

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 179 OF 2019

NKUPA TANZANIA COMPANY LTD ----- APPLICANT

VERSUS

NMB BANK PUBLIC COMPANY -----1st Respondent

GADAU AUCTION MART & COMPANY LTD ----- 2nd Respondent

RULING

Date of Last Order: 18.10.2019

Date of Ruling: 28.10.2019

Ebrahim, J.:

On 2nd October 2019 the applicant/plaintiff, Nkupa Tanzania Company Ltd filed in this Court Civil Case No. 179 of 2019 suing NMB Bank Public Company and Gadau Auction Mart and Company Limited on their intention to attach and sell his house. Together with the plaint, the applicant also filed Miscellaneous Civil Application No 531/2019 seeking for an order of temporary injunction to restrain the respondents and their agents to sell the applicant's house within Block No. 1/D located at Shelui –

Nselembwe Street Iramba District in Singida Region pending the determination of the main suit.

Upon being served with the plaint and the application for injunction, the 1st respondent filed a counter affidavit challenging among other things the pecuniary jurisdiction of this court to entertain the suit filed by the applicant.

Owing to the raised issue of jurisdiction at para 3 of the counter affidavit, the court found it apt to address the issue of the jurisdiction of the main suit before it proceeds further with the case. It is for that reason, on 16.10.2019, the court issued an order for parties to prepare themselves and address the court on the point of jurisdiction. The hearing was scheduled to be on 18.10.2019.

In this matter the applicant/ plaintiff is represented by Mr. Benson Kuboja, learned advocate while the 1st respondent/ 1st defendant has preferred the services of Ms. Sangi Zilahulula who is also a learned advocate.

Submitting on the raised point of law as to whether this court has pecuniary jurisdiction to entertain the filed case, Mr. Kuboja argued the point on two limbs. On the first limb he argued that it is the substantive

claim in the plaint that establishes pecuniary jurisdiction of the court. He referred to para 4 of the plaint which averred that the claim of the plaintiff is Tshs. 310,000,000/-. To support his argument, Mr. Kuboja cited the case of **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sisters** [2006] TLR 70 which held the position that it is a substantive claim that determines the pecuniary jurisdiction of the court.

Mr. Kaboja submitted on the second limb that in order to ascertain as to whether the plaintiff suffered a specific loss at a preliminary stage, the plaintiff will be forced to prove the loss which is contrary to the spirit of a preliminary point of law. He stressed therefore that the only way to determine pecuniary jurisdiction is by looking at the substantive claim.

In reply, Ms. Sangi learned Counsel opposed the assertion by the counsel for the applicant. She contended that going through **annexture MB1** of the affidavit which a plaint, the applicant has not stated anywhere the value of the subject matter that shall enable in determining the pecuniary jurisdiction of the court as per the requirement of the law in terms of **Order 7 Rule 1 of the Civil Procedure Code, Cap 33 RE 2002.**

Responding further on the argument that it is an early stage to determine the loss suffered; Ms. Sangi submitted that this is the only time that the applicant is required to state the amount suffered in order to know the proper court that he is supposed to file his plaint. She submitted further that one of the requirements of the law on what should contain in a plaint is a statement of the value of the subject matter of the suit for the purpose of jurisdiction.

Concluding, she agreed that it is a substantive claim and not general damages that determines the jurisdiction of the court and insisted that this court has no pecuniary jurisdiction to entertain the instant matter. Ms. Sangi added that in para 4 of the plaint, the plaintiff however she prayed for the case to be dismissed with costs is seeking for declaratory orders and not substantive value.

In his brief rejoinder, Mr. Kuboja urged the court to be guided by the specific amount of Tshs. 310,000,000/- stated in the plaint which forms the basis of the substantive claim. He re-joined also that by stating the specific loss suffered the plaintiff conformed to the requirement of the law by stating the value which forms the basis of pecuniary jurisdiction of the

court. He concluded by praying to the court to try the matter on merits as it has the requisite pecuniary jurisdiction.

