IN THE HIGH COURT OF UNITED REBUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT, DAR ES SALAAM

CIVIL APPEAL NO 1 OF 2019

(Arising from the Ruling of the Resident Magistrates Court of Dar es Salaam at Kisutu, Bofore Mashauri –PRM Dated 18th October in Civil Case No 78 of 2018)

SHANA GENERAL STORE LTD.....1ST APPELLANT

ABDALLAH MSHANA.....2ND APPELLANT

VERSUS

THE NATIONAL MICROFINANCE BANK PLC.....RESPONDENT

JUDGMENT

Date Last Order: 18/2/2020
Date of Judgment:13/3/2020

MLYAMBINA, J.

In this case the appellant was aggrieved by the decision of Kisutu Resident Magistrates Court, dated 18th October in Civil Case No 78 of 2018. The appellant appealed before this honorable Court on the following one ground:

> That the trial Magistrate, erred in law by holding that the Resident Magistrate Court had no pecuniary jurisdiction to entertain Civil Case No 78 of 2018.

Wherefore, the appellant prayed for the following orders:

(a) An order quashing the ruling of the Resident Magistrates Court of Dar es Salaam at Kisutu.

(b) Costs of Appeal be provided for.

(c) Any other Relief(s) this honorable Court deem fit to grant.

The appellant was represented by Makoa Law Chambers. The Respondent was advocated by Joseph Ndazi advocate. By consent of the parties, the appeal was argued by way of written submissions.

It was submitted by the appellant that he was aggrieved and dissatisfied with the said decision of the trial Magistrate for upholding the preliminary objection raised by the Respondent. It was the appellant contention that the trial Court had no pecuniary jurisdiction to hear and determine Civil Case No 78 of 2018 on the ground that specific damages is Tshs 4,000,000/= which is below the minimum pecuniary jurisdiction of the trial Court.

The appellant stated further that, the Respondent failed to identify the claims and reliefs sought by the appellant, particularly in paragraph 4,7,8,9, 10(i) –(vi) read together with prayer by the Plaintiffs (herein appellant) particularly in prayer (a), (b) and (c) of the prayers.

Thus, there was nowhere the Plaintiffs' claims for payment of the specific damages of TZs 4,000,000/= in Civil Case No 78 of 2018. The appellant claims against the Respondent is for declaratory orders and general damages as quantified to total sum of TZs

1,111,880,000/= Due to unlawful act of the Respondent of closing the appellant Bank Account No. 40306600485 and 42810001162.

Further, the appellant stated that, the trial Magistrate failed to find out that the Plaintiffs were claiming for declaratory orders and general damages and punitive damages to the tune of TZs 1,111,880,000 due to the Respondent unreasonableness, malicious and entrepreneur acts which lowered the reputation of the appellant.

Appellant went on to state that the trial Magistrate erred in law by relying on the fact that the cause of actions which arose from paragraph 5 of the plaint was wrongly submitted by the Counsel of the Respondent. Hence, the cause of action can be derived from the stated facts and reflected claims as presented in plaints and in the defense statement. To bolster up such position, the appellant cited the case of *Stannic Finance Tanzania Ltd vs Geiseppe Trupia and Chiara Malavas (2002).* In that case, it was held that:

> *a cause of action arises when facts exists which give rise or occasion to a party to make a demand or seek redress, all depending on the kind of claims; a course of actions arise when the facts on which liability is founded do exist and*

disclosure is reflected in the claims as presented in plaints and not as weighed against the defence statement.

From the above position, the appellant was of view that, the trial Magistrate erred in law by holding that the Resident Magistrate Court had no jurisdiction to entertain the matter.

In response, the Respondent objected the appeal and argued that, pecuniary jurisdiction of the Court is founded on the value of the subject matter and not general damages or punitive damages sought. To back up such argument, the appellant cited the cases of *Tanzania- China Friendship Textiles Co Ltd v. Our Lady of Usambara Sisters* 2006 TLR 70, *Zanzibar Insurance Corporation v.Temba*, Commercial Appeal NO 1 of 2006, High Court of Tanzania, (Commercial Division) at Dar es Salaam (unreported), *George David v. Reliance Insurance Company Ltd,* Commercial case No 102 of 2005, High Court of Tanzania (Commercial Decision) at Dar es Salam (unreported) and *Tanzania Breweries limited v. Anthony Nyingi* (2016) TLS LR 99.

The Respondent further argued that, from paragraph 4,5,6,7,10 and prayers, clause (a) of the plaint, the substantive claims arise from the negotiable instrument of TZs 4,000,000/= which was cashed on its presented value. Later on, it allegedly came to the knowledge of 2nd appellant that the Respondent had wrongfully deducted TZs 4,000,000/= from their account. Hence causing

the suffering of direct loss of the deducted 4,000,000/= and further loss of income of TZs 11,888,000.00. In view of the Respondent, that makes the value of claim and direct losses (specific damages) to be either 4,000,000/= or 11,888,000. The Respondent was of submission that the lower Court rightly ruled TZs 4000,000/= which is direct loss suffered is a way below the minimum pecuniary jurisdiction of the Court which is 30,000,000.

