

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

(HC) CIVIL APPEAL NO. 2 OF 2019

(Arising from the judgment and decree of the District Court of Urambo at Urambo dated 14th day of December 2018 in Civil Case No. 27 of 2016)

ACCESS BANK TANZANIA LIMITED.....APPELLANT

VERSUS

MICHAEL DAUD MSUFU.....RESPONDENT

JUDGMENT

08/10/2020-11/12/2020

BAHATI,J.:

The Appellant in this case appeals against the decision of the Resident Magistrate of Urambo at Urambo that the Appellant pay the Respondent the total sum of TZS.seventy million (70,000,000/-) as general damages for the loss suffered by the same as a result of unlawful seizure and confiscation of the Plaintiff's head of cattle and motor vehicle.

The brief facts of the case from the record show that on 17th day of November, 2015 the Plaintiff secured a loan facility to the tune of TZS. 23,000,000/=. As a condition precedent to obtain the same, the Plaintiff pledged the following properties as security to wit, motor vehicle Isuzu with Registration No. T896 AMR, 100 heads of cattle and house and plots of land being and situated at Usongelani, Usoke Village Urambo District, Tabora Region. Following the rampant default by the plaintiff, the defendant issued a warning letter dated 21st September, 2016, and 60 days' notice claiming for the outstanding loan. However, the plaintiff did not heed to the same. The defendant decided to exercise its rights by confiscating 121 head of cattle and the Isuzu lorry, with intent to recover back its outstanding loan. Being aggrieved with the said confiscation, the plaintiff instituted this case and won the case hence this appeal.

The Appellant being aggrieved and dissatisfied by the judgment and decree of Urambo District Court, hereby appeal to this Court on the following grounds that;

- 1. The learned trial Magistrate erred in law and fact in deciding that the confiscation and/or seizure of head of cattle and motor vehicle were unlawful.*

- 2. The learned trial magistrate erred in law and fact in awarding unreasonable and excessive amount of TZS 70,000,000/- as compensation for loss contrary to the principles governing such awards,*
- 3. The learned trial Magistrate erred in law and fact by failure to consider the weight of evidence adduced by the Appellant's witness,*
- 4. The learned trial Magistrate erred in law in entering the matter over which he had no jurisdiction.*

At the hearing of the Appeal, the Appellant was represented by Mr. Amos G. Gondo and Mr. Sylvester Mulokozi, learned Advocate while the Respondent had the services of Mr. R.G Kabaguzi, learned Advocate.

It is the Appellant's submission in support of the first ground and third ground jointly, grounds two and fourth separately. Mr.Gondo submitted that the trial learned magistrate erred in law and fact in deciding that the confiscation and/or seizure of head of cattle and motor vehicle was unlawful. On page 8 and 9 of the Judgement, the learned trial magistrate held that confiscation of head cattle's was obtained unlawfully by the Appellant for two reasons namely, that the 60 days' notice served to respondent was yet to expire and that

respondent's failure to make loan repayment was due to the natural calamities of heavy rain on agricultural season of 2025/2016.

The trial magistrate in his decision among others held that confiscation of heads cattle and motor vehicle was unlawful because the 60 days' notice which was served to the plaintiff was yet to expire. It is true from the record that the said notice was yet to expire by the time confiscation was conducted.

The sixty-days notice referred herein was for landed properties only. The appellant issued the notice to the respondent in terms of section 127 of the Land Act No. 4 of 1999 , the provisions make it mandatory for the lender to issue sixty days' notice to defaulting borrower before exercising its rights of disposing of pledged security(ies).

On page 24 of the proceedings, PW1, one Michael Daudi Msufu who is the respondent testified that the sixty-days' notice (exhibit P2) issued to him was specifically for landed (immovable) properties only not for motor vehicles or cows. Also DW1 testified the same that the notice was specifically for landed properties had nothing to do with cows and motor vehicles.

The counsel submitted that in the case of **GENERAL TYRES EAST AFRICA LTD VS. HSBC BANK PLC (2006) TLR. 60** it was held inter alia *that,*

"Bank/lenders and their customers/borrowers must fulfill and enforce their respective contractual obligations under the various lending/securities agreements entered into by the parties to restrain a debenture holder from exercising his contractual rights and enforcing his security is not only unreasonable but contrary to express contractual terms of the agreements entered into by the parties" which in this case were admitted by PW1 at page 21 of the proceedings that I failed to pay the said loan on required date as agreed as on that season due to heavy rainy season which washed away the tobacco crops.

