

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

**CIVIL CASE NO. 4 OF 2019**

**THE OPEN UNIVERSITY OF TANZANIA.....PLAINTIFF  
VERSUS**

**FRIDA WALIWEHULI .....1<sup>ST</sup> DEFENDANT  
FLORA WALIWEHULI .....2<sup>ND</sup> DEFENDANT  
EMMANUAEL WALIWEHULI .....3<sup>RD</sup> DEFENDANT**

**RULING**

**MASABO, J.:**

This is a ruling in respect of a preliminary objection on a point of law raised by the defendants, that this court has no jurisdiction to entertain the suit. The application was argued in writing. Both parties were represented. The plaintiff was represented by Mr. Kalokola, learned State Attorney and the Defendant was represented by Mr. Mashaka Ngole, leaned counsel.

In the upshot, the plaintiffs is claiming against the defendant specific damages of Tshs 588,669,300/= in respect of unutilized sum paid by the plaintiff as rental fee and Tshs 100,000,000/= as general damages. In support of the objection, Mr. Ngole has argued that, the plaint filed by the plaintiff contravenes a mandatory requirement of Order VII Rule 1(i) of the Civil Procedure Code [Cap. 33 R.E 2019], that the plaint shall contain " a statement of the value of the subject matter of the subject of the suit for purposes jurisdiction and court fees." Mr. Ngole cited the case of **Jamal Said and 3 Others v Karmal Azizi Msuya**, Land Case No. 42 of 2017

(unreported) where it was held that failure to include the said statement has an effect on the jurisdiction of the court.

On his part, Mr. Kalokola made a long submission in which he contested the defendants averments. He argued that, the value of the subject matter is decipherable from the content of the complaint and especially paragraphs 10 and 11 of the complaint. In support of his submission, Mr. Kalokola cited the case of **Michael Ngaleku Sirima v African Banking Corporation (T) Limited**, Commercial case No. 54 of 2016 HC (Commercial Division) at Dar es Salaam in which the court found that the content of the counter claim provided sufficient facts on the total value of the subject matters. He further argued that the case of **Jamal Said & 3 others v Karmal Azizi Msuya** (supra) is distinguishable because the matter was a land matter.

In rejoinder Mr. Ngole reiterated his submission in chief and argued that the case of Jamal is not distinguishable, He further referred the court to the case of **Arusha Art Limited and Alliance Insurance Corporation Ltd**, Commercial Case No. 12 of 2011.

Having given due consideration to the submission by the parties, the issue for determination is whether the complaint is defective and if so, whether the defect is fatal. Both parties are basically in agreement regarding the content of the complaint as stipulated under Order VIII rule 1 of the Civil Procedure Code (supra) and especially, the requirement to include a statement of the value of the subject matter as stipulated in paragraph (i) of the rule. It is

undisputed between them that this requirement is a mandatory requirement because it is crucial in determination of the court's jurisdiction and the assessment of the fees payable by the parties. In this regard, and based on the authorities they have both rendered, they are all at one that the omission of a statement of the value is fatal as it renders the plaint fatally defective.

The contention is rather on style. The defendant is in favour of the orthodox style of including in the plaint a stand-alone paragraph stating the pecuniary value of the subject matter showing that it was within the pecuniary jurisdiction of the court, a position which is fully supported in **Jamal Said & 3 others v Karmal Azizi Msuya** (supra); and in **Arusha Art Limited and Alliance Insurance Corporation Ltd** (supra). On the other hand, the Plaintiff has based its argument on an approach used by the court in **Michael Ngaleku Sirima v African Banking Corporation (T) Limited**, in which it was held that since the Civil Procedure Code does not prescribe a specific format for presenting the content of rule 1(i), in determining whether the requirement of this provision has been satisfied, the court should not confine itself to the plaint itself without due regard to the merit of the case. Rather, the content of the whole plaint should be examined to see whether the materials provided sufficiently establish the value of the subject matter and consequently, save the two purposes intended by rule 1(i) namely, jurisdiction of the court and assessment of court fees.

The cases relied upon by the parties are decisions of this court hence they are highly persuasive. Having paid due regard to both schools and the solid

grounds advanced in supports thereto, I am inclined towards to the second school. In my humble view, whereas the orthodox way of listing the content of rule 1(i) is desirable, the interest of substantive justice and expeditiousness in dispensation of justice dictate that the content of the plaint as a whole be examined to determine if materials provided sufficiently establish the requirement of rule 1(i). The two paragraphs from which the pecuniary jurisdiction is allegedly imputed, state as follows:

10. That to date the plaintiff has paid to the tune of Tanzania Shillings one Billion, Seven Hundred Eighty Million, Six Hundred Sixty-Nine Thousand and Three Hundred only (Tshs 1,788,669,3000/) as rental payment. The amount paid extra to the remaining years of lease is the sum of the Five Hundred Eighty-Eight Million, Six Hundred Nine Thousand and Three Hundred Only (Tshs 588,669,300/-)

11. That, further the plaintiff spent Tanzania shillings Hundred Million (Tshs 100,000,000/-) from its own accounts to renovate the leased property at the beginning of the lease which enabled an effective use of the leased property expecting to utilize the leased property for the entire period of the lease agreement.

In my strong view, the materials provided in these two paragraphs sufficiently establish the value of the subject matter and in so doing, adequately serve the purpose of the requirement under rule 1(i). The amount provided in under paragraph 10 is well within the pecuniary jurisdiction of this court. Even if it is presumed that the amount in paragraph

11 is subsumed under paragraph 10, subject matter will still be within the pecuniary jurisdiction of this court.

Based on the above, I overrule the objection and allow the matter to proceed on merit. Costs on the Defendants.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of July 2020



**J.L. MASABO**

**JUDGE**

