

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

CIVIL CASE NO. 21 OF 2008

BETWEEN

ELIPHAS L. MOLLELIAN PLAINTIFF

AND

1. RELI ASSETS HOLDINGS COMPANY 1ST DEFENDANT
2. TANZANIA RAILWAYS LIMITED 2ND DEFENDANT

Date of Last Order: 10/02/2012

Date of Ruling: 13/02/2012

RULING

A.C. NYERERE, J

The plaintiff herein sues the defendants jointly and severally for the tort of malicious prosecution for a number of reliefs. But before addressing the main cause, the defendants raised a total of two (2) Preliminary Points of Objection hence this Ruling. The said preliminary points of objection are that;

- (a) On the basis of the pleadings, the High Court lacks jurisdiction to entertain this suit.
- (b) This Court lacks jurisdiction to entertain claims based on employer – employee relationship.

When the matter came for hearing, parties herein agreed to dispose of the matter orally whereas the plaintiff was represented by Mr. Lawena learned Counsel while Mr. Gwakisa learned Counsel appeared for the defendants. In the first place, the defendants' learned Counsel prayed to argue the two Preliminary Points of Objection altogether as they are more or less similar.

Now, arguing for the Preliminary Points of Objection, **first;** Mr. Gwakisa learned Counsel for the defendants submitted that the claims before this Court ought to have been referred as trade disputes where the Court with competent jurisdiction being the High Court (Labour Division) per the provisions of section 51 of the Labour Institutions Act, No. 7 of 2004.

The defendants' learned Counsel further submitted that the provisions of section 52(1) of the Labour Institutions Act (supra) read;

"Labour Court shall have all powers of the High Court".

In addition, the defendants' learned Counsel referred this Court to the case of **TAMBUENI ABDALLAH & 89 OTHERS vs. NATINAL SOCIAL SECURITY FUND**, Civil Appeal No. 33 of 2000 where the Court of Appeal of Tanzania observed that High Court lacks jurisdiction to entertain trade disputes as it reads at page 13 that;

"It is clear to us that trade disputes have to follow that prescribed procedure and there is no room for going to the High Court straight. The High Court has no original jurisdiction to entertain trade disputes".

Further; Mr. Gwakisa learned Counsel referred this Court to the Court of Appeal decision i.e. the case of **NBC HOLDING CORPORATION vs. MRS. DINNAH NKYA**, Civil Appeal No. 81 of 2008 where the Court observed at page 9 that;

"Hopefully, we have amply demonstrated that the High Court had no original jurisdiction to entertain and adjudicate upon this trade dispute".

In addition, the defendants' learned Counsel argued that the prayers under the plaint in item 11 paragraph (a) for payment of Tshs. 150,000,000/= being damages for loss of employment, paragraph (c) for payment of Tshs. 200,000,000/= being life pension for the period of the plaintiff's employment and paragraph (e) for payment of Tshs. 39,808,952/= being payment of half salaries and leave allowances from December, 2002 up to September, 2007 i.e. the date when the plaintiff was acquitted from the charged criminal case all the prayers fall under an employee – employer relationship or trade dispute out of the jurisdiction of this Court.

Secondly; the defendants' learned Counsel submitted that the plaintiff has quantified the claimed general damages at his own discretion so as to be accommodated within the Jurisdiction of this Court which is improper. Arguing for that, the defendants' learned Counsel referred this Court to the case of **TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD vs. OUR LADY**

OF THE USAMBARA SISTERS [2006] T.L.R 70 where the Court of Appeal of Tanzania held that;

"(ii) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the Court".

Further reference was made to the case of **EDWIN WILLIAM SHETTO vs. MANAGING DIRECTOR OF ARUSHA INTERNATIONAL CONFERENCE CENTRE [1999] T.L.R 130** where the Court of Appeal of Tanzania held that;

"(iv) It is wrong pleading to put a specific amount in a claim for general damages; the quantum of general damages, where awardable, is assessed by the Court".

The argument by the defendants' learned Counsel has bases under item 11 paragraph (b) in the amended plaint the prayer which is for payment of Tshs. 350,000,000/= for psychological torture and embarrassment suffered which is a pure general damage whereas the prayer under item 11 paragraphs (a) and (c) are also prayers on damages which are granted under discretion of the Court which cannot be construed to constitute the pecuniary Jurisdiction of this Court.

The defendants' learned Counsel thus argued that the provisions of section 13 of the Civil Procedure Code, [CAP. 13 R.E, 2002] which requires a suit to be instituted in a lowest Court with competent Jurisdiction to entertain and since the plaintiff has just stated in item 11 of his amended plaint that

this Court has jurisdiction simply because of its territorial position i.e. being within Arusha Municipality, then; such bases are insufficient to vest Jurisdiction to this Court to entertain the matter at hand.

Lastly; Mr. Gwakisa learned Counsel argued that the prayer under item 11 of paragraph (d) of the amended plaint which is for some alleged legal service costs regarding demand notice, the powers and Jurisdiction which is vested to the District Registrar vide a taxation cause guided under the Advocates Remuneration and Taxation Rules, G.N. No. 515 of 1991 specifically at Rule 3 have been improperly pleaded. He thus prayed for the suit to be dismissed with costs for lack of Jurisdiction.

In rebuttal; Mr. S.J. Lawena learned Counsel submitted that the plaint was prepared by a layperson consequently of which other matters were unnecessarily and improperly pleaded in the present suit instead of just sticking to the issue of malicious prosecution as the main cause as per items 4, 6 and 7 of the amended plaint. The plaintiff's learned Counsel thus prayed for the contents under paragraph 8 of the amended plaint to be expunged from the Court record.

In respect of the pleaded general damages; the plaintiff's learned Counsel conceded that quantification of the general damages was wrong though he argued that that fact does not make the whole plaint incompetent. The plaintiff's learned Counsel thus prayed for this Court to further allow the plaintiff to make further amendments to the in place amended plaint so as

to separate the two issues of malicious prosecution and employment as by virtue of filing of the present Preliminary Points of Objection, the plaintiff had no other opportunity to pray for such an opportunity as that could amount into pre-empting the already raised Preliminary Points of Objection.

In rejoinder; Mr. Gwakisa learned Counsel argued against the prayer of further amendment stating that that will derogate the cardinal principle in law that requires claims/suits to come into an end. In the alternative, the defendants' learned Counsel argued that in case this Court exercises its vested discretionary powers to order further amendments, then; such leave should be granted with costs in favour of the defendants.

Having gone through the Court records on one hand and the respective submissions by the respective learned Counsel on the other hand, this Court has the following in disposal of the two Points of Preliminary Objection which were argued altogether.

The prayers under paragraph 8 of the amended plaint show that the plaintiff prays for remedies in employment, malicious prosecution and psychological torture/defamation. It is uncertain if really the plaintiff aims at claiming for defamation as no facts in the plaint establish a cause of action regarding the tort of defamation.

To this Court, starting with the issue of damages; unlike special or liquidated damages which must be specifically pleaded and proved, the quantum in general damages cannot be expressly set out in the plaintiffs' pleadings. **THE LAW OF TORTS** by Salmonds & Heuston, 21st Edition reads at page 503 that;

"That kind of damages that the law presumes to follow from the wrong complained of and which therefore need not be expressly set out in the plaintiff's pleadings".

Likewise, the issue of general damages has been dealt with in a number of cases whereas for instance the High Court of Tanzania in the case of **STELLA TEMU vs. TANZANIA REVENUE AUTHORITY**, Civil Case No. 1 of 1999 had the following to say;

"She (plaintiff) ought to have realized much earlier that it is only special damages which are specifically pleaded and strictly proved. As far as general damages are concerned it will only suffice if they are pleaded and the Court, if satisfied that the plaintiff suffered such damages will assess the appropriate amount to be awarded as damages".

