

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC. CIVIL APPEAL NO. 19 OF 2021

(C/F Civil Revision No. 13 of 2020 at Arumeru District Court, Originating from Civil Case No. 83 of 2020 Enaboishu Primary Court)

GRACE STEPHEN CHACHA.....APPELLANT

VERSUS

FRANK WILBARD URIO.....RESPONDENT

JUDGMENT

9/08/2022 & 16/09/2022

GWAE, J

This appeal has its originates from a civil case No. 83 of 2020 at Enaboishu Primary Court ("trial court") where the appellant filed a suit against the respondent on the claim of Tshs. 11,000,000/= arising from a loan allegedly advanced by the appellant to the respondent. At the trial court the matter was however determined ex-parte and the judgment was delivered on 15th May 2020 in favour of the appellant. Consequently, the respondent was ordered to pay the claimed amount.

Subsequent to the deliverance of the trial court's judgment, the respondent presented a letter was duly received on 18th May 2020 to the

trial court requesting the trial court to set aside its *exparte* judgment and ascertain its territorial jurisdiction. The trial court, through its ruling dated 19th May 2020, dismissed the respondent's complaint on the reason that, it has already pronounced its judgment thereto and therefore the court could not determine the question of its jurisdiction.

Dissatisfied, the respondent subsequently lodged a complaint letter to the Resident Magistrate in-charge of Arumeru District court complaining on the irregularities appearing on the hearing of the matter at the trial court. Apparently, a civil revision was *suo motto* conducted by the trial court and among others, the District Court dealt with the issue of the territorial jurisdiction of the trial court. It was the finding of the district court that, since the cause of action arose at TFA near Kilombero market and as the parties were living at Sombetini area, therefore the primary court with local or territorial jurisdiction to determine the matter is Arusha Urban Primary Court commonly known as Maromboso primary court and not Enaboishu Primary Court which is in the local jurisdiction of Arumeru District. As a result, the judgment, proceedings and order of the trial court were accordingly quashed and set aside.

Unpleased with the order of the District Court, the appellant has filed this appeal with the following grounds of appeal.

1. That, the trial learned magistrate erred in law and in facts by misinterpreting section 1(b) of the fourth schedule to the Magistrates Court Act (Cap 11 R.E 2019) and hence nullified the entire judgment of Enaboishu Primary Court.
2. That, the trial Magistrate erred in law and in fact for failure to consider the place of suing hence directed the appellant to sue in a wrong territorial jurisdiction.
3. That, the trial learned Magistrate erred in law and in fact by quashing the judgment of Enaboishu Primary Court basing on un sworn information of the respondent that he was denied the right to be heard despite clarity of court's proceedings as was recorded on the trial court's record.

When the matter came for hearing before me, the parties herein appeared in person, unrepresented. Supporting the grounds of appeal, the appellant argued that, the trial court had jurisdiction to determine the matter as the respondent is living at Chekereni area located within Arumeru District in Arusha Region. The respondent also admitted to live at chekereni however he submitted that, the appellant herein is his tenant and that she is indebted to him as she has not paid rental fees.

I have dispassionately given a thorough perusal of the entire records of the trial court and the courts below and come up with the firm view that, the main issue for determination is, whether the trial court had territorial jurisdiction to entertain the matter between the parties.

It is the contention of the respondent that, the trial court had no jurisdiction on the reason that, the cause of action arose at Arusha Mjini District and therefore it was improper for the trial court which is within Arumeru District to have entertained the matter.

It has been a well cherished principle that, jurisdiction of the court is the creature of statute and parties to the suit shall not confer the court with jurisdiction. And that whenever a court or quasi-judicial tribunal hears and determines a matter without the requisite territorial or pecuniary jurisdiction such proceedings, judgment or any other ancillary orders thereto, will be nothing but a nullity. This position of the law was correctly stressed in the case of **Shyan Thanki and Others v. Palace Hotel** (1971) EA at 202 where it was stated that;

“All the courts in Tanzania are created by statute and their jurisdictions are purely statutory. It is elementary principle of the law that parties cannot by consent give a court jurisdiction which it does not possess”.

Jurisdiction of courts being a creature of a statute, it is therefore apposite to have paragraph 1 (b) of the 4th schedule to the Magistrates' Courts Act, Cap 11 (supra) reproduced herein under for the sake of clarity and for the purpose of placing the court into appropriate determination of this appeal;

1. Subject to the provisions of this Act, proceedings of civil nature shall be heard and determined-
(b) in any other case, by a court within the local jurisdiction of which the cause of action arose or the defendant is ordinarily resident, or by a court to which proceedings have been transferred under, or by an order made under Part V of this Act".

From the above quoted provision of the law, it is apparent that, in suits of civil nature the court with local jurisdiction to determine the matter shall be the one where the cause of action arises or where the defendant ordinarily resides or whenever a civil suit is transferred from one court to another by an order of the competent court. With the above in mind, in the matter at hand two issues must be taken into consideration or to be paused, **firstly**, where did the cause of action arise and **secondly**, where did the respondent reside at the time of filing the suit.

From the records, the appellant testified that, the amount claimed was given to the respondent whom she alleges to be her husband at

Shoprite near Kilombero Market. This piece of evidence was supported by that of SM2 Emmanuel Reuben, an employee of the appellant and the one who was sent by the appellant to give the respondent the said amount of money. Therefore, it is with no doubt that the cause of action arose at Arusha Mjini District.

Second issue to be ascertained by this court is, on the residence of the respondent at the time of filing the suit. Unfortunately, this issue was not discussed at the trial court, nevertheless, at the 1st appellate court the parties while submitting stated that, the appellant and the respondent were together living at Sombetini area however the appellant went further to state that she lived with the respondent at Sombetini since 2014 as husband and wife respectively but the respondent had already shifted his residence to Chekereni area which is in Arumeru District where he is living with another woman, the fact which the respondent did not dispute in his rejoinder. More so, during hearing of this appeal, the respondent admitted to have been living in Chekireli area.

Pursuant to the above provision of the law and as already discussed above this court is of the view that, at the time of filing the suit, the respondent was residing at Chekereni area within the locality of Enaboishu Primary Court. Hence the trial court had jurisdiction to determine the matter since it is within its local jurisdiction.

Therefore, I am of the view that, in the matter at hand, the appellant was at liberty to either file her suit where the cause of action arose (Maromboso Primary Court) or where the defendant resides, and for this matter it is highly proved that the respondent resides at Cherekeni area which is within Arumeru District. Hence, the trial court had territorial jurisdiction to entertain the matter.

I have also found that, the respondent's contention during hearing of the appeal that, the appellant is indebted to him is not attainable by this 2nd appellate court since the same was not heard and determined by the trial court. Equally, the trial court's reason for its refusal to set aside ex-parte judgment is properly founded.

That being said, this appeal is allowed, the judgment and decree of the 1st appellate court are hereby quashed and set aside. Costs shall be borne by the respondent

It is so ordered.


SGD. M. R. GWAE
JUDGE
16/09/2022