In the light of the foregoing authority in the present suit, it was justifiable by the appellant to undertake attachment and sale of the pledged security to the appellant following a blatant breach of the loan agreement concluded between the appellant and the respondent.

Even though there is no sufficient evidence from the record that failure by the respondent to make loan repayment was due to natural calamities resulted from heavy rainfall in the 2015/2016 agricultural season, therefore the appellant was right to realize its pledged securities. Equally assuming that it is true that the default by the respondent was due to heavy rainfall still it is their considered

argument that the Bank has the right to enforce contractual terms by realizing securities to recover its money.

It is a very naked business principle that money/loans disbursed to the borrowers is the part and parcel of capital injected in the business by shareholders and investors to promote business, indeed are also part of bank's depositor's money, be it for a fixed term or any other means and securities came in place to instigate any likely risk to a moneylender to recover the money in event of default. Therefore for the appellant to realize securities has never been bad in law.

Also, he cited the case of **Agency Cargo International vs Eura African Bank, Civil case No. 44 of 1998**, the court stated that:-

"In order for the Bank to continue being a Banking Business, it must have the fund to lend and which must be repaid by its borrowers. If the bank does not recover loans, it will surely be an obvious candidate for Bankruptcy."

Regarding the second ground of appeal, the counsel submitted that on page 9 of the Judgement it is the trial Magistrate's Holding that the Respondent be compensated by the Appellant TZS 70,000,000/= for loss suffered by the respondent as a result of the alleged unlawful seizure and confiscation of heads of cattle and motor vehicle. This is unjustifiable and unreasonable holding for it is not in all tours as far as

principles governing compensation award are concerned. That is to say the same is not in accordance with the law.

In the case of **Antony Ngoo and Davis Antony Ngoo versus Kitanda Kimaro, Civil Appeal No. 25 of 2014, Court of Appeal of Tanzania at Arusha (Unreported) on page 15**. It was held that:-

"The law is settled that, general damages are awarded by trial Judge after considering and deliberation on the evidence on records able to justify the award of general damages, however, the Judge must assign a reason which was not done in this case."

Similarly, according to Lord Macnaghten in the celebrated case of **Storms versus Hotchison 1905 A.C. 515**

"General Damages are such as the law will presume to be the direct natural or probable consequence of the act complained of".

It is also a clear position of the law that, the award of damages is the sole discretion of the court. However the same must be exercised cautiously, the magistrate awarding general damages, must state the reason thereon. See Ngwala, J holding in the case of **Access Bank Tanzania Limited versus Adeltus Rwegisila Antony versus Rutigalida Richard Lenard Civil Appeal no. 49 of 2018, High court of Tanzania at Dar es Salaam (Unreported)**.

In the present suit, the trial magistrate awarded to the Respondent compensation of TZS. 70,000,000/= without assigning any reason to that effect. The act of the Appellant to realize its security did not cause any loss to the respondent and it is also clear from the records that, there is no any proof that the effect that the respondent incurred such as loss and be confirmed by pleadings and the records at large, the respondent could not have been awarded 70,000,000/= just from the moon.

On the third ground of appeal, the counsel for the appellant also submitted that the trial learned magistrate erred in law in entertaining the matter over which he had no jurisdiction.

He submitted that, the law is well settled that, the issue of jurisdiction can be raised at any stage of the proceedings, even on appeal stage, the same is the position of law which was confirmed by an earlier decision of the Appellate court in **M/S Tanzania – China Friendship Textile Co. Limited vs. Our Lady of the Usambara Sisters (2006) TLR, 70** following the series of Authorities of **Mandavia vs. Sungh (1968) E.A. 118, John VS. R 18 EACA** just to mention a few. Therefore the issue of jurisdiction is always an issue at any stage of the proceedings.

He further contended that , the question which taxes his mind is "what is the Pecuniary Jurisdiction the District Court in a matter of a

Commercial nature? To answer this question there is no way whatsoever we can circumvent the law that confers jurisdiction to the District Court in matters of a commercial nature.

The Written Laws (Miscellaneous Amendment) Act no. 4 of 2004 Amended section 40 of the Magistrates Courts Act, Cap.11 by adding immediately after subsection (2) provisions which confer Pecuniary Jurisdiction of a District court in commercial disputes. Its reads;

"(3) notwithstanding subsection (2) the jurisdiction of the District Court shall in relation to commercial cases be limited:-

(a) In proceedings for the recovery of possession of the immovable property, to proceedings in which the value of the property does not exceed fifty million shillings.

