

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NUMBER 86 of 2006

REV CHRISTOPHER MTIKILA..... PLAINTIFF

VS

1. YUSUF MEHBOOB MANJI.....1ST DEFENDANT

2. QUALITY GROUP LIMITED.....2ND DEFENDANT

3. EDITOR TANZANIA DAIMA.....3RD DEFENDANT

4. PUBLISHER TANZANIA DAIMA.....4TH DEFENDANT

5. BUSINESS PRINTERS LIMITED.....5TH DEFENDANT

6. EDITOR OF TAZAMA NEWSPAPER.....6TH DEFENDANT

7. TAZAMA NEWSPAPER LIMITED.....7TH DEFENDANT

8. PRINTER OF TAZAMA NEWSPAPER.....8TH DEFENDANT

9. EDITOR OF MAJIRA NEWSPAPER.....9TH DEFENDANT

10. BUSINESS TIMES LIMITED.....10TH DEFENDANT

Last Order: 24-11-2011

Ruling: 27-02-2012

RULING

JUMA, J.

This is a ruling on a Notice of Preliminary objection raised by the Muganda, Kamugisha and Bwana Advocates

on behalf of the 1st and 2nd defendants herein. In this notice dated 22nd November 2011, the two defendants are contending that the Civil Case Number 86 of 2006 pending before me is unsustainable because this Court lacks the requisite pecuniary jurisdiction.

The plaintiff (REVEREND CHRISTOPHER MTIKILA) filed his Amended Plaint on 28th September, 2006 against a total of ten defendants: YUSUF MEHBOOB MANJI (1st defendant); THE QUALITY GROUP LIMITED (2nd defendant); EDITOR TANZANIA DAIMA (3rd defendant); PUBLISHER TANZANIA DAIMA (4th defendant); BUSINESS PRINTERS LIMITED (5th defendant); EDITOR OF TAZAMA NEWSPAPER (6th defendant); TAZAMA NEWSPAPER LIMITED (7th defendant); PRINTER OF TAZAMA NEWSPAPER (8th defendant); EDITOR OF MAJIRA NEWSPAPER (9th defendant); and BUSINESS TIMES LIMITED (10th defendant).

When the Preliminary Point of Objection came up for hearing on 23rd November, 2011 Mr. Kamugisha assisted by

Mr. Rattansi submitted in support of the objection. The plaintiff opposed the objection through Mr. Mosha whereas Mr. Marando supported the objection on behalf of the 5th, 9th and 10th defendants. The 6th and 7th defendants were represented by Mr. Mbuya who also supported the point of objection.

The essence of the submission by Mr. Kamugisha the learned Counsel is that the plaintiff's claim in terms of paragraphs 12 and 25 of the Plaint, is basically founded on general damages of Two Hundred Billion (TZS 200,000,000,000/=). The learned Counsel is in no doubt that the general damages which the plaintiff relies upon as a basis of his claim cannot be used to determine pecuniary jurisdiction of this Court. Mr. Kamugusha augmented his submission by drawing my attention to the Court of Appeal decision in **M/S TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD. vs. OUR LADY OF THE USAMBARA SISTERS, CIVIL APPEAL NO. 84 OF 2002 (DSM)** wherein the Court of Appeal categorically stated that it is specific damages that

determine the pecuniary jurisdiction, but not the amount that is claimed by the Plaintiff as general damages. Buoyed by this position of the Court of Appeal, Mr. Kamugisha contended that if the plaintiff had wanted this Court to entertain his suit, he should have pleaded pecuniary loss by quantifying his loss under the heading of special damages. Otherwise, the learned Counsel urged me to strike out the suit so that it may be filed at proper court.

Mr. Kamugisha also addressed himself on my concern over the belated way the 1st and 2nd defendants brought this Notice of Preliminary Objection. The learned Counsel submitted that any jurisdictional issue can be brought at any stage of the proceedings, i.e. even on the date set for hearing of a suit concerned.

With both Mr. Marando and Mr. Mbuya supporting the submissions by Mr. Kamugisha, Mr. Mosha begun by furnishing several reasons why the objection should be rejected. Although conceding that preliminary objections on points of

law could be raised at any point, the learned Mr. Mosha submitted that the timing should also consider the special circumstances of each particular case and the danger likely to result from misuse of the objections. The learned Counsel drew my attention to paragraph 15 of the Amended Written Statement of Defence which was filed on behalf of the 1st and 2nd defendants on 26th July 2007 and wherein the defendants do not dispute pecuniary jurisdiction of this Court.

In this paragraph 15, the 1st and 2nd defendants pleaded that: - *"...the pecuniary and territorial jurisdiction of this Honourable Court is admitted."* The learned Mr. Mosha contended that the 1st and 2nd defendants cannot now turn their back against their own paragraph 15 of the Amended Written Statement without seeking to amend it. Mr. Mosha also urged me to revisit the pre-trial conferences wherein the defendants had opportunities to raise their points of objections and put to an end any applications. Mr. Mosha observed that to sustain the point of objection at this late

moment is tantamount to an abuse of the processes of this Court.

