IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., MSOFFE, J.A., And KAJI, J.A.)

CIVIL APPEAL NO. 84 OF 2002

M/S TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD. ..... APPELLANT

VERSUS

OUR LADY OF THE USAMBARA SISTERS..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania – Commercial Division at Dar es Salaam)

(Kalegeya, J.)

dated the 30th day of July, 2002
in
Commercial Case No. 69 of 2002

JUDGMENT OF THE COURT

KAJI, J.A.:

In this appeal, the appellant, M/S Tanzania – China Friendship Textile Co. Ltd., is appealing against the decision of the High Court Commercial Division (Kalegeya, J.) in Commercial Case No. 69 of 2002.

Briefly, the facts giving rise to the case as accepted by the trial court are as follows:

The respondents, Our Lady of the Usambara Sisters, is a religious society based at Kwamndolwa, Korogwe District in Tanga Region.

On or around 3rd August, 1998, the respondents made a special order of *vitenge* fabrics at the appellant's Textile Mills for celebrating their 40 years anniversary which was about to take place at the end of October, 1998. The said special order of fabrics consisted of exclusive and special design meant for the 40 years anniversary of the respondents to generate income for financing the said celebrations, and off-setting other expenses. The respondents paid Shs. 8,136,720/= for the fabrics plus tax.

But before the celebrations took place, and without the knowledge and consent of the respondents, the appellant sold the said special *vitenge* fabrics to other customers at a lower price compared to the price the respondents would have to sell in order to realize sufficient money to meet the costs of the said celebration. The respondents complained that the appellant's act of selling and or

releasing the said special order vitenge fabrics to other customers who flooded the market by selling the *vitenge* at a price which was lower than that of the respondents, occasioned loss to them in terms of the costs they had incurred as well as loss of expected profit. It also caused them to suffer great inconvenience in the preparation of the celebration, as well as embarrassments and hatred among the society in which the respondents were living.

Consequently the respondents sued the appellant for the following reliefs:-

(a) Shs. 8,136,720/= being costs incurred for the production of the vitenge fabrics and tax paid,

(b) Shs. 15,000,000/= being general damages suffered by the respondents for the inconvenience caused in the preparation of their celebrations,

(c) Interest on Shs. 8,136,720/= at the Court rate from the date of judgment till final payment,

(d) Costs of the suit,

(e) Any other relief the Court could deem fit and just to grant.

The appellant denied all the claims. But at the end of the day the respondents were awarded Shs. 8,136,720/= which they had paid for the production of the *vitenge* plus tax, Shs. 7,500,000/= being general damages, interest at 7% per annum on the decretal sum from the date of judgment till final payment. They were also awarded costs of the case.

The appellant was dissatisfied with the decision; hence this appeal.

The appellant, through its advocate Mr. Magafu, preferred four grounds of appeal, namely:-

1. That the honourable judge erred in law and in fact for failure to observe that the High Court had no jurisdiction to entertain the suit presented before it,

2. That the honourable judge erred in law and in fact in awarding the respondent a total of Shs. 8,136,720/= allegedly being costs incurred for production of the said vitenge fabrics and tax paid,

3. That the honourable judge erred in law and in fact in awarding the respondent a total sum of Shs. 7,500,000/= allegedly being general damages,

4. That the honourable judge erred in law and in fact in holding that the appellant breached the terms of the special order.

At the hearing, Messrs. Magafu and P.L. Chabruma, learned counsel, represented the appellant and the respondents respectively.

Arguing the first ground of appeal, Mr. Magafu contended that, at that time the pecuniary jurisdiction of the High Court was limited to amounts exceeding Shs. 10,000,000/= as provided for under Section 40 (2) (b) of the Magistrates Courts Act No. 2 of 1984 and Section 6 of the Civil Procedure Code, 1966 and that the High Court in its original jurisdiction had no powers to adjudicate upon claims whose amount did not exceed Shs. 10,000,000/=. The learned counsel pointed out that, in the instant case the main amount claimed was Shs. 8,136,720/=, and that the amount for general damages was irrelevant because, in his view, the amount for general damages which is granted on the discretion of the court, is not required to be quantified in the plaint, and that, where erroneously quantified, it does not alter or affect the jurisdiction of the Court. In the instant case, since the substantive amount was below Shs. 10,000,000/= the trial court had no pecuniary jurisdiction to adjudicate upon the matter, submitted the learned counsel.

Arguing the second ground of appeal, Mr. Magafu contended that, the learned trial judge erred in awarding the respondents Shs.

8,136,720/= and at the same time retaining the vitenge fabrics. The learned counsel pointed out that, by being awarded Shs. 8,136,720/= which was alleged to have been paid by the respondents for production of the vitenge plus VAT, and also retaining the vitenge in issue, the respondents were more or less paid twice, that is, the money and the vitenge which, in his view, is unjust.

Arguing the third ground of appeal Mr. Magafu argued that, the respondents did not prove sufficiently that they suffered embarrassment and inconvenience through the alleged breach of contract. The learned counsel further pointed out that, even if they could have proved the same sufficiently, yet they should not have been awarded Shs. 7,500,000/= which, in his view, is on the high side. The learned counsel further pointed out that, the learned trial judge, by basing the assessment of damages on waiving the interest, acted on a wrong principle necessitating this Court to interfere with the assessment. The learned counsel cited the decision of this Court in **Cooper Motor Corporation Ltd. v. MOSHI/ARUSHA Occupational Health Services** (1990) TLR 96.

Arguing the fourth ground of appeal the learned counsel contended that, there was no breach of the terms of the special order in that the respondents collected what they had paid for, that is 8 bales and that since they had not paid for the reject grade C, the appellant was free to sell them (grade C) to whoever was ready and willing to buy them.

On his part, Mr. Chabruma, learned counsel for the respondents, conceded that the substantive amount was below Shs. 10,000,000/=, that is, Shs. 8,136,720/=. But he was quick to point out that, since the claim of Shs. 15,000,000/= for payment of general damages was quantified, it had to be added to the main amount thereby making a total claim of Shs. 23,136,720/=, which at that time, was within the pecuniary jurisdiction of the High Court.

The learned counsel denied the respondents to have been awarded twice. The learned counsel contended that, the respondents did not sell and could not have sold the *vitenge* for the reasons stated earlier, and that, those *vitenge* were still lying idle in

their store and the respondents were ready to return them to the appellant if ordered by the court. The learned counsel emphasized that, now the respondents' interest is no longer in the *vitenge* but in the money which they had paid for the same.

On whether there was enough evidence that the respondent suffered embarrassment and inconvenience, the learned counsel contended that, the same was substantially proved by Sister Mary Amedeus (PW2) in her testimony.

On whether the learned trial judge was right in taking into account that the respondents had not claimed for interest in assessing general damages, the learned counsel contended that, there was nothing wrong with the learned trial judge in taking into consideration that fact, especially that the act of awarding general damages is entirely in the discretion of the court. The learned counsel denied the amount of Shs. 7,500,000/= to be on the high side, taking into consideration the embarrassment and inconvenience

suffered by the respondents who had ordered those *vitenge* for a great occasion of celebrating 40 years anniversary.

On whether there was a breach of the terms of the special order, the learned counsel pointed out that, there was an implied term in the order that the appellant should not deal with the products of the order, be it grade A, B or C, in a manner which would defeat the purpose for which they were made. Further that, in selling them to a third party before the occasion, and at a low price, that was a clear violation of the terms of the special order, submitted the learned counsel.

We have carefully considered the arguments and submissions by counsel for both parties. We will start with the first ground of appeal, that is, whether the trial court had pecuniary jurisdiction to adjudicate upon the matter. Admittedly, this issue was not raised before the trial court. But since it is about the jurisdiction of the court, it can be raised at any stage even before this Court.

It is common ground that, the substantive amount which the plaintiffs/respondents were claiming before the trial court was Shs. 8,136,720/=. They were also claiming for general damages which they quantified to the tune of Shs. 15,000,000/=. But since general damages are awarded at the discretion of the court, it is the court which decides which amount to award. In that respect, normally claims of general damages are not quantified. But where they are erroneously quantified, we think, this does not affect the pecuniary jurisdiction of the court.

In our view, it is the substantive claim and not the general damages which determines the pecuniary jurisdiction of the court.

In the instant case, the substantive amount is Shs. 8,136,720/=. It is this amount which determines the pecuniary jurisdiction of the court. At this juncture we ask ourselves: What is the pecuniary jurisdiction of the High Court Commercial Division? The High Court Commercial Division is a division of the High Court; and therefore its pecuniary jurisdiction is the same as that of the High Court. "What is the pecuniary jurisdiction of the High Court?", we ask. This question has taxed our minds a great deal. It has taxed our minds greatly

because the answer is not found in a single legislation. We have to consider several legislations. For example, Section 6 of the Civil Procedure Code, 1966 which states:-

> "6: Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction"

Under Section 3 of the said code the word "court" has been defined to include the High Court." Section 6 limits the pecuniary jurisdiction of the court on amounts not exceeding the amount prescribed. It is common knowledge that the High Court has unlimited pecuniary jurisdiction upwards, and therefore no amount can be said to exceed the pecuniary jurisdiction of the High Court. Another relevant legislation is Section 40 (2) (b) of the Magistrates Courts Act No. 2 of 1984 which at the material time limited the pecuniary jurisdiction of a District Court or a Court of a Resident Magistrate to not exceeding

Shs. 10,000,000/= on movable properties. This by implication meant that, a proper forum for a claim exceeding Shs. 10,000,000/= was a court higher than a District or Resident Magistrate Court, that is, the High Court.

But does this mean that at the material time the High Court had or had no pecuniary jurisdiction over claims the amount of which did not exceed Shs. 10,000,000/=? The jurisdiction of the High Court is specified under Section 2 (1) of the Judicature and Application of Laws Ordinance Cap 453 and under Article 108 of the Constitution of the United Republic of Tanzania. Articles 108 provides as follows (in Swahili)

> 108 (1) Kutakuwa na Mahakama Kuu ya Jamhuri ya Muungano (itakayojulikana kwa kifupi kama "Mahakama Kuu") ambayo mamlaka yake yatakuwa kama yalivyoelezwa katika Katiba hii au katika Sheria nyingine yoyote.

mahsusi kwa ajili hiyo, basi Mahakama Kuu itakuwa na mamlaka ya kusikiliza kila shauri la aina hiyo. Hali kadhalika, Mahakama Kuu itakuwa na uwezo wa kutekeleza shughuli yoyote ambayo kwa mujibu wa mila za kisheria zinazotumika Tanzania shughuli ya aina hiyo kwa kawaida hutekelezwa na Mahakama Kuu.

Isipokuwa kwamba masharti ya ibara hii ndogo yatatumika bila kuathiri mamlaka ya Mahakama ya Rufani ya Tanzania kama ilivyoelezwa katika Katiba hii au katika Sheria nyingine yoyote."

English version –

108 (1) There shall be a High Court of the United Republic (to be referred to in short as "the High Court") the jurisdiction of which shall be as specified in this Constitution or in any other law.

(2) If this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court shall have jurisdiction to deal with any matter which, according to legal traditions obtaining in Tanzania, is ordinarily dealt with by a High Court; save that, the provisions of this sub article shall apply without prejudice to the jurisdiction of the Court of Appeal of Tanzania as provided for

Again, another relevant provision of law in the instant case is the amendment to the First Schedule (Rules) to the Civil Procedure Code, 1966 effected by GN No. 140 of 1999, which added sub rule (2) to Rule 1 Order IV. The said subrule reads:-

> (2) **No suit shall be instituted in the Commercial Division of the High Court concerning a commercial matter** which is pending before another court or tribunal of competent jurisdiction or **which falls within the competency of a lower court."** (emphasis added)

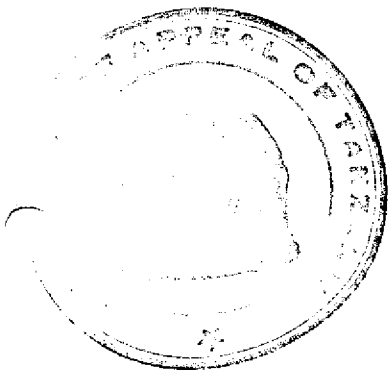
The amount of Shs. 8,136,720/= falls within the competency of a District Court or Court of a Resident Magistrate. Lastly, we remark in

passing that, in considering the circumstances of this case, we considered also Section 95 of the Civil Procedure Code 1966, to see whether, under the circumstances of the case, the trial court could properly have invoked its inherent powers. But we are satisfied that, under the circumstances of the case, which involves jurisdiction, the trial court could not properly have invoked its inherent powers by vesting itself with jurisdiction which it did not have. Generally speaking, inherent powers of the court relate to matters of procedure for the ends of justice and to prevent an abuse of process of the court.

Since the trial court had no pecuniary jurisdiction as stated above, the whole proceedings and the decision thereat are null and void.

After holding so, we do not consider that it is necessary to consider the other grounds of appeal.

DATED at DAR ES SALAAM this 19 day of October, 2005.



A.S.L. RAMADHANI
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. M. RUMANYIKA)
DEPUTY REGISTRAR