The Respondent viewed that, if one say that the suffered loss of income is TZs 11,888,000,then the lower Court still does not have pecuniary jurisdiction because the maximum pecuniary jurisdictions of the lower Court is capable of 200,000,000/= as per *Sections 40(2) of the Magistrates Court Act Cap 11 R.E. 2002 as amended by Sections 22 of The Written Laws (Miscellaneous Amendments) Act 2016*, whichever way you twist the case, the lower Court still lacks pecuniary jurisdiction.

Having gone through the submission of both parties, the lingering issue is; *whether the trial Court had pecuniary jurisdiction to entertain Civil suit No. 78 of 2018.*

It is trite law that pecuniary jurisdiction of the Court is governed by the value in terms of money of subject matter of the suit in question. It has to do with the quantum sum involved in the dispute. In terms of *Section 13 of the Civil Procedure code* Cap 33 (R.E. 2019), every suit has to be instituted in the Court of the

lowest grade competent to try it. In the case before this honorable Court, the cause of action arose from when the Plaintiffs drew and presented internal cheque no 446598 valued at 4,000,000/= on account no 4036600485 at the Defendants NMB Bank House Dar es salaam. The said negotiable instrument was cashed on its presented value, but later on, it came to the knowledge of the 2nd Plaintiff that the Defendant without any claims of rights deducted some of TZs 4,000, 000/= from their account.

Therefore, from the above transaction by the Defendant to Plaintiffs account, it was alleged to have caused the Plaintiffs general damages of 1,011,880,000/= and punitive damages of 100,000,000/= as quantified to the total value of 1,111,880,000/= as general and punitive damages to the Respondent. The said general damages and punitive damages could not be used to determine the pecuniary jurisdiction of the Court.

Therefore, since the cause of action in this suit is 4,000,000/=, it is true that the trial Court Magistrate was right to strike out the said suit for want of jurisdiction. The amount claimed by the Plaintiff is low compared to the pecuniary jurisdiction of the Resident Magistrate Court of Kisutu at Kisutu whose jurisdiction is Two Hundred Million Shillings (200,000,000/=) as per section

40(2) (b) of the Magistrate Court Act Cap 11 R.E. 2002, as amended by Section 22 of the Written Laws (Miscellaneous Amendments) Act.

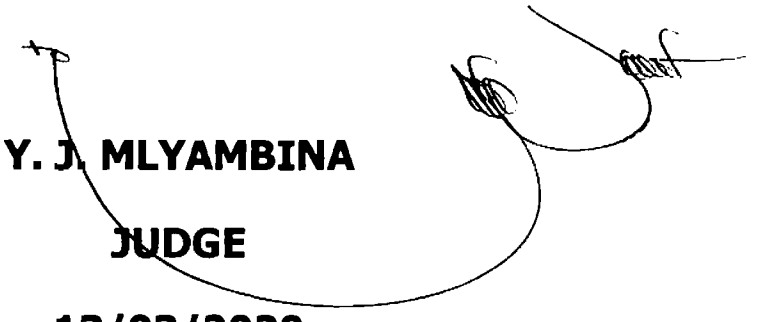
On the other hand, on assessment of general and punitive damages claimed by Plaintiff, the law is very clear that, it is the discretion of the Court to asses as to what amount be awarded to the parties in a suit and it is not governed by value in terms of money of the subject matter in question. The general rule in assessing general damages was established in the case of *Tanzania –China friendship textiles Co ltd v. Our Lady of Usambara Sisters (2006)* TLR 70 and in the case of *Admiralty Commissioner v. Susqueh - hanna* (1926) AC 655, *National Bank of Commerce Ltd v. Lake Oil* Commercial Appeal NO 5 of 2014, HC of Tanzania Commercial Division, Mwambegele J. In that case it was held that:

> If damage be general, then it must be averred that such damages has been suffered, but the quantification of such damages is a jury of the Court (in our jurisdiction).

However, general damages do not need to be specially proved as stated in the case of *Kibwana and another v. Jumbe* 1990-1994 EA 223, read together with *Black Law Dictionary (Abridged 7th Edtn) by Bryan A. Garner:* Editor in chief, the term general damage is defined at page 321:

Damage that the law presumes follow from the types of wrong complained of general damages do not need to be specifically proved to have been sustained.

In the circumstances of the above, the appeal is hereby dismissed with costs for lack of merits.

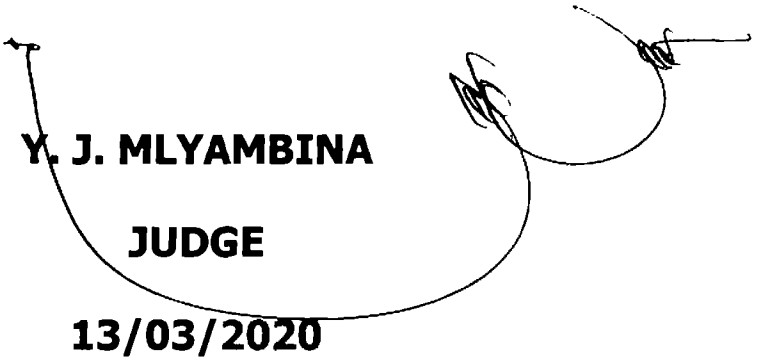


Y. J. MLYAMBINA

JUDGE

13/03/2020

Ruling delivered and dated 13th March, 2020 in the presence of Counsel Sajigwa Ngemela holding brief of Emmanuel Kessy for the appellant and Counsel Sajigwa Ngemela for the Respondent.



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