

IN THE HIGH COURT OF TANZANIA

**AT TABORA**

CIVIL CASE NO. 14 OF 2009

. DEONATUS NKUMBO

2. ROBERT K. LWAMUZIGU .....PLAINTIFF( S)

VERSUS

THE DISTRICT EXECUTIVE

BARIADI DISTRICT COUNCIL .....DEFENDANT

**RULING**

27<sup>th</sup> August, 25<sup>th</sup> September, 2014

**RUMANYIKA, J**

Just as the matter was to take off, M/s Mwanahamis Kawega learned solicitor of the Defendants had to argue the five(5) limb preliminary point of objection (p.o). Taken by them formally way back 24/10/2013. Nevertheless she argued only two points of them. Having abandoned the remaining ones. Namely:

1. This court had no pecuniary jurisdiction.
2. The plaintiffs had sued a wrong person.

Mr. Emmanuel Musyani Learned Counsel represents the Plaintiffs.

Ms Kawega submitted that this court had no pecuniary jurisdiction. For decretal sum being claimed was merely general (as opposed to specific) damages. Which in law, had nothing to do with pecuniary jurisdiction of any court. Much as general damages needed no evidential proof. It was only dependant of courts' discretion. That the suit ought to have been instituted in a court of lowest grade competent to try it (subordinate hereto). The Learned Solicitor cited Section 13 of the Civil Procedure Code Cap 33 RE 2002 (the code) and the case of Tanzania – China Friendship Textile Co. LTD V. Our Lady of the Usambara Sisters (2006) TLR 70 (CA).

2ndly, Ms Kawega averred that the suit contravened the provisions of Section 12 (1) (b) of the Local Government District Authorities Act Cap 287 RE 2002 (the Act). One having not sued the Bariadi District Council. Which indeed was capable of suing or being sued. Not the present defendant (a mere employee of the former). In the light of all this, the incompetent suit be struck out with costs. Stressed Ms Kawega.

Whereas Mr. Musyani concedes that pecuniary jurisdiction of courts were not pegged on general damages really, counsel contends that the plaintiffs had stated no specific damages. Unlike it was the case in the case of Tanzania – China friendship (supra). It was respectfully distinguishable. That time was now up for court to

determine where should case be instituted were only general damages stated.

As regards the 2<sup>nd</sup> limb of the p.o, Mr. Musyani submitted that as long as the present defendant was, according to Regulations to the Act the Chief Executive Officer (the C.E.O) thereof, one was rightly sued. The p.o be overruled with no order for costs. Much the plaintiffs now having been reinstated, there was in essence, no longer a dispute.

In rejoinder, but reiterating, Ms Kawega submitted that it is only specific damages, that established court pecuniary jurisdiction. That as long as there were no specific damages stated, the suit ought to have been instituted in a primary court. Submitted M/s Kawega.

The issues are; (1) whether without specific damages being stated in the suit this court can assume pecuniary jurisdiction. (2) Whether the DED can be sued in place of his respective district council.

It is trite law (Case of Tanzania – China Friendship (supra). Leave alone Section 13 of the code, that suits be instituted in competent courts of lowest grade. As regards the issue of pecuniary jurisdiction, which indeed has the necessary nexus to specific damages being claimed, it can not be true that a case in which no

specific damages are stated be instituted in any court of the respective a party's choice.

This means that it is by design, not accidentally, that as a general rule, courts in vertical hierarchy have different pecuniary jurisdiction without this restriction, there would have been inevitable flood gate of litigation concentrated in court at a certain level. The higher the level of the court the higher the decretal sum being stated and vice versa. It follows therefore, that whenever there is no specific damages stated so as one to establish court pecuniary jurisdiction, it is, all things being equal, prudent that the matter be instituted in the lowest court in hierarchy. The primary court for that matter. (As proposed) correctly so in my view, by Ms Kawega. The 1<sup>st</sup> point of p.o sustained.

As regards the District Executive Director (DED) being sued in liue of the District Council, I will agree with Ms Kawega that of the two, only the latter were autonomous capable to sue or being sued in their name. Nor is this requirement optional. It is purely a point of law. The DED being the Chief Executive Officer (CEO) is immaterial. One may wish to know that powers to sue or of being sued is essentially a question of legal personality. At times, this has got nothing material to do with financial controlling powers of oneself. Nor can an employee, the DED for that matter, be sued in place of the employer (the respective District Council). Irrespective of one being

the CEO or an Accounting Officer for that matter. Too, the 2<sup>nd</sup> limb of the p.o crumbles.

The p.o is in the upshort, sustained in its entirety. The purported suit is dismissed with costs. As this court lacks pecuniary jurisdiction. But also, having been instituted against a wrong person. Ordered accordingly. The plaintiffs to institute it in an appropriate court.

R/A explained.

**S.M.RUMANYIKA**

**JUDGE**

**24/09/2014**

Delivered under my hand and seal of the court in chambers this 25/09/2014. In the presence of Mr. Emmanuel Musyani Learned Counsel only.

**S.M.RUMANYIKA**

**JUDGE**

**25/09/2014**