

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

**AT DAR ES SALAAM**

**CIVIL CASE No. 159 OF 2019**

**SAID MGANGA .....1<sup>st</sup> APPLICANT**

**MDOE ALLY.....2<sup>nd</sup> APPLICANT**

**ATHUMANI HASSAN.....3<sup>rd</sup> APPLICANT**

**SELEMANI SEIF.....4<sup>th</sup> APPLICANT**

**ALEXANDER LWANA.....5<sup>th</sup> APPLICANT**

**SAIDI SHAHA.....6<sup>th</sup> APPLICANT**

**THOMAS MKEKA.....7<sup>th</sup> APPLICANT**

**PETER NGONYANI.....8<sup>th</sup> APPLICANT**

**HUSSEIN ISSA.....9<sup>th</sup> APPLICANT**

**FRANK HIZZA.....10<sup>th</sup> APPLICANT**

**YASMIN RAJABU.....11<sup>th</sup> APPLICANT**

**OMARI NDENDELE.....12<sup>th</sup> APPLICANT**

**HALIMA SHINYAMBALA.....13<sup>th</sup> APPLICANT**

**LEONARD HAULE.....14<sup>th</sup> APPLICANT**

**NESTOR CHIMBUGA.....15<sup>th</sup> APPLICANT**

**WILSON BURTON.....16<sup>th</sup> APPLICANT**

**ABDALLAH AYUBU.....17<sup>th</sup> APPLICANT**

**SAIDI JOHARI.....18<sup>th</sup> APPLICANT**

**BATULI KIVUGO.....19<sup>th</sup> APPLICANT**

**KASIMU SOZIGWA.....20<sup>th</sup> APPLICANT**

**JUMA SAIDI.....21<sup>st</sup> APPLICANT**

Versus

**HON. JETHRO TURAMWESIGA.....RESPONDENT**

## **RULING**

9<sup>th</sup> April -28<sup>th</sup> April, - 7<sup>th</sup> May, 14<sup>th</sup> May, 2020.

**J. A. DE-MELLO J;**

This Ruling is in respect of the **Preliminary Objections** raised by **Bernard Masimba** Counsel for the Respondent, lodging three Points of law as hereunder;

- 1. This Honourable Court has no Pecuniary Jurisdiction to entertain this suit.**
- 2. Owing to the provisions of paragraph four of the Plaintiff this suit is hopelessly Time Barred.**
- 3. The Plaintiff is fatally defective for failure to state particulars as required by the provisions of Order VI Rule 4 of the Civil Procedure Code Cap. 33.**

On the **13<sup>th</sup> February, 2020** with parties before me, written submissions for the said objections was preferred of which both have complied to. Counsels **Bernard Masimba**, for the said objection is fending for the Defendant, whereas; **Hashim Mziray**, is for the Plaintiff. Submitting on the first limb of objection, it is Counsels contention that this Court has no pecuniary jurisdiction considering that each Plaintiffs is each claiming for himself. Drawn from simple arithmetic, the **TShs. 298,000,000/=** divided by two hundred and eight (280) Respondents in **Civil Revision No. 47 of 2008** each would claim **TShs. 1,064,285/=**. Drawn for the **Written Laws (Miscellaneous Amendments) Act of 2016**, the **Magistrates Court Act Cap. 11** was amended to mandate the Primary Court jurisdiction to entertain the matters which do not exceed **TShs. 30,000,000/=** for movable property and, **TShs. 50,000,000/=** for immovable. **Section 18 (1) (a) (ii) (iii)** of the **Magistrate Court Act**, which was amended, takes cognizant of the **Civil Procedure** under **section 13** which provides that, every suit shall be instituted in the Court of the lowest grade competent to try it. In the case of **Attorney General vs. Diocese of Njombe (2004) TLR 94**, this Court held that, the value of the subject matter in this suit is outside the pecuniary limits of the jurisdiction of the subordinate Court rendering it improper before High Court. With regard time barred, Counsel contends that **Civil Revision No 47 of 2008** was settled in the High Court on **13<sup>th</sup> February, 2012**, while this suit was filed on **10<sup>th</sup> September, 2019**, over seven years long after. It being a contractual dispute, the **Law of Limitation Act Cap. 89** under Schedule Item 7 provides for six years only. Nothing has been shown to exhibit exemption as provided by **Order VII Rule 6 of the Civil Procedure Code Cap. 33**. Addressing the third

ground, Counsel suggest missing particulars to substantiate professional negligence as required under **Order VI Rule 4** of the **Civil Procedure Code** for dates and, items.

This, he proposes goes a long way to afford the Defendant to know the nature of the case that, has been brought against him.

It under **paragraph 6**, that the case based reading;

**6. "That the Plaintiffs are aware that the defendant acted professionally negligence in misappropriate (sic) or Mishandling of the stated sum of TShs. 298,000,000/=which are their entitlement..."**

It is a demand of not only the law but supported by a chain of cases as I share this one from **Asha Jayawant vs. Lalsingh Air 1963 Bom 223** holding;

**"...where negligence or contributory negligence is charged, full details must be given of acts on which the party pleading rely as constituting negligence".**

In the interim and from the foregoing, the Defendant prays the preliminary objections be upheld with costs.