The issue of jurisdiction of the court is paramount hence the requirement to establish the same and the court to satisfy itself before commencement of any proceedings. Any trial of a proceeding by a court lacking requisite jurisdiction will be adjudged a nullity at a later stage of appeal or revision. The erstwhile East African Court of Appeal held in **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at 202 that:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

Order VII Rule 1 (f) and (i) of the Civil Procedure Code, Cap 33 RE 2002 provides that a plaint must contain among other requisite particulars facts showing that the court has jurisdiction and a statement of the value of the subject matter of the suit. The statement that is vividly lacking in the plaint.

Counsel for the Plaintiff in support of his assertion that this court has pecuniary jurisdiction to entertain the matter referred the court to para 4 of the plaint where he argued that the plaintiff's claim has been stated to be Tshs. 310,000,000/-. He cited the **Tanzania – China Friendship Textile Co. Ltd (supra)** in bringing the point that it is substantive claim that determines the pecuniary jurisdiction of the court. I entirely agree with the principle of the law that it is a substantive claim that determines the pecuniary jurisdiction of the court. The question now comes; does the averment in para 4 of the plaint state the value of the subject matter to confer this court with the pecuniary jurisdiction to entertain the present suit?

Para 4 of the plaint reads:

"That the Plaintiff claims against the defendants is (sic) for payment of TZS 310,000,000/- being specific loss arising from unjustifiable intention of auctioning the Plaintiff landed property, costs of this suit and general damages as quantified later".

Indeed what Mr. Kuboj a persuades this court to agree that the mentioned amount of Tshs. 310,000,000/- as specific loss amounts to the

pleading of specific claim. I am aware that specific claims/damages when specifically pleaded they elevate the value of the subject matter. However, the law requires that due to their exception in character, specific loss/damages must be **claimed specifically** and later strictly proven. This position, the position that I fully associate myself with, has been well articulated in the case of **Bamprass Star Service Station Ltd V Mrs. Fatuma Mwale**, [2000] TLR 390 (HC- Arusha).

As the law requires, the word **specifically** in defining special damages connotes the necessity of **specification of the detail of what is claimed**. It has to be damages suffered or their happening is so evidenced as directly connected to a cause of action to the date of filing the suit. Equally important is that the certainty on what amount was lost must be established by particularizing such loss. I am aware that specifying the loss/damages is one thing and then goes the requirement of strict proof of the same at the trial. Therefore a mere assertion of **specific loss** without particulars of such loss does not in any way convert it to substantive claim but rather anticipated damages.

The plaintiff has stated at para 16 of the plaint that the claims are for declaratory orders only. Nevertheless, looking at the reliefs sought, it is

self-defeating as nothing suggests any prayer for declaratory orders. The Plaintiff rather prays for payment of specific loss of TZS 310,000,000/-; general damages of Tshs. 90,000,000/-; costs and any other relief deemed fit by the court.

From the above background therefore and as alluded earlier that a jurisdiction of the court is purely statutory; I find this court to have no pecuniary jurisdiction to try the matter. Accordingly I dismiss Civil Case No. 179 of 2019 with costs.

Accordingly ordered.



Dar Es Salaam

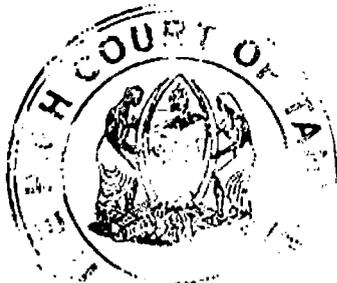
28.10.2019

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R.A. Ebrahim

Judge

Ruling delivered today in chambers in the presence of Advocate Kuboja counsel for the plaintiff and Advocate Sangi for the Defendant.



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R.A. Ebrahim

Judge

28/10/2019

Right of Appeal Explained.



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R.A. Ebrahim

Judge

28/10/2019