Now, if this Court concedes to the prayer of expunging all the paragraphs in respect of the other areas of the law leaving only the issue of malicious prosecution, then; the next issue will be in which Court can now one institute the said claim as issues of malicious prosecution falls more or less to the very issue of general damages as it is hard for one to prove specifically how much s/he has been maliciously injured thus amounting to

specific damages if at all as per the already cited case of **TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD vs. OUR LADY OF THE USAMBARA SISTERS** (supra), the only damages which ought to have pleaded are the specific damages unlike general damages.

From the immediate above paragraph it follows that, in which Court then should an intended plaintiff think of instituting his or her claim on malicious prosecution if the duty to assess such general damages is left to the Court to assess the amount which cannot constitute Jurisdiction of the Court? On the other hand, it is easy to determine as to which Court a suit on malicious prosecution can be instituted when within such claims there are special damages with the general damages in compliment, but; things turns different when the cause of action only takes with it general damages (as the present matter) the amount of damages which none could assess other than the Court.

To this Court, under such circumstances; since the High Court is neither too small and nor too big to determine any claim, prudence demands such claims to be instituted before the High Court especially when the resultant damage in the alleged malicious prosecution is so high as instituting a case before the Resident Magistrates' Court may limit the intended reliefs disfavours the plaintiff's interest as the Resident Magistrate Court will have just to confine it grants to the very prescribed Pecuniary Jurisdiction Court as such Court cannot grant general damages which are beyond its Pecuniary Jurisdiction.

The next issue is which Court can a claim of the present nature i.e. a matter emanating from an employment cause can be instituted? As rightly submitted by the defendant's learned Counsel, the only proper Court with Jurisdiction to entertain a matter of the present nature is the High Court (Land Division) as per the provisions of section 88 (1) (b) of the Employment and Labour Relations Act, No. 6 of 2004, as amended by Acts No. 8 of 2006 is very relevant in this case.

The said section provide thus:-

"88. (1) for the purposes of this section, a dispute means:-

(b) A complaint over-

*(ii) any other contravention of this Act or any other Labour Law or breach of contract or any employment or labour matter falling under Common Law, **tortious liability** and vicarious liability in which the amount claimed is below the pecuniary jurisdictions of the High Court".*

Again, the same law talks vests jurisdiction to the Labour Court as per the provision of section 94 (1) of the Employment and Labour Relations Act, No. 6 of 2004, as amended by Acts No. 8 of 2006 and No. 17 of 2010 provide as hereunder:-

"94. – (1) subject to the constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive

*jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common Law, **tortious liability**, vicarious liability or breach of contract”.*

For clearance of doubts regarding meaning of a labour Court, the provisions of section 4 of the Employment and Labour Relations Act (supra) defines labour Court in the following words;

“Labour Court’ means the Labour Division of the High Court established under section 50 of the Labour Institutions Act, 2004”.

Again, the Labour Institutions Act (supra) was amended specifically the very section 50 whereas the said section that establishes the Labour Division of the High was deleted in section 50(1) and substituted by Act No. 17 of 2010 thus to read;

“There shall be established a labour Division of the High Court”.

Therefore; from the above premises and as previously argued by this Court, the raised Preliminary Points of Objection are hereby sustained whereas the plaintiff is advised to file the matter before the High Court (Labour Division) as I have endeavoured to argue in this ruling. On the other hand, if the plaintiff accordingly feels to merge all the matters in a single suit i.e. all issues of malicious prosecution, employment, pension, damages for loss of employment etc. so as to avoid split of claims, again;

he is at liberty so to exercise such discretion as matters on tortuous liability can also be instituted before a labour Court.

Thus, the Preliminary Points of Objection are hereby sustained. Consequently, the suit is hereby struck out with costs. It is so ordered.

**SGD:- A.C. NYERERE
JUDGE
13/02/2012**

Ruling delivered in chambers this 13th day of February, 2012 in the presence of the plaintiff in person and Mr. Lawena learned Counsel for the plaintiff and in presence of Mr. Gwakisa learned Counsel for the defendant.



**SGD:- A.C. NYERERE
JUDGE
13/02/2012**

I hereby certify this to be a true copy of the Original.

A handwritten signature in black ink, appearing to be "H" or similar, written over a horizontal line.

DISTRICT REGISTRAR

ARUSHA

17/02/12