Mr. Mosha drew support of the **Newspapers Act, Cap. 29** whose section 56, the learned Advocate contends confers jurisdiction on this Court to hear suits like present one which are founded on libel. The relevant section 56 of **Cap 29** provides

56.-(1) For the purposes of this Part "court" means the High Court of Tanzania, a court of a resident magistrate or district court presided over by a civil magistrate and references to a district court are references to a district court presided over by a civil magistrate.

(2) The provisions of this Part shall apply to every proceeding relating to a suit of a civil nature in respect of any action for libel arising out of anything or matter published in a newspaper and to no other proceeding.

I should perhaps at this juncture deal immediately with the question whether section 56 of the **Newspapers Act, Cap. 29** confer jurisdiction to courts. With due respect, Mr. Kamugisha

is correct to contend in his replying submissions that **Cap. 29** does not confer jurisdiction to courts.

The word “part” referred to in section 56 is Part VIII which is concerned with special procedure for trial of cases of defamation in suits of a civil nature. In its totality, section 56 of **Cap. 29** does not specify to which amongst the High Court, Resident Magistrates Courts or District Courts any specified type of libel or defamation should be filed. Section 56 (1) defines “courts” in a general inclusive term to cover the High Court of Tanzania, a court of a resident magistrate or district court presided over by a civil magistrate but leaving specific jurisdictions of each court to be determined by other laws.

Mr. Marando had two points in his replying submissions. The learned Counsel considered it to be elementary that the issue of jurisdiction is statutory and parties to a lawsuit cannot confer or agree to confer jurisdiction on courts. A pleading acquiescing pecuniary jurisdiction like paragraph 15 of the 1st and 2nd Defendants’ statement of defence

does not confer jurisdiction. In his second point, Mr. Marando submitted that a party filing a lawsuit should always do so at the court with requisite jurisdiction positioned at the lowest ladder.

In his replying submissions, Mr. Mbuya pointed out that the law already prescribes pecuniary jurisdiction. The learned Counsel went further and contended that a person suing for defamation must quantify his sufferings for purposes of determining which amongst the ladders of courts he should file his lawsuit. And if one cannot specify special damages falling within the jurisdiction of the High Court, Mr. Mbuya pointed out then he should not file his lawsuit in the High Court.

I have given considerable weight to the articulate submissions of the learned Counsel. From the perspective of these submissions; two main issues stand out for my determination from the objection on a point of law whether

this Court lacks pecuniary jurisdiction to entertain this suit. The first issue revolves around the belated way the preliminary point of objection on pecuniary jurisdiction of this Court was raised. I will seek to determine whether the issue of jurisdiction can be raised at any time as it was contended on behalf of the Defendants. The second issue is whether the Plaintiff has sufficiently pleaded the value of the subject-matter of his lawsuit appropriate to determine pecuniary jurisdiction of this Court and payment of court-fees.

I propose to begin with the second issue governing pecuniary jurisdiction because this can easily be discerned by looking at the facts pleaded in the Plaint and determine whether they comply with the mandatory requirements of Order VII of the **Civil Procedure Code, Cap. 33 (CPC)**. In so far as pecuniary jurisdiction of this Court is concerned, it is important to verify whether the Plaintiff in his Amended

Plaint, furnished the value of his lawsuit for the purposes of jurisdiction and of court fees.

The facts which the plaintiff has pleaded to show that this Court has pecuniary jurisdiction to sustain his suit are manifested in paragraphs 12, 23, 25 and 25 (1) of his amended Plaintiff. It is important to revisit these paragraphs if only to appreciate the main thrust behind the Notice of Preliminary Point of Objection.

In paragraph 12, the plaintiff claims against the defendants jointly and severally payment of a sum two hundred billion shillings (TZS 200,000,000,000/=) "...being unliquidated damages on account of the defamation committed by the Defendants...." In paragraph 23, the plaintiff prays for an award of general damages in the sum of two hundred billion shillings (TZS 200,000,000,000/=).

And under Paragraph 25 of the Amended Plaintiff the Plaintiff pleaded that:

25. For purpose of jurisdiction and court fees the principal sum claimed is shillings Two Hundred Billion (TZS 200,000,000,000/=) only and the defendants reside within the jurisdiction of this Honourable Court.

Finally, in prayer paragraph 25 (1) of his Amended Plaintiff the plaintiff prays for judgment and decree against the defendants jointly and severally as follows:

(1) General Damages in the sum of shillings Two Hundred Billion (TZS 200,000,000,000/=) only.

