

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO 35 OF 2010

HASSANI SAID.....APPLICANT

VERSUS

TAN RUSS INVESTMENT LTD

t/a MOVENPICK ROYAL PALM HOTELS.....1ST DEFENDANT

BRAISON MOSHI.....2ND DEFENDANT

SERENA HOTELS

t/a DAR ES SALAAM SERENA HOTELS.....3RD DEFENDANT

RULING

Date of Last Order: 21/11/2013

Date of Ruling: 14/3/2014

Bongole,J

This ruling is in respect of a Preliminary Objection on a point of law raised by the counsels for the defendant to wit:-

1. That this Honourable Court lacks pecuniary jurisdiction to entertain this matter as the plaintiff's main claim against the Defendants is for general damages.
2. That the amendment of the plaint was not properly made as it was after mediation had been marked failed.

The defendants seek dismissal of the case with costs.

In the conduct of this case, the plaintiff is represented by Mr. Melkior Saul Sanga learned Advocate and whereas the defendants have the legal service of M/s CRB Africa Legal Advocates.

Parties opted to dispose the Preliminary Objection by way of Written submissions.

In support of the Preliminary Objection counsels for defendants submitted that the law i.e section 6 of the civil Procedure code Cap. 33 R.E 2002] provides that nothing contained in it shall operate to give any court jurisdiction over suits the amount or value of which exceeds the pecuniary limits of its ordinary jurisdiction. That this indicates that a court can not adjudicate matters before it if the pecuniary jurisdiction is below or over the court's pecuniary jurisdiction. That in determining the actual amount subject to pecuniary jurisdiction of the court there are decided cases in an attempt to enable the court to do so. That in Civil Appeal No 84 of 2002 **Tanzania China Friendship Textiles Co. Ltd Vs. Our Lady of the Usambara Sisters, (2006) TLR at page 70** the Court of Appeal of Tanzania held *inter alia* that when determining cases on matters concerning the pecuniary jurisdiction of a court, it is the substantive claim which should be looked at and not the amount of damages prayed for. Nevertheless general damages are awarded at the discretion of the court and should not be specified. In addition it is wrong pleading to put specific amount in a claim of general damages the quantum of general damages were awarded, is awarded by court as stated in the **Civil Case No 3 of**

1997 Edwin William Shetto V Managing Director of Arusha International Conference Centre (1999) TLR at page 140.

That the case before us, the plaintiff claims for payment of Tshs. 200,000,000/= as general damages. That General damages are awarded at the discretion of the court and as stated in the cases stated above and can not be relied upon when determining the pecuniary jurisdiction of the court. That in this case there are no substantive claims.

In response, Mr. Melkior had a different view. He submitted that the case cited of **Tanzania China Friendship Vs Our Lady of Usambara Sisters** (Supra) had different facts from the present case as the case was purely a commercial transaction case while the present case is all about tortious acts and its liability by the defendants against the plaintiff.

That the decision of each case and its principle will differ if the facts are also different.

That looking at paragraph 5 of the amended plaint, the claims by the plaintiff is arising from false Imprisonment, defamation, malicious prosecution, economic loss, financial loss and sufferings in relation to Criminal Case No 2623 of 2009 at Kariakoo Primary Court.

He invited this court to glance on the decision in the case of **Peter Joseph Kilibika and CRDB Bank Public Company Ltd V Patrick Aloyce Mlingi, Civil Appeal No 37 of 2009 CAT at Tabora** (unreported) which had similar or related facts with the present case.

I am persuaded by Mr. Melkioris' argument that the present case differs from the **Friendship Textile** case (Supra) which has been cited by the defendant's counsel in support of the preliminary objection.

In the present case, the plaintiff claims arises from the alleged false Imprisonment, deformation malicious prosecution, economic loss, financial loss and sufferings in relation to Criminal Case No 2623 of 2009 at Karikoo Pr. Court whereas in the **Friendship Textiles** case (Supra) relates to costs incurred for the production of the vitenge Fabricks and Tax paid.

The court of appeal had this to say in the case of **Peter Joseph Kilibika** (supra)

"We shall deal first with the issue of jurisdiction of the High Court, the subject matter was deformation and unlawful confinement. The respondent claimed for damages for TZS 800,000,000/=. There was no claim made which could lead to a conclusion that the pecuniary value of the claim is not within the jurisdiction of the High Court. The circumstances of this case are different from the circumstances prevailing in Friendship Textiles (Supra). In the Friendship Textile case the principal claim was below Tzs 10,000,000/=. It was a specific claim of T.Shs. 8,136,720/= being the costs incurred for the production of the Vitenge Fabricks and Tax paid. We are therefore of the considered view that this ground has no basis".

In view of what I have endeavored to state above and by the authority cited, I am of a settled mind that the 1st objection raised has no merit and the arguments in support thereto though not lacking in attractiveness is but with no merit as well.

With regard to the 2nd preliminary objection, the advocate for the defendant invoked order V1 r.17 of the Civil Procedure Code Cap. 33 R.E. 2002 which provides that amendment of pleadings can be done at any

stage of the proceedings in such manner and on such terms as may be just. That this case was instituted in April, 2010, since then the plaintiff has been in possession of the plaint but did not make any attempts to amend the plaint until May 2013. That this manner does not abide with the rule set forth for amendment of pleadings. He is of the view that the law has to be complied as parties to suit should not take advantage of the provisions of the law but learned to give it respect it deserves. He prays that the preliminary objection be upheld. Responding to the above arguments, Mr. Melcheor submitted that the gist of the amendment of the original plaint was due to the fact that on 2nd Dec, 2011 the company affairs of the 1st Defendant was taken over by the 3rd defendant who inherited all rights and liabilities of the former. That the amendment can not be taken as a fault by the plaintiff but rather the claimant was forced to make an amendment to his pleadings so as to implead/join the 3rd defendant to be part of the suit.

I have given a compationate consideration to the rival arguments in respect of the preliminary objection and in the upshot I incline to support it. As it appears, the intention of the amendment is to add the 3rd defendant who has inherited the rights and liabilities of the 1st defendant. In other words the 3rd defendant who has been joined will put on the shoes of the 1st defendant having taken its affairs. As it is not disputed as to whether or not the 3rd defendant has taken the affairs of the 1st defendant, I find the amendment made to have been incomformity with the law and it is supposed to be blessed by this court as I hereby do.

The 2nd Preliminary Objection is overruled on reasons given.

That been said and done the Preliminary Objection raised is overruled, costs to follow the event in the main suit.

Ordered accordingly.

S.B. Bongole

JUDGE

14/03/2014

14/3/2014

Coram: S.B. Bongole,J

For the Plaintiff: In person

For the 1st Defendant

For the 2nd Defendant

For the 3rd Defendant

C.C. Mrangi

Ms. Catherine Zacharia

Ms. Catherine:

I pray for 1st Pre-trial conference.

Order: 1. 1st PTC on,27/5/2014

2. Parties duly notified.

S.B. Bongole

JUDGE

14/03/2014