

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: MUSSA, J.A., MMILLA, J.A. And MKUYE, J.A.)

CIVIL APPEAL NO. 48 OF 2012

**SAVINGS AND FINANCE COMMERCIAL
BANK LIMITED (LATELY KNOWN AS NIC
BANK TANZANIA LIMITED** }**APPELLANT**

VERSUS

**1. BIDCO OIL AND SOAP LIMITED
2. TRANS AFRICA FORWARDERS LIMITED** }**RESPONDENTS**

**(Appeal from the Judgment and Decree of the High Court of Tanzania
(Commercial Division) at Dar es Salaam)**

(Mruma, J.)

dated the 21th day of October, 2011

in

Commercial Case No. 84 of 2006

RULING OF THE COURT

15th June, & 6th July, 2017

MUSSA, J.A.:

In the High Court (Commercial Division) of Tanzania, the first respondent instituted a suit against the appellant for a refund of a sum of Shs. 66,414,835/= which arose from a wharfage bill. As it were, the suit was lodged on the 10th November, 2006 but, a good deal later, on the 22nd March, 2007 the appellant filed a third party Notice against the second

respondent. At the height of the trial, judgment was entered against the appellant and the claim against the second respondent (third party) was dismissed in its entirety (Mruma, J.). Dissatisfied, the appellant presently seeks to impugn the verdict of the trial court upon a memorandum of appeal which is comprised of six points of grievance.

When the appeal was placed before us for hearing the appellant was represented by Mr. Dilip Kasaria, learned Advocate, whereas the first and second respondents had the services of Messrs Deogratias Lyimo and Heavenlight Mlinga, respectively. As counsel from either side geared towards arguing the appeal, we prompted them to comment on whether or not the trial court had, in the first place, jurisdiction to entertain the suit.

In raising the concern, we had in mind the provisions of the Written Laws (Miscellaneous Amendment) Act No. 25 of 2002 which amended section 40 (2) of the Magistrate's Court Act, Chapter 11 of the Revised Laws (MCA). In effect, by that amendment, the pecuniary jurisdiction of a District Court in suits capable of being estimated at money value was enhanced from a sum not exceeding ten million shillings to a sum not exceeding one hundred million shillings. We also had in mind our decision in the case of **Tanzania**

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TLR 70 which limited the downward pecuniary jurisdiction of the High Court in matters that are triable by subordinate courts in accordance with section 13 of the Civil Procedure Act, Chapter 33 of the Revised Laws (CPC). We were keenly aware that, by a recent amendment, the provision has been qualified with a rider which upholds the downward jurisdiction of the High Court but, section 13 of the CPC, as it then stood at the time of the trial at hand, unreservedly required every suit be instituted in the court of the lowest grade competent to try it.

Having disclosed the foregoing position, counsel from either side unhesitatingly conceded that the trial court had no jurisdiction to entertain the suit giving rise to this appeal. In the result, Messrs Kesaria, Lyimo and Mlinga, in unison, advised us to invoke our revisional jurisdiction and quash the entire proceedings of the High Court.

As we, however, retreated to compose a Ruling on the matter, it came to our attention that there was a further amendment which is constituted in the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2004. By this

amendment, a new subsection 3 was added immediately below subsection 2 and the same goes thus:

" (3) *Notwithstanding subsection (2), the jurisdiction of the District Court shall in relation to commercial cases be limited-*

(a) *In proceedings for recovery of possession of immovable property, to proceedings in which the value of the property does not exceed fifty million shillings and;*

(b) *In proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed thirty million shillings."*

[Emphasis supplied.]

The extracted amendment came into effect on the 14th April, 2004 and, thus, it was obviously in force at the time when the suit was instituted. To say the least and, quite regrettably, we are, on a reflection, satisfied that the

trial court had jurisdiction to entertain the suit. That being the position, we defer the hearing of the appeal to a date to be fixed by the Registrar.


DATED at DAR ES SALAAM this 4th day of July, 2017.

K.M. MUSSA
JUSTICE OF APPEAL

B.M.K. MMILLA
JUSTICE OF APPEAL

R.K. MKUYE
JUSTICE OF APPEAL

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



E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL