IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MBAROUK, J. A., MASSATI, J. A., And MMILLA, J. A.)

CIVIL APPEAL NO. 119 OF 2014

TANZANIA BREWERIES LIMITED ..... APPELLANT

VERSUS

ANTHONY NYINGI ..... RESPONDENT

(Appeal against the Decision of the High Court of Tanzania, at Mwanza.)

(Sumari, J.)

Dated the 16th day of May, 2014
in
Civil Case No. 3 of 2009

.....

JUDGMENT OF THE COURT

25th & 27th March, 2015

MASSATI, J.A.:

The respondent had successfully sued the appellant for the tort of negligence in the High Court of Tanzania, sitting at Mwanza. According to the plaint, the respondent's claim was based on the appellant's (or its agent's) negligence in selling beer branded *Kilimanjaro* which was unfit for human consumption, to its (the appellant's) knowledge. For that the respondent had claimed shillings 400,000,000/= (four hundred million Tanzanian shillings only) as general damages. At the end of the trial,

however, the High Court awarded the respondent only shs 50,000,000/= (shillings, fifty million only.)

The appellant was not amused. It lodged a Notice of Appeal in this Court and finally lodged an appeal on 23/9/2014.

On the date of hearing Mr. Karoli Tarimo and Mr. James Njelwa, learned counsel, appeared for the appellant and the respondent respectively, as they did in the trial court.

The memorandum of appeal had set out eight grounds of appeal, but what immediately caught our eyes was the first one which reads as follows:-

> *"1.) That the trial court had no pecuniary jurisdiction to try the plaintiff's suit."*

Since the question of jurisdiction is fundamental, we asked the learned counsel to address us first on that issue, because it could determine our own jurisdiction to look into the merits of the appeal.

Relying on this Court's decision in **M/S TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD VS OUR LADY OF THE USAMBARA**

SISTERS, (2006) TLR 70, Mr. Tarimo submitted that, since general damages could not be used to determine the pecuniary jurisdiction of the courts, and since section 13 of the Civil Procedure Code (the Code) requires that every suit be instituted in the court of the lowest grade competent to try it, and since the High Court was not a court of that description, the trial court had no pecuniary jurisdiction to try that suit. He therefore prayed that this ground be allowed, and the proceedings, judgment and decree of the High Court be quashed for want of jurisdiction.

But Mr. Njelwa, had a different view. He supported the trial court's holding that since there was no written law proscribing the High Court from taking cognizance of suits claiming general damages only, it had jurisdiction to try the suit under Article 108 (2) of the Constitution of the United Republic of Tanzania (Cap 2 R.E.2002) (the Constitution). It was therefore his view that this ground of appeal lacked merit and the appeal ought to be heard on merit. He distinguished the facts in **TANZANIA – CHINA FRIENDSHIP** case (*supra*) in that, there, the respondent had claimed both special and general damages unlike in the present case, where only general damages were claimed.

The issue of the trial court's jurisdiction was first raised in the High Court as a preliminary objection. In the course of argument, the **TANZANIA – CHINA FRIENDSHIP** case (*supra*) was cited. In overruling the objection, the learned trial judge said (on p. 86-87 of the record).

> *"As well put by Mr. Njelwa, if there is any matter which the law does not say where the matter should be taken as a court of first instance, then the High Court shall have all the powers/jurisdiction to hear it. Since nowhere in our laws that when a person is claiming for general damages has to take the case in a certain particular court, then Article 108 (2) (supra) is applicable and therefore the plaintiff's suit is properly before the court."*

The first point we must note is that although the **TANZANIA – CHINA FRIENDSHIP** case (supra) was cited to the trial court, it was not referred to in the learned judge's reasoning, either by approval of the principles set out therein, or at least by distinguishing it and justifying why she did not follow that decision which was binding on her. The second

point is that the decision rested on Article 108 (2) of the Constitution alone. Other written laws like the CPC were not considered. In our view, those two points blow serious punches in the decision of the learned judge.

In the first place, when it comes to determining the jurisdiction of the High Court, one has to visit a wide spectrum of legislations. Historically long before the present Constitution came into force there is the Judicature and Application of Laws Act (Cap 358 R.E. 2002) (the JALO) which provides the broad guidelines. Section 2 (1) of JALO provides:-

> *"2(1) Save as provided herein after or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters."*

By this provision, we take it to mean that the High Court has full (i.e. unlimited) jurisdiction except where it is provided otherwise, in any other written law. That legislation is still very much around.

Then Article 108 (1) of the Constitution provides:-

> *"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."

This is then followed by Article 108 (2) of the Constitution which was relied upon by the trial court.

It provides in part:-

"108 (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 ..."

It is therefore clear from these provision of JALO and the Constitution, that the jurisdiction of the High Court is subject to the provisions of other written laws. So, it was wrong for the learned trial judge to have decided the question of jurisdiction by looking at Article 108 (2) of the Constitution alone. In other words, Article 108 (2) of the Constitution should not have been read in isolation, without discussing whether or not such other written laws to the contrary exist.

In the trial court, counsel referred to the learned judge, section 13 of the CPC, and section 40 (2) (b) of the Magistrates Courts Act (Cap 11 R.E. 2002) (the MCA) as among those other written laws referred to in section 2 (1) of JALO and Article 108 (1), of the Constitution which were also discussed extensively in **TANZANIA – CHINA** case (*supra*). But these provisions did not feature in her ruling. As a matter of principle, this was wrong. If a court of law decides to accept or reject a party's argument, it must demonstrate that it has considered the same, and set out the reasons for rejecting or accepting it. Otherwise the decision becomes an arbitrary one. If the trial court had considered those provisions along with the decision in **TANZANIA – CHINA FRIENDSHIP** case (*supra*) it could perhaps have come up with a different decision. In that case, the Court held among others: that:-

> *"(1) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court.*
>
> *(2) Although there is no specific provision of law stating expressly that the High Court had no pecuniary jurisdiction to entertain claims not*

exceeding Tshs 10.000,000/= according to ***the principle contained in section 13*** *of the Civil Procedure Code that every suit must be instituted in the court of the lowest grade competent to try it."*

(emphasis supplied).

This holding is contrary to the finding of the trial court that was quoted above. Under the doctrine of *stare decisis*, or precedent, the decision of the Court of Appeal prevails as the correct interpretation of the laws relating to the civil jurisdiction of the High Court until such time that this Court may depart from it, or some relevant statute is amended. Whatever views to the contrary one may have about it, they are of no consequence. To that extent the decision of the High Court was made *per incuriam*. So it is null and void.

For the above reasons, we allow the appeal on the basis of the first ground alone. We proceed to declare that the High Court had no pecuniary jurisdiction to try the suit. Therefore all the proceedings, judgment and decree of the trial court are quashed. The appellant shall have its costs.

DATED at **MWANZA** this 26th day of March, 2015.

M. S. MBAROUK
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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

P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL