

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
LAND CASE NO. 35 OF 2013**

**STAR DIGIATAL TECHNOLOGIES &
PRITWAYS LIMITED.....1ST PLAINTIFF
OLIVER'S INVESTMENT & CO. (1993) LIMITED.....2ND PLAINTIFF**

VERSUS

**STANBIC BANK (T)1ST DEFENDANT
MARCAS INVESTMENT & COMPANY2ND DEFENDANT
FODEYS SECURITY & ALARM SYSTEM.....3RD DEFENDANT**

RULING

MURUKE, J.

When Mr. Amon Ndunguru holding brief of Esther Shedrack for the plaintiff, requested to withdraw the suit, court refused, on the reason that, there is preliminary objection raised by the court on pecuniary Jurisdiction, which has to be determined first. Withdraw of the suit will amount to circumventing the preliminary objection raised.

It should be understood that high court does not have overall unlimited jurisdiction because it is subject to relevant laws. This was the dictum in the case of **China Tanzania Friendship**

Textile. Co. Ltd V. Our Lady of the Usambara Sisters (2006) TLR 70 (“Our Lady of the Usambara”), at p. 78. The reasoning in that judgment was that although Article 108 of the Constitution of the United Republic of Tanzania 1977 (The “constitution”) gives the High court unlimited jurisdiction in all manner of proceedings, that mandate is subject to other laws in force. In the same way, s. 2(3) of the Judicature and application of Laws Act (Cap 358 R.E. 2002) (“JALA”) gives the High Court full jurisdiction, but makes it subject to restraint by relevant laws in force. The MCA, in its S. 40 (2) (b) is such restraining law.

Masati, J. stated this principle in the case of **Anna Babu t/a E&L Catering Service v. Akiba Commercial Bank** (Commercial Case No. 68 of 2007 High court of Tanzania (Commercial Division, Dar es Salaam) (unreported). In that case, the learned Judge observed;

“....It is the plaintiff’s valuation that controls and determines the Court’s jurisdiction. So, it is the plaintiff’s plaint which sets the ball in motion; and not how the Defendant interprets it”.

The principle was also stated in another Ruling of this Court in the case of **Abdulrahman Kinana v. Hon Peter Simon**

Msigwa, (Dar es Salaam District Registry Civil Case No. 108 of 2013) (unreported) **The Kinana case**”), **this court observed that a plaintiff is therefore solely and strictly responsible for drawing his plaint and for the value he assigns to the suit.**

The High Court has followed this principle in several decisions, among others is the case of **George David Gordon V. Reliance Insurance Company (T) Limited** (Commercial Case No. 102 of 2005 High Court of Tanzania (Commercial Division, Dar es Salaam) (unreported) the “George Gordon case”) and that of **John Mallya v. M/S Zantel (T) Limited and Another**, High Court (Dar es Salaam District Registry) Civil Case No. 62 of 2007 (unreported).

In the Gorge Gordon case, the plaintiff claimed for loss of use of this motor vehicle at the rate of Tshs. 30,000/= per day from the de of accident to the date of payment in full. Masati, J. (as he then was) remarked:

“....although this amount was not claimed as general damages, the actual amount was still at large, and like, general damages, it was subject to proof and assessment by the court. I would

not therefore regard, the claim for Tshs. 18,000,000/= as part of the shs. 35,000,000/= that the plaintiff has put forward in his claim. I would, instead, relegate the principal sum to be claimed, to shs. 17,000,000/=".

The position of the court of Appeal as regards the principle in our Lady of the Usambara stands as good law until it is reversed by the said Court in a superior (full) bench. This is the position that was carefully laid out by a full bench of the Court of Appeal in the case of **Jumuiya ya Wafanyakazi Tanzania. Kiwanda cha Uchapishaji cha Taifa (1988) TLR 146.** (The "Juwata v. Kiuta case"). In that case, **Nyalali, C. J. Mustafa, Makame, Kisanga and Omar, JJ. A Quoted** with approval the case of **Dodhia V. National Grindlays Bank Limited and Another (1970) E.A. 195.** (the Dodhia's case") (at pp. 198 to 200). The Dodhia case stated.

"The results of distinguishing a decision when there was no real difference results in uncertainty, and uncertainty which would not exist if it were clearly stated that the old decision was no longer the law".

According to the plaint, there is no specific claim pleaded by the plaintiff, for the court to determine pecuniary jurisdiction. Plaint at paragraph 4 just says plaintiff claims **3,000,000,000** equal to **1,500,000** for each plaintiff being general and specific. It has not been shown, how much is specific for this court to determine pecuniary jurisdiction. Generalization done by plaintiff is against the law of pleadings. Accordingly plant is struck out for failure to state specific amount claimed by plaintiff for court to determine pecuniary jurisdiction. It is so ordered.



Z. G. Muruke

JUDGE

13/02/2018

Ruling delivered in the presence of Amon Ndunguru holding of Esther Shedrack for the plaintiff and Maiko Chahe for the first defendant.



Z. G. Muruke

JUDGE

13/02/2018