Mandatory contents of plaints are clearly enumerated from paragraphs (a) to paragraph (i) of Rule 1 of Order VII of the **CPC**. For example, a plaint cannot stand the scrutiny of this Court if in terms of in paragraph (a) of Rule 1 of Order VII it does not plead the name of the court in which the suit is brought. It cannot similarly stand if it fails to give particulars of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees. Upon my perusal of the

Amended Plaintiff, I am left with no doubt that the Plaintiff herein did not plead any statement of the value of the subject matter of his suit for the purposes of jurisdiction and determination of payable court fees. He therefore, did not comply with the mandatory provisions of Order VII Rule 1 (f) and (i) of the **CPC** which states:

1. The plaintiff **shall** contain the following particulars-

- (a) the name of the court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) **the facts showing that the court has jurisdiction;**
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) **a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of**

court fees, so far as the case admits. [Emphasis provided]

I am persuaded by a case from Uganda where the High Court of Uganda dealt with Order 7 rule 1 (f) of the **Civil Procedure Rules** of Uganda which is in *pari materia* with Order VII Rule 1 (f) and (i) of **CPC** of Tanzania. The High Court of Uganda in **James Fredric Pool Nsubuga c/o Kitio & Co. Advocates Vs Attorney General of Uganda (Civil Suit No.1296/87) [1990] UGHC 11** stated that Order 7 Rule 1 (f) of the **Civil Procedure Rules** of Uganda impose on Plaintiffs obligation of pleading “facts showing that the court has jurisdiction” in the matter. **Mr. Justice G.M Okello** stated:

“I have carefully considered the above arguments and the authorities cited. Order 7 rule 1 (f) of the Civil Procedure Rules clearly imposes on the Plaintiff a duty to state in his plaint facts showing that the court has jurisdiction in the matter. This was the view held in **Assan and & Sons Uganda Ltd .v. E.A Records LTD** above where it was added that mere assertion by the Plaintiff in the plaint that ‘the court has jurisdiction’ was not enough.

The important thing is that facts showing that the court has jurisdiction must be stated in the Plaint. This view was followed in **Bisuti vs. Busoga District Council HCCS No. 83/69: and Alexander G. Mutongole vs. Nyanza Textile Industries Ltd**"

I have similarly noted that Order VIII Rule 1 of the **CPC** of Tanzania is couched in a mandatory language with regard to particulars regarding a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees which every plaint shall contain.

From my foregoing finding, Mr. Mugisha is with respect correct in his submission that the Plaintiff's lawsuit is basically founded on general damages of Two Hundred Billion (TZS 200,000,000,000/=). This claim for general damages cannot be a basis for the pecuniary jurisdiction of courts within the guideline of the Court of Appeal in **M/S TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD. vs. OUR LADY OF THE USAMBARA SISTERS (supra)**. Mr. Mugisha is within the imperative of the

law to contend that the law in Tanzania is now well settled that pecuniary jurisdiction of courts cannot be determined by reference to prayers for unliquidated or general damages. For the purpose of the preliminary point of objection before me, the significance of the Court of Appeal decision in **M/S Tanzania-China Friendship Textile Co. Ltd (supra)** lies in its clarification of the principle of law regarding which, between substantive claim in a plaint (which the Plaintiff did not indicate) and general damages (which the Plaintiff prayed for in his Plaint) determine the pecuniary jurisdiction of the court. The answer is clear; it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court. I will apply that guidance of the Court of Appeal and I hereby hold that the Plaintiff's claim, based as it is on general damages does not comply with obligation to state the value of the

subject matter of the suit for the purposes of determining the jurisdiction of this Court.

From my reading of Order VII Rule 1 (i) of the **Civil Procedure Code** together with the precedent setting decision of the Court of Appeal in **M/S TANZANIA – CHINA FRIENDSHIP TEXTILE CO. LTD. (supra)** I can deduce three legal principles applicable to this present suit. First, a plaintiff wishing to file any lawsuit in this Court must in his Complaint specifically plead particulars regarding the value of the subject matter of the suit for the purposes determining the jurisdiction and court fees payable. Secondly, a person suing in a defamation or libel lawsuit must quantify his sufferings in monetary terms for purposes of determining pecuniary jurisdiction of the court and must proceed to file the suit at the ladder of courts consistent with what he has quantified in his pleadings as the value of his suit. The third legal principle arises from Mr. Moshia's contention that

because the 1st and 2nd defendants had in their amended written statement of defence acquiesced to the jurisdiction of this court over the suit, this Court has the requisite jurisdiction. With due respect, I do not agree with this line of reasoning. With due respect, Mr. Marando is correct in his submission that jurisdiction is a matter of law prescribed by statute or case law. Parties cannot agree amongst or between themselves to bestow jurisdiction on courts of law.

Having made a finding that Civil Case Number 86 of 2006 is not competently before this Court, I still have to express my displeasure with the belated way the preliminary points of objection leading up to this Ruling were brought. Although the law is clear that the question of jurisdiction can be raised at any time, I should perhaps point out that the five year interlude between 28th September, 2006 when the Plaintiff filed his Amended Plaintiff and 22nd November 2011 when a Notice of Objection was filed, is by any measure a very long time it took the very learned Counsel involved in this

suit to discover a want of jurisdiction. Records show that 1st and 2nd Defendants have had several earlier opportunities to bring their Notice of Objection but failed to seize the occasions. I will express my displeasure through my order on costs.

In the upshot, I hereby sustain the objection contending that the Civil Case Number 86 of 2006 pending before me is unsustainable because this Court lacks the requisite pecuniary jurisdiction. This suit is hereby struck out. I make no order on costs. It is so ordered.

DATED at DAR ES SALAAM this 27th day of February, 2012



**I.H. Juma
JUDGE**