decision of the Resident Magistrate's Court of Mwanza in RM Civil Case No. 70 of 2018. The appellant did not see justice hence this appeal to this court. The appellant filed four grounds of appeal as follows:-

- 1. That, the trial Magistrate grossly erred in law by dismissing the suit on the ground that it has no jurisdiction.*

2. *That, the trial Magistrate erred in law by determining issue raised suo mottu without according parties right to be heard on the same.*
3. *That the trial Magistrate erred in fact and in law by holding that the case was dismissed by failure by the appellant (then plaintiff) to prove the case in the standard required.*
4. *That the trial Magistrate erred in law and in fact by going against the decisions and directive of the High Court in CHARLES RICK MULAKI VERSUS WILLIAM JACKSON MAGERO Hc. Civil Appeal No. 69 of 2017 (MAIGE, J) who hold that District Court has jurisdiction and order the matter be tried denovo.*

In prosecuting this appeal, Mr. Kinango, learned counsel, and Mr. Paul Bomani, learned counsel respectively, appeared for the appellant and respondent.

It was Mr. Bomani, learned counsel for the respondent who started to kick the ball rolling. Mr. Bomani was brief and straight to the point. He conceded with the appellant's grounds of appeal. He went on to submit that the trial Magistrate went into an error to hold that the court had no jurisdiction to determine the matter while it had such power.

In conclusion, Mr. Bomani urged this court to remit back the file to the trial court to compose a judgment.

Mr. Kinango, learned counsel for the appellant had not much to say rather admitted that the trial Magistrate faulted himself for dismissing the appeal. He went on to submit that the same matter was before Hon. Maige, J who ruled out that the District Court had jurisdiction to determine the matter the file was remitted back to the trial court.

On the strength of the above submission, Mr. Kinango beckoned upon this court to remit back the file to another Magistrate to compose a judgment.

I have given due consideration to the submissions of both learned counsels, on the appeal whereby the learned counsel for the respondent has conceded that the trial Magistrate entered into an error by dismissing the case for a mere reason that the trial court had no jurisdiction to determine the matter. The learned counsels' submissions are based on the first and second grounds of appeal that the trial Magistrate erred in law by dismissing the suit on the ground that it has no jurisdiction and that the trial Magistrate erred in law by determining the issue of jurisdiction *suo mottu* without affording the parties right to be heard.

I think in the light of the learned counsels submissions, the issue for determination is whether the parties were heard on the issue of jurisdiction. The answer to that question is obviously that they were not heard on the issue of jurisdiction. As rightly pointed out by both learned

counsels the trial Magistrate after hearing the case proceeded to compose the judgment and surprisingly the trial Magistrate *suo mottu* raised an issue of jurisdiction. He determined the issue on jurisdiction in absence of the parties and concluded that the trial court had no jurisdiction.

In case the trial Magistrate thought that there is an issue of jurisdiction he ought to call the parties to address him before concluding. In this situation, the parties were condemned unheard. In the case of **Amos Elias v Grace Mwijage** , Civil Application No. 432/08 of 2018, the Court of Appeal of Tanzania cited with approval the case of **I.P.T.L v Standard Chartered Bank**, Civil Revision No.01 of 2009 (unreported), it was with lucidity, stated by the Court that:-

“ No decision must be made by any court of justice/body or authority entrusted with the power to determine rights and duties to adversely affect the interest of any person without first giving him a hearing according to the principles of natural justice.”

Applying the above authority, it is clear that the trial Magistrate decision affected the interest of both parties for failure to afford them the right to be heard. I find this is a matter that the trial court should have properly called upon the parties to address the point of law which relates to jurisdiction of the trial court to entertain the suit. Failure to do so was improper and erroneous.

Consequently, due to learned counsels' position and concern that all witnesses testified before the trial court what was left was to compose a judgment. I find it prudent to order Case No. 70 of 2018 records be remitted back to the Resident Magistrate's Court to proceed to where it ended. In the circumstances, I shall not consider the remaining grounds of appeal. The appeal is therefore allowed without costs.

Order accordingly.

DATED at Mwanza this 19th February, 2021.




A.Z MGEYEKWA

JUDGE

19.02.2021

Judgment delivered on 19th February, 2021 via audio teleconference whereas Mr. Kinango, learned counsel, and Mr. Bomani, learned counsel for the appellant and respondent respectively were remotely present.


A.Z MGEYEKWA

JUDGE

19.02.2021