

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

LAND CASE APPEAL NO. 06 OF 2021

(Arising from District Land and Housing Tribunal for Kagera at Bukoba Application No. 130 of 2018)

1. NMB BUKOKA BRANCH.....1ST APPELLANT

2. L. J INTERNATIONAL LTD.....2ND APPELLANT

VERSUS

LENA JOEL RWEHABURA.....RESPONDENT

JUDGMENT

20/09/2021 & 06/10/2021

NGIGWANA, J.

Dissatisfied by the judgment and decree of the District Land and Housing Tribunal for Kagera at Bukoba dated 02/12/2020, the appellants NMB Bukoba Branch and L. J International Ltd appealed to this court on the following grounds:-

1. That the trial tribunal grossly erred in law to entertain the matter which was preferred against non-existing legal entity to wit, NMB – BUKOKA BRANCH.
2. That the trial Chairman misdirected himself to hold that Justus Ndibalema and Erick Gwaje (3rd and 4th respondents in the trial

tribunal) are responsible on payment of the loan while the same are strangers to the loan agreement which was entered and signed by the respondent in a free consent.

3. That the trial Chairman erred in law to restrain permanently the 1st and 2nd Appellants from entering into the suit land for the purpose of attaching, auction or selling the suit land while the same was duly deposited by the respondent who is the owner of the same as a security for the loan of TZS 30,000,000/=.
4. That trial Chairman grossly erred in law to hold the loan agreement was illegal abinitio for being obtained by fraudulent misrepresentation without any legal prove while the same was processed and signed by the respondent herself being of sound mind.

Wherefore, the appellants pray for the following orders; that this appeal allowed with costs, that the judgment and decree of the tribunal be quashed and orders thereto be set aside, that the respondent be declared to be the borrower of the loan from the 1st appellant and be ordered to repay unpaid amount with interest.

The background of this matter goes briefly as follows: On 31/01/2017 the respondent applied for and was granted a loan of TZS 30,000,000/= from NMB Bank PLC – Bukoba Branch which was to be repaid in 24 installments commencing from 28/02/2017 to 28/01/2019. The respondent defaulted payment of the loan. To recover the outstanding amount, the 1st appellant exercised her option to sell the mortgaged property. She is on that process sought the services of the 2nd appellant, a Court broker and instructed the

said Court broker to attach and sell the mortgaged property, a house located at Mafumbo street, Kashai Ward within Bukoba Municipality in Kagera Region. It is at this stage the respondent reacted and instituted a suit at the District Land and Housing Tribunal for Kagera at Bukoba against the appellants and other two persons namely Justus Ndibalema and Erick Gwaje claiming that the loan was taken by Justus Ndibalema in collusion with Erick Gwaje (3rd and 4th respondents in the trial Tribunal) therefore her house is not attachable. The case against the 3rd and 4th respondents proceeded exparte because they have never entered appearance in court despite of the service done by publication.

The trial tribunal found that the 3rd and 4th respondents are the persons responsible on the repayment of the loan, as the applicant did not breach the terms and conditions of the loan agreement since the same was void ab initio for being obtained by fraudulent misrepresentation. That the 1st appellant is not entitled to the foreclosure of the mortgaged property. It is this decision that the appellants are appealing against.

When this appeal was called on for hearing the appellants had the services of Mr. Abel Rugambwa, learned advocate while the respondent had the services of Mr. Eliphaz Benges, learned advocate. Submitting on the first ground of appeal Mr. Rugambwa stated that, reading the loan agreement which was tendered in the trial tribunal as exhibit D1, and deed of mortgage, the 1st appellant ought to have been NMB Bank Plc and not NMB Bukoba Branch. He added that this issue was raised in the trial tribunal as an objection but it was overruled and dismissed.

Mr. Bengesi learned counsel on his side conceded that the said issue was raised in the trial tribunal, but it was not heard because Mr. Rugambwa, learned counsel for the 1st respondent (now first appellant) prayed to withdraw the same, and the prayer was granted, and for that reason, the 1st appellant has no right to re-raise it at this stage.

In his brief rejoinder, Mr. Rugambwa denied to have ever prayed to withdraw the objection. He added that the preliminary objection was heard by way of written submissions and finally the trial tribunal handed down its ruling on 18/11/2019.

Having carefully considered the rival submissions of the parties, records of the trial tribunal and meditating the grounds of appeal, it is my view that ground one will dispose of the appeal. The said ground states;

“That the trial tribunal grossly erred in law to entertain the matter which was preferred against non-existing legal entity to wit, NMB – BUKOBA BRANCH”

It is trite law that only natural or legal persons are legally allowed to maintain actions in court against other legal persons in their own names/capacities.

As correctly submitted by Mr. Rugambwa, learned advocate for the appellants, NMB – BUKOBA BRANCH is the Branch of NMB Bank PLC, therefore has no capacity to sue or to be sued in its own name.

In the case of **Novoneca Construction Company Ltd and Another versus National Bank of Commerce Ltd and Tukuyu Branch National Bank of Commerce Ltd**, Criminal Case No. 8 of 2015, my Senior brother His Lordship Mwambegele (as he then was) held inter alia that;

“Branches do not have a legal entity of their own separate from that of the first defendant”

In the case of **Kanisa la Anglikana Ujiji versus Samson Heguye**, Labour Revision No.5 of 2019 my brother His Lorship I. Mugeta held among other things that Anglican Church or its branches cannot be sued.

It was further held in the case of **Singida Sisal Production & General Supply versus Rofal General Trading Ltd and 4 others** Commercial review No. 17 of 2017 that;

“non-existing parting does not have legs to stand, hand to prosecute, no eyes to see and mouth to speak either on her own as on behalf of any other person before any court of law”

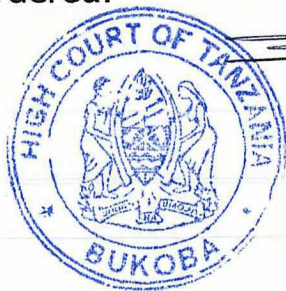
It follows therefore that it is the mandatory legal requirement to sue the Bank in its juristic name and not in its branch. See the case of **CRDB Azikiwe Branch versus Baddy Twaha Ally**, Civil Appeal No.60 of 2016 HC at Dar es Salaam.

In the case at hand as already pointed out, the respondent sued NMB Bank Bukoba Branch. I accordingly hold that the respondent sued a legally non-existent entity. This is an anomaly which cannot be left to stand. I sympathize with the parties for the resources already spent on prosecuting this case. Had the Hon. Chairman properly directed his mind to the law and submissions made in support of the objection raised before the trial tribunal, the anomaly in question would not have reached this court since it is not true that the PO was withdrawn as alleged by Mr. Benges. It was heard by way of written submissions, and finally the trial tribunal composed its ruling

whereas the objection was overruled and dismissed, but with no legal justification.

Having said, I quash the proceedings, set aside the judgment and orders of the trial Tribunal for being a nullity. The parties, if still interested to pursue this matter are at liberty to institute a fresh suit by following proper procedures and legal requirements. Taking into account the nature and circumstances of this case, I order no order as to costs.

It is so ordered.




E. L. NGIGWANA

JUDGE

06/10/2021

Judgment delivered this 6th day of October, 2021 in the presence of Mr. Josephat Rweyemamu, learned advocate for the appellants, the respondent in person, Mr. E. M. Kamaleki, Judges Law Assistant and Mr. Gozbert Rugaika-B/C. Right of appeal fully explained.




E. L. NGIGWANA

JUDGE

06/10/2021