(b) *In the proceedings where the subject matter is capable of being estimated at a money value to proceedings in which the value of the subject matter does not exceed thirty shillings.* (Emphasis added)

In the instant case the special or substantive amount claimed in the plaint by the plaintiff is TZS 171,000,000/= (Say Tanzanian shillings One Hundred Seventy one Million only) That is to say 120 heads of cattle valued at 1,200,000/ each Plus 27,000,000/= (Twenty seven

million only) which is the value of the Motor vehicle Isuzu Lorry T896 AMR amount which is beyond the pecuniary limit of a district court in cases of a commercial nature to the Written Laws (Miscellaneous Amendment) Act no. 2 of 2004 which amended section 40 of the Magistrates Courts Act, Chapter 11.

With the above new position of the law, make the case that the specific or substantive amount of 171, 000,000/= as claimed by the Respondent does not fall within the pecuniary limits of the District court because this court is restricted to amount not exceeding to 30,000,000/= in civil matters of a commercial nature.

It is beyond doubt that the instant case falls within the ambit of the criteria set by the law on what type of dispute can be termed as a commercial dispute. They are categorically reflected in the Written Laws (Miscellaneous Amendment) Act no. 4 of 2004 which amended section 2 of the Magistrates Courts Act, Cap. 11: For the avoidance of doubt the provision is reproduced below. The Act is amended;

- (a) Is section 2 by inserting in its appropriate alphabetical order the following new definition?

"Commercial case" means a civil case involving a matter considered to be of commercial significance including but not limited to

- (i) the formation of a business or commercial organization
- (ii) The contractual relationship of a business or commercial organization with other bodies or person outside it.
- (iii) The liabilities of a commercial or business organization or its officials arising outside its commercial or business activities.
- (iv) The liabilities of a commercial or business person arising out of that person's commercial or business activities.
- (v) Restructuring or payment of a commercial debt by or to business or commercial organization or person.

Also, he submitted that if you thoroughly read between lines of the plaint by the Respondent you will concur with the very argument that the suit herein is a commercial one in its entirety. In the plaint the plaintiff has without reservation admitted that Defendant is a commercial organization, additionally, the plaintiff is seeking a restoration of 120 heads of cattle, a motor vehicle, and restructuring of loan repayment in terms of extension of time to make repayment to the Defendant who is a commercial organization, a fact which falls within the criteria of commercial dispute. It is also clear that the instant suit arises out of contract as reflected in the Plaintiff. Therefore the relationship that subsists between the defendant and plaintiff is a contractual relationship in a business arena.

It is trite law that in a circumstance such as this the court has no power to continue entertaining this matter as it was held in the case of **Zanzibar Insurance Corporation Limited Vesus Rudole Temba, Commercial Appeal no. 1 of 2006 High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported)**. It should therefore continue to dismiss the case. A good question that might be a center of legal reasoning here is that "of the amount claimed, what amount determines the pecuniary jurisdiction of the court? This question is well determined in the celebrated case of **Tanzania – China Friendship textile Company Limited versus Our Lady of Usambara Sisters, 2006 TLR 70** where the court of Appeal of Tanzania had the following to say and here I quote;-

"In our view, it is the substantive claim and not general damages which determine the pecuniary jurisdiction of the court".

In the premises and for the reasons stated above it is well established that the trial Magistrate erred in law to entertain the case which was far beyond the pecuniary limit of the District court Hence it should be dismissed with costs.

The second point of objection is to the effect that this court has no territorial jurisdiction to entertain this matter of which is fundamental

in the eyes of law. The suit herein is in contravention to the trite law that the suit must be instituted in court within local limits where the cause of action arose.

It is a well-established argument that the cause of action in the instant case arose out of a contract. That is to say loan contract between the plaintiff and the defendant. The said contract was executed in Tabora Town within the premises of the Defendant's Offices. The same makes the case that the Tabora District Court at Tabora is the proper court competent to entertain this matter as it the court within local/geographical boundaries where the cause of action arose.

The issue that assets or properties in disputes are situated in Urambo is not an issue and the same has no merit as it out of context. Assets like motor vehicle are movable assets which have no permanent destination. Motor vehicle or cows cannot at no time determine territorial jurisdiction as today they can be at one place and tomorrow at another place.

In reply, the counsel for the Respondent submitted that regarding the first ground of appeal that the trial learned Resident Magistrate's finding that the confiscation and/or seizure of the Respondent's cattle and motor vehicle were unlawful is impeccably correct. The evidence

on record thoroughly proves that the Appellant had no legal justification for seizing the Respondent's suit cattle and motor vehicle and ultimately confiscating the Respondent's said suit cattle on the material date. The evidence on record demonstrating unlawfulness of the Appellant's acts of seizing the suit cattle and motor vehicle and thereafter confiscating the Respondent's suit cattle accrues from the testimony of the Respondent himself (PW1) and the testimony PW2-Alex Matatu, as per PW1's testimony on record, the same had received a loan of a total of TZS. 18,000,000/= from the Appellant which had to be repaid to the same with the accruing interests, amounting to a total of TZS.32,189,739/73, by 20/09/2016.

According to the evidence of both sides on record, it was common ground that the loan given by the Appellant to the Respondent was to be used by the Respondent for tobacco farming activities during the year 2015/2016 and the proceeds from the sale of the Respondent's tobacco which would be obtained during the relevant agricultural season was what was mutually agreed to repay the suit loan.

The respondent's testimony on record is very demonstrative and it is corroborated by the testimony of the Appellant's witness (DW1-William Charles Mvungi), at pages 28 to 34 of the record of proceedings in that, what befell upon the Respondent for not repaying the loan on

the very agreed date was because of the greatest rate of rain fall which washed out the Respondent's tobacco crops in the relevant farm.

It was also common ground, according to the evidence of both sides, that even the Appellant sympathized on such an unanticipated contingency of the Respondent's crop being washed out by rainwater to the extent of granting the Respondent an additional loan sum of TZS. 5, 000, 000/= so that the same could rescue his crops from such destruction by rain by adding more fertilizer in the relevant farm to increase the product.

When the Respondent's initiatives to rescue the crops were in vain, the Appellant opted to grant the Respondent an extension of time of repaying the loan from other different resources, the Respondent tendered exhibit "P" in order to prove that an account of such unforeseen contingency of rainfall, the same was granted an extension of time to repay the suit loan by 30/11/2016 instead of the formerly agreed date of 20/09/2016.

The Respondent's evidence on record is also demonstrative regarding such prematurity of the seizing and ultimately confiscating the said security of the suit loan (i.e. cattle) since it is also common ground that upon the Appellant seizing the Respondent's cattle, the Respondent immediately paid a total of TZS. 4, 900, 000/= so that

some of his cattle could be released to the same. 21 heads of cattle were then released to the same.

In the premises, he submitted that the Appellant lawfully seized the Respondent's suit motor vehicle and cattle and that the impugned confiscation of the suit cattle was lawful are very flimsy and hence the cited case of **General Tyre East Africa Limited Versus Hsbc Bank PLC (2006) T.L.R. 60** is legally distinguishable from the facts of the case at hand in which the Respondent, having been granted an extension of time to repay the suit loan by 30/11/2016, the Appellant was legally estopped from resorting to the seizure of the Respondent's motor vehicle and cattle and confiscating the same before the expiry of the period of repayment of the loan so extended (ie by 30/11/2016).

Regarding the second ground of appeal, the counsel submitted that the compensation of TZS 70, 000, 000/= for loss suffered for the unlawfully seized and confiscated 79 heads cattle is reasonable and the same meeting the end of justice. Since as per plaint on record the Respondent claimed for the restoration of a total of 120 heads of cattle but in the course of hearing the Appellant admitted through the testimony on record (DW1-WILLIAM CHARLES) the Respondent's

a total of 79 had been seized and thereafter the same were auctioned to one Masunga Sabuni.

PW1 alleged to have auctioned the said cattle and obtained a total of TZS 19, 000, 000/= but no documentary evidence was tendered in Court by the said witness to prove that it was only that sum which had been received by the Appellant for auctioning such a big number of cattle.

In the Respondent's testimony on record (on cross-examination by the Appellant's learned Counsel, the Respondent testified that the current market price of each of the confiscated cattle is TZS. 1, 200, 000/=.

It is revealed by the record of proceedings the Respondent (**PW1**) was cross-examined by the Appellant's learned Counsel regarding the current price of each of the confiscated cattle and the same maintained that it was the same price of TZS. 1, 200, 000/= per each.

