IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: MBAROUK, J.A., LUANDA, J.A. And MUSSA, J.A.)

CIVIL APPEAL NO. 92 OF 2015

QAMARA KWASLEMA GWAREH ..... APPELLANT

VERSUS

1. ANWARY HASSAN
2. ABDALLAH ABDILATIF MUHSIN t/a BORN CITY BUS
3. NATIONAL INSURANCE CORPORATION OF TANZANIA LIMITED **..... RESPONDENTS**

(Appeal from the decision of the High Court of Tanzania at Arusha)

(Moshi, J.)

Dated the 25th day of April, 2014
In
Civil Case No. 8 of 2008
.....

JUDGMENT OF THE COURT

26th & 29th February, 2016.

MUSSA, J.A.:

In the High Court of Tanzania, at Arusha, the appellant sued the respondents over loss resulting from a motor vehicle accident that occurred at Minjingu Village on the 23rd July, 2005. It was common ground that, on the fateful day, the plaintiff's motor vehicle with registration No. T 740 AHK which was being driven from Arusha towards Mbulu collided with the

second respondent's Bus with registration No. T 698 AFE which was being driven by the first respondent towards Arusha.

The appellant's claims which are relevant to our determination were comprised in paragraphs 8, 11 and 14 of the plaint which we extract in full:

> *"8. That the plaintiff motor vehicle was damaged beyond repair and thus the plaintiff claim from the defendants jointly and severally Tshs. 40,000,000/= being cost of purchasing another motor vehicle. Copy of vehicle inspection report is annexed herewith and marked "B" to form part and parcel of this plaint.*
>
> *9. ..... N/A.*
>
> *10. ..... N/A.*
>
> *11. That the plaintiff's business motor vehicle was at material time generating 140,000/= per day and therefore the plaintiff claim from the defendants jointly and severally Tshs. 140,000/= per day from 23rd July, 2005 to 16th June, 2008 making a total of Tshs.*

132,160,000/= and then Tsh. 140,000/= per day from 17th June, 2008 till the date of judgment.

12. *..... N/A.*

13. *.....N/A.*

14. *That the value of claim for purposes of determining jurisdiction and assessment of court fees is Tshs. 172,160,000/=."*

Before the matter was set down for hearing, the High Court (Moshi, J.) *suo motu* raised the issue whether or not the court was vested with pecuniary jurisdiction to try the case and invited the parties to address it on the issue. At the height of the enquiry, the court was of the view that paragraph 11 of the plaint was speculative and that the only substantive claim of the appellant was contained in paragraph 8 of the plaint which was within the pecuniary jurisdiction of the District Court. Thus, the High Court declined jurisdiction on the authority of the decision of this Court in **Tanzania – China Friendship Textile Co. Ltd Vs Our Lady of Usambara Sisters** [2006] TLR 70. In the end result, the suit was

dismissed for lack of jurisdiction. The appellant is aggrieved and presently seeks to impugn the verdict of the High Court upon three grounds, namely:-

> "1. ***THAT,*** *the learned Judge erred in law and in fact in holding that paragraph 11 of the appellant's plaint does not contain specific damages.*
>
> 2. ***THAT,*** *the learned Judge erred in law and in fact in holding that the High Court had no pecuniary jurisdiction to entertain Civil Case No. 8 of 2008.*
>
> ***IN THE ALTERNATIVE AND WITHOUT (SIC) TO THE ABOVE GROUNDS.***
>
> 3. ***THAT,*** *the learned Judge erred in law in dismissing the appellant's suit."*

At the hearing before us, the appellant was represented by Mr. John Materu, learned Advocate, whereas the first and second respondents had the services of Mr. Nelson Merinyo, also learned Advocate. Another learned

Advocate, namely, Mr. Akoonay Sang'ka, was representing the third respondent.

Mr. Materu fully adopted the memorandum of appeal as well as the written submissions in support of the appeal. He then generally submitted with respect to both the first and second grounds of appeal. Concisely put, Mr. Materu's contention was that specific damages were actually specifically claimed and pleaded in paragraph 11 of the plaint and, to that extent, it was wrong for the trial Judge to hold that what was pleaded in that paragraph was a claim for general damages. To buttress his contention, the learned counsel for the appellant referred us to several decisions of the Court including the case of **Tanzania Saruji Corporation Vs Africa Marble Company Ltd** [2004] TLR 155 where it was held, *inter alia*:-

> *"When the precise amount of a particular item has become clear before the trial, either because it has already occurred or so become crystallized or because it can be measured with complete accuracy, this exact loss must be pleaded as special damages."*

To conclude his submission, Mr. Materu urged that what was pleaded by the appellant in paragraphs 8 and 11 were substantive claims which, when added together, conferred jurisdiction to the High Court. In that regard, the learned counsel distinguished the **Tanzania – China Friendship** case (supra) on account that, in that case, the plaintiff sought to enshrine the pecuniary jurisdiction of the High Court through general damages and not the substantive claim. In the result, he further urged, the appeal is meritorious and should be allowed with costs.

As regard the alternative ground of appeal, the learned counsel for the appellant contended that even assuming for the sake of it that the trial court had no jurisdiction; to the extent that the court did not decide the case on the merits, it was wrong for the Judge to proceed with the dismissal of the suit. Initially, Mr. Materu urged that the trial court should have, instead, simply struck out the suit but, after a brief dialogue with us, the learned counsel refined his stance and submitted that the trial court should have returned the plaint to be presented to the court in which the suit should have been instituted in terms of Order VII Rule 10 (1) of the Civil Procedure Code Chapter 33 of the Revised Laws (the Code).

In reply, Mr. Merinyo for the first and second respondents resisted the appeal by similarly adopting his written submissions, save for a portion of it where counsel desired to challenge the appellant's written submissions for being belatedly filed. In fine, Mr. Merinyo generously abandoned that portion of his submissions. Addressing the bone of contention, the learned counsel strenuously contended that paragraph 11 of the plaint is more conceivable as a claim of general damages than it is as a claim for special damages. To glean from his own words in the submissions:-

> *"The appellant's plaint is lacking particulars of special damage. It is logically inconceivable that the plaintiff motor vehicles must be taken to be earnings a fixed amount of income irrespective of whether it is high or low tourist season. In short the pleading is geared to general damages which was going to be proved during trial."*

In the upshot, Mr. Merinyo urged that the particulars of the matter at hand are on all fours with the **Tanzania – China Friendship** case (supra) and, accordingly, the trial court justifiably declined jurisdiction. The appeal,

he summed up, should be dismissed but, since the issue was raised *suo motu* by the court below, the Court should refrain from giving an order as to costs. As regards the consequential order of the trial court, Mr. Merinyo conceded that the trial Judge wrongly dismissed the suit instead of remitting the same to the court with jurisdiction to try it.

For his part, Mr. Sang'ka for the third respondent supported the appeal. In his brief submission, when looked at in the light of the rules relating to pleadings, paragraph 11 of the plaint was clearly geared towards showing special damages and, according to him, that alone qualified it to a substantive claim.

We have given due consideration all the submissions of the three learned Advocates. To us, what was pleaded in paragraph 11 of the plaint can be measured with complete accuracy and, as such, in agreement with both Messrs Sang'ka and Materu, the pleading was, so to speak, for specific damages. As to whether or not the claim was inconceivable or not provable was a matter of the evidence to be adduced. On that account, what was decided in **Tanzania – China Friendship** (supra) is distinguishable and was not applicable to the situation at hand. To that

end, we are satisfied that the substantive claims as pleaded in paragraphs 8 and 11 of the plaint amounted to a sum of Shs. 172,160,000/= which was within the pecuniary jurisdiction of the High Court. We, accordingly, allow this appeal, quash the decision of the High Court and remit the record back for it to resume trial before another Judge of competent jurisdiction. Costs will follow the event.

Before we pen off, we wish to make one observation by way of a postscript and for future guidance. To say the least, it was wrong for the trial Judge to hand down an order dismissing the suit in the wake of her finding that the High Court lacked pecuniary jurisdiction. The proper order, under the circumstances, should have been to deal with the suit in accordance with Order VII Rule 10 (1) and (2) of the Code which stipulates:-

> *"1. The plaint shall, at any stage of the suit, be returned to be presented to the court in which the suit should have been instituted.*
>
> *2. On returning the plaint the judge or magistrate, shall endorse thereon the date of its presentation and return, the name of the party*

presenting it and a brief statement of the reasons for returning it."

All said and, as already intimated it is, accordingly, ordered that suit resumes in the High Court before another Judge.

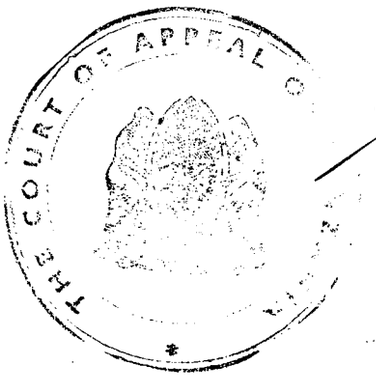
DATED at **ARUSHA** this 29th day of February, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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



E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL