

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 66 OF 2007

LAURENT CHACHA PLAINTIFF

VERSUS

TWIGA BANCORP LTD DEFENDANT

Date of last order – 30/11/2007

Date of Ruling – 5/2/2008

R U L I N G

Oriyo, J.

According to the plaint, the plaintiff filed the suit against the defendant, Twiga Bancorp Ltd (formerly known as the National Bureau de Change). It is alleged in the plaint that when the plaintiff was in the defendant's employment, the latter initiated a criminal prosecution against him. Criminal Case No. 698/2001, **R. Vs. Rajabu Mbwana** and Others held at the Kisutu Resident Magistrates Court, Dar es Salaam ended in favour of the accused; and they were acquitted. The plaintiff further alleges that the defendant had no reasonable and

probable cause to initiate the criminal prosecution. The court is asked to order the defendant to pay the plaintiff a sum of shs.170,000,000/= being general damages and shs.50,000,000/= being special damages. The special damages are the costs incurred by the plaintiff to engage counsel in the criminal case. The plaintiff prays for interest and costs of the suit as well.

In its Written Statement of Defence, the defendant raised a legal point of preliminary objection that:-

"This court has no pecuniary jurisdiction to entertain the suit".

On the representation of parties, the plaintiff is suing through the services of Mr. Luguwa, learned counsel. The defendant is advocated for by Mr. Rweyongeza, learned counsel.

In his oral submission to support the objection, Mr. Rweyongeza stated that the reliefs sought by the plaintiff are shs.170 million for general damages and shs.50 million for special damages; the total payment being shs.220 million. He

argued that the amount upon which the jurisdiction of the court is based is on the special damages of shs.50 million. Further submission was that an award of general damages depends on the court's discretion and cannot be used as a basis to determine the pecuniary jurisdiction of the court.

The learned counsel contended that the pecuniary jurisdiction of the High Court begins at shs.101 million in terms of Section 40 (2) (b) of the Magistrates Courts Act as amended. He stated that Section 40 (2) (b) above should be read together with Section 13 of the Civil Procedure Act. Therefore; the learned counsel submitted; since the substantive sum of claim is less than shs.100,000,000/= the High Court has no pecuniary jurisdiction to adjudicate upon the matter. Counsel cited the Court of Appeal decision in the case of **TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD VS. OUR LADY OF THE USAMBARA SISTERS**, C/A No. 84/2002 DSM Registry (unreported) in support of the objection.

For the plaintiff, Mr. Luguwa, learned counsel argued that the Court of Appeal decision is distinguishable in that the basis

of claim was contract while the suit at hand is based on tort. He stated that otherwise upholding the defendant's objection would amount to holding that this court has no jurisdiction over tortious claims. Counsel final contention was that it is immaterial whether the general damages claimed is quantified or not. He asked the court to dismiss the objection.

The issue here is whether the High court has a limited pecuniary jurisdiction. The answer is simple and straightforward. The High Court has an unlimited pecuniary jurisdiction as per Article 108 of the Constitution of the United Republic of Tanzania Cap. 2 [R.E. 2002] which provides as hereunder:-

"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 subarticle shall apply without prejudice to the jurisdiction of the Court of Appeal of Tanzania as provided for in this Constitution or in any other law".*

However, for convenience purposes and for the even distribution of litigation/suits at all court levels; there are some

legislations which touch on the pecuniary jurisdiction of the High Court. Such legislations include the Civil Procedure Act, Cap. 33 (R.E. 2002) and the Magistrates Courts Act, Cap. 11, [R.E. 2002]. For ease of reference some of the relevant provisions are reproduced.

Section 40 (2) (b) of the Magistrates Courts Act as amended by Act 25/2002, provides for the pecuniary jurisdiction of District Courts and/or the courts of a Resident Magistrate in civil litigation. It states:-

" . . . 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 one hundred million shillings".

Further, Section 13 of the Civil Procedure Act states as follows:-

"13. Every suit shall be instituted in the court of the lowest grade competent to try it. For the purpose of this section, a court

of a resident magistrate and a district court shall be deemed to be courts of the same grade".

In terms of Section 40 (2) (b) of the Magistrates Courts Act, read together with Section 13 of the Civil Procedure Act; the Magistrates Courts have pecuniary jurisdiction over the substantive claim in the case at hand; of shs.50 million. The plaintiff's suit ought to have been filed in the subordinate courts. The pecuniary jurisdiction of the High Court is as per Section 40 (2) (b) of the Magistrates Courts Act; where the substantive claim exceeds shs.100,000,000/=.

In view of the law as stated in the foregoing provisions; it is obvious that the High Court has no pecuniary jurisdiction to entertain a suit of shs.50,000,000/=. As it was held by the Court of Appeal in the case of **Tanzania –China Friendship Textile Co. Ltd Vs. Our Lady of the Usambara Sisters** (supra); it is the substantive claim in the suit which determines the pecuniary jurisdiction. General damages are not taken into account in determining the pecuniary jurisdiction for a number of reasons.

One reason is that general damages are not qualifiable and if quantified, the value placed on general damages is immaterial in the circumstances. Two, is that general damages are awarded at the court's discretion. So the amount of general damages awarded is determined by the court (see another Court of Appeal decision in the case of **COOPER MOTOR CORPORATION LTD VS. MOSHI/ARUSHA OCCUPATIONAL HEALTH SERVICES** [1990] TLR 96).

The learned counsel for the plaintiff, in addition to opposing the objection; prayed that in the event that the objection is upheld; the suit be transferred to the subordinate courts. On the defendants part, Mr. Rweyongeza opposed the prayer for transfer of the case. He submitted that the case cannot be transferred because it does not fall under the ambit of Section 21 of the Civil Procedure Act. Secondly he submitted that transfer of the case would amount to pre-empting the objection raised.

On whether the suit is transferable in terms of Section 21 (1) (a) of the Civil Procedure Act or not; I think the High Court

has wide discretionary powers under the provision to transfer a suit to a subordinate court. It states:-

*"21 – (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court **may at any stage** –*

(a) transfer any suit or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same;"

Had the circumstances been different; the High Court could have legally exercised its powers above and transfer the suit to a subordinate court. But as submitted by the defendants learned counsel, such order of transfer would effectively pre-empt the defendants objection which has been upheld.

In the result, the preliminary objection is sustained and the suit is struck out with costs.

Accordingly ordered.

K. K. Oriyo

JUDGE

5/2/2008

5/2/2008

Coram: Oriyo, J.

For the Plaintiff – Absent (Luguwa advocate enters late)

For the Defendant – Zake Advocate

C.C. Emmy

Court: Ruling delivered in the presence of parties.

Order:

1. Preliminary objection sustained.
2. Suit struck out with costs.

K. K. Oriyo

JUDGE

5/2/2008