

**IN THE HIGH COURT OF TANZANIA**

**AT MBEYA**

**CIVIL CASE NO. 04 OF 2011**

**ELIAS FULANO MWASALYANDA ..... PLAINTIFF**

**VERSUS**

**1. MOHAMED ALLY OTHMAN**

**t/a OTHMAN MOTORS**

**2. JUMA ALLY**

**3. THE JUBILEE INSURANCE COMPANY  
OF TANZANIA LTD**

**..... DEFENDANTS**

**RULING**

*Date of last Order: 14/12/2015*

*Date of Ruling: 11/02/2016*

**Hon. A. F. Ngwala, J.**

The two Preliminary Objections on Point of law that have been raised by the third Defendant's counsel Mr. Muya in the Notice dated 24<sup>th</sup> day of August, 2015 are that:-

“(1) This honourable court has no pecuniary jurisdiction to entertain this case as the Plaintiff has not pleaded specific damages.

(2) The Plaint does not disclose the cause of action against the third Defendant”.

When the matter came up for hearing on 14<sup>th</sup> December, 2015, Mr. Muya submitted in support of the objection that the Plaintiff's claim as contained under paragraph 3 of the Plaint is founded on general damages. The Plaintiff has failed to plead specific damages which would enable this court to exercise its jurisdiction. Paragraph 3 of the Plaint shows that the Plaintiff's claim against all the Defendant is the amount of a sum of Tzs.150,000,000/= (that is one hundred and fifty million shillings) as damages for loss which he suffered by reason of a motor vehicle accident which involved the motor vehicle owned by the 1<sup>st</sup> Defendant, that was driven by the 2<sup>nd</sup> Defendant and insured by the 3<sup>rd</sup> Defendant".

In reply the learned Counsel for the Plaintiff, Mr. Kayange submitted that the High Court of Tanzania has unlimited pecuniary jurisdiction. It can entertain the instant civil suit as the Plaintiff has claimed general damages for the loss suffered; hence the raised Preliminary Point of Objection has no merit.

In view of their respective submissions the issue for the court's determination is whether this court lacks jurisdiction to entertain this suit?. In discussing the issue of jurisdiction reference is made to Order VII of the Civil Procedure Code [CAP. 33 R. E. 2002] that provides for the contents of the Plaint. The Order inter alia under Rule 1 (f) and (i) specifically for the purpose of this point of objection; under Rule 1 (f) it is stated that the Plaint must contain the facts showing that the court has jurisdiction.

In paragraph (i) of Rule 1 of Order VII provides to the effect that the Plaintiff must contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees.

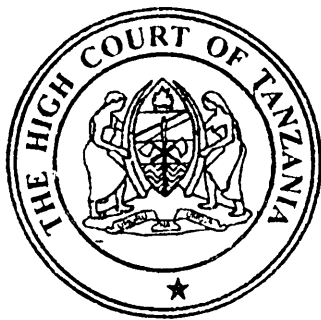
In the Plaintiff I do not see if the requirements of the above provisions of the law which are in mandatory terms in regard to the particulars on the statement of the value of the subject matter for the purposes of jurisdiction and of court fees have been provided. The mere assertion by the Plaintiff in the Plaintiff that the court has jurisdiction in paragraph 8 is insufficient. The important thing ought to be the facts showing that the court has jurisdiction must be categorically stated in the Plaintiff.

This reasoning is founded in the decision of the Court of Appeal of Tanzania in the case of **M/S TANZANIA CHINA FRIENDSHIP TEXTILE Co. LTD V. OUR LADY OF THE USAMBARA SISTERS, [2006] T.L.R. 71**, Originally, **CIVIL APPEAL No. 84 of 2002 AT DAR ES SALAAM** in which the court held that:- *“it is substantive claim and not general damages which determine the pecuniary jurisdiction of the court.”*

It is on those basis that Mr. Muya’s submission on pecuniary jurisdiction has merit. It is now a settled law in Tanzania that the pecuniary jurisdiction of courts cannot be ascertained by reference to prayers for general damages. The significance of the said decision by the Court of Appeal of Tanzania in the above mentioned case lies in its clarification of the principle of law between the substantive claim in the Plaintiff of which the Plaintiff did not claim or indicate

and the general damages that the Plaintiff prayed for in the Plaint determine the pecuniary jurisdiction of the court. It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court. In view of the guidance of the Court of Appeal of Tanzania I am inclined to hold that the Plaintiff's claim can not move this court to entertain the suit that is based on general damages and does not comply with the obligation to state the value of the subject matter for the purposes of determining the jurisdiction of this court.

For the foregoing reason, the second point of objection is not canvassed as the 1<sup>st</sup> point of objection disposes this matter. Accordingly, I uphold the 1<sup>st</sup> objection. The objection is sustained. The suit is struck out with no orders as to costs. That is each party shall bear his or her own costs.



A handwritten signature in black ink, appearing to read "A.F. Ngwala".

**A.F. NGWALA**  
**JUDGE**  
**17/02/2016**