In reply, Counsel **Hashim Mziray** submitted that, jurisdiction was establish in case of **Mukisa biscuit**, the amount arrived at by the Defendant to the tune of **TShs.298,000,000/=** which in his thinking is a matter of evidence as opposed to ascertaining at this juncture. Further that, the cited case of **Attorney General vs. Diocese of Njombe** c is distinguishable with this present case, whose underlying legal principle governing jurisdiction of

the Court was under the **Government Proceedings Act 1967**, whose Principal sum was **TShs. 8 million** which from the face of it, was to be instituted in the lowest Court. In reply to the second ground of objection is that the suit before this Court is not for breach of contract but, a tortious one on professional negligence, hence non annexure of any document in support. This was following advise on the **19<sup>th</sup> September 2019** when the Tanganyika Law Society, to stage a civil suit. Professional negligence can be raised at any time after discovery of set of negligence on the part of the Plaintiffs, he observed. Citing the case of **Kipumbwi Village Council vs. Kwakibuyu village Council, Land Case No. 13 of 2015** page 4 of first paragraph and last paragraph.

**"...torts like nuisance, false imprisonment and trespass to land which though may be done once but, the consequences and damages arising from them are continuing, are regarded as continuing tort.**

In those types of torts, a fresh cause of action arises "**de die dem**", that, is, from day to day, so long as the wrongful state of affairs continues. In such a case, the Plaintiff's suit is covered by **section 7 of the Law of Limitation Act**. On the third ground, Counsel wondered how this is raised considering that all particulars of negligence are found in **paragraph 5,6,7,8,9 and 10** of the Plaint. The case of India referred to is distinguished from the scenario case, as it is for the injury claim as opposed to this one solely on professional negligence. Therefore, he prays before this Court to dismiss the said preliminary objection, all it being baseless and, with costs.

Let me at this outset state that, none of the objections are with merit. I am saying so commencing from what section 6 of the **Civil Procedure Code Act Cap 33 R. E. 2002** provides that;

**“save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction”.**

The case of **Tanzania harbor Authority V. African Liner Agencies Co. Ltd (2004) TLR 127**, emphasized what **section 6** is all about, calling Courts to observe the pecuniary of the High Court.

We are all mindful that, issue of Jurisdiction can be raised at any stage even in Appeal, as was determined the case of **Richard Julius Rugambura vs. Issack Ntwa Mwakajila, &Another [CAT] Civil Appeal No. 3 of 2004 as follows;**

**“...the question of jurisdiction is fundamental in Court proceedings and can be raised at any stage, even at the appeal stage. The Court, ‘Suo Motu’ can raise it.”**

A similar stance was held in **Baig and Batt Construction Ltd vs. Hasmati Ali Baig, [CAT] Civil Appeal No. 9 of 1992.**

Moreover, **section 13 of Civil Procedure Code Cap. 33** states that;

**“Every suit shall be instituted in the Court of the lowest grade competent to try it and, for the purpose of this section, a Court of resident magistrate and a District Court shall be deemed to be**

**Courts of the same grade” compels suits to be instituted in the Court of the lowest grade competent to try it, for which substantive claim determines jurisdiction as opposed to purely discretionary, judiciously exercised on general damages.**

**Section 13** was amended by **section 9 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016** dated the **18<sup>th</sup> of July, 2016**, regarding the place of suing as was the findings in the case of **Tanzania-China Friendship Textile Co. Ltd vs. Our Lady of Usambara Sisters [2006] TLR 70.**

**Section 22** of the **Written Laws (Miscellaneous Amendments) Act No. 3 of 2016** amended **Section 40** of the **Magistrate Court Act Cap. 11 the Principal Act** is amended in **sub-section (2)**, by;

**(a) deleting the words “one hundred and fifty” appearing in paragraph (a) and substituting for it the words “three hundred”; and (b) deleting the words “one hundred” appearing in paragraph (b) and substituting for it the words “two hundred.**

It is also evident and, as shown in **paragraph five** of the **Plaint** that, the total amount claimed is **TShs. 298,000,000/=** well within the pecuniary jurisdiction of this Court. On the second ground, this being a Tortious liability on alleged professional negligence supported by the case of **Kipumbwi village council vs. Kwakibuyu Village Council Land Case No. 13 of 2015 page 4** of first paragraph and, last paragraph stipulates that;

**“...torts like nuisance, false imprisonment and trespass to land which though may be done once but the consequences and**

**damages arising from them are continuing, are regarded as continuing tort”.**

Similarly, is the third ground on which particular of negligence are spelt out in **paragraphs 5,6,7,8,9** and, **10** of the Plaint.

The practise of raising objections haphazardly have a negative repucartions of timely dispensation of justice and, which Courts are reminded not to condone such practise. None of the three had legal foundation and hence waste of time and abuse of Court process. I dismissed them all and with costs

The substantive suit shall proceed to be heard on its merits and, by law guiding Civil suits, that of **Balance of Probabilities.**

It is so ordered.

  
**J. A. DE-MELLO**

**JUDGE**

**14<sup>th</sup> MAY, 2020**