In the premises, submitted that the compensation of TZS. 70, 000, 000/= for such a loss that was occasioned by the Appellant to the Respondent due to such unbecoming act of prematurely and unlawful seizure of the Respondent's property and ultimately auctioning his cattle met the justice of the case and it was on

account of such Respondent's impeccable evidence on record. Hence the second ground of appeal be also dismissed with costs.

As to ground number 3rd on the pecuniary jurisdiction of the trial District Court over the matter, indeed, such issue of pecuniary jurisdiction was not raised during the hearing of the case but it has been raised at this stage of appeal. The learned Counsel, challenging pecuniary jurisdiction of the trial District Court are devoid of merits and hence the 3rd ground of appeal be also dismissed with costs.

Section 40 of the Magistrates Courts Act, Cap.11 [R.E. 2019] as amended by the Written Laws (Miscellaneous Amendments Act No. 4 of 2004 in that, the pecuniary disputes, it is the contention that the nature of the property involved in the dispute rendered the matters in controversy between the Appellant and Respondent to be determined by the trial District Court through a normal civil case.

It is common ground that the Respondent is a peasant residing and working for gain in the rural area (Usoke). He just secured the suit loan for agricultural activities by mortgaging to the Appellant his cattle, a residential house in the said rural area.

The Respondent's contractual relationship with the Appellant's not the same as those envisaged by the provisions of the cited section 2 of the Magistrates Courts Act,Cap.11 [R.E. 2019] as

amended by the Written Laws (Miscellaneous Amendments) Act, No. 4 of 2004.

In the written submission the Appellant's learned Counsel intimates this Court to refer to the Respondent's plaint on record in which, according to him, the Respondent allegedly admitted that the Defendant is a commercial organization and that the Respondent sought for the restoration of 120 heads of cattle, motor vehicle and restructuring of the loan repayments term to hold that the case between the Appellant and Respondent had commercial significance.

That even if the Appellant was alleged to be a commercial organization, on the other hand, the Respondent is by himself a normal peasant and a village whose said agricultural activities for which the loan was secured from the Appellant are not registered but the same merely deal in the said agricultural activities for his subsistence and his family's subsistence.

The status of the Respondent's agricultural activities does not fall within the ambit of the provisions of section 2(i) to (vii) of the Magistrates' Court Act (*supra*).

In the case of **Timothy J. Flavell versus Pumziko Safari Lodge Limited**- Commercial Case No. 95 of 2018 (unreported), at page 11 of

which a copy is attached hereto, it was held, *inter alia*, that the list of the categories of cases of commercial nature are not exhaustive but the Court could have determined the issue basing on the facts of the case as to whether it has any commercial significance or not.

Considering the status of the Respondent, the nature and purpose of the suit loan, and the location of the Respondent's agricultural activities, that the case at hand had no commercial significance.

The Appellant's second limb of the 3rd ground of appeal is in respect of the territorial jurisdiction of the trial District Court over the matters in controversy between the Appellant and Respondent.

Basing on the contents of the submissions of the parties hereto and the relevant ruling on record, the Appellant's complaint is devoid of merits and hence the same be dismissed with costs.

The counsel prayed that the trial District Court had territorial jurisdiction over the matters in controversy between the Appellant and Respondent considering the Respondent's pleadings as per paragraphs 9, 10, and 11 of the plaint on record which portrays that the cause of action against the Appellant had accrued from the wrongs that had been committed by the Appellant against the Respondent, to wit premature and arbitrary seizure of the suit property and unlawful confiscation of the Respondent's cattle.

Hence in terms of Section 14 of the Civil Procedure Code-Chapter 33 [R.E. 2019,] the District Court property entertained and determined the case between the Appellant and Respondent since the same was in respect of recovery of movable property actually under restraint or attachment of the Appellant which the law permits to be instituted in court of whose the jurisdiction the property is situate.

The suit cattle and motor vehicle are situate at Ussoke and hence within the jurisdiction of Urambo District Court.

Having carefully read the submission from both parties, there are issues that I have to determine here first, regarding the ground of **compensation** and the **jurisdiction** of the Court. I believe that jurisdiction is a fundamental matter to be considered by a Judge or Magistrate before hearing any matter. Before assuming powers to entertain any matter, Magistrates are supposed to ensure that they have requisite jurisdiction to do so. Jurisdiction is a creature of statutes. In **Shyam Thanki and Others v. New Palace Hotel [1972] HCD No. 92** it was held that:

"All the courts in Tanzania are created by statutes 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."

The law is well settled that, the issue of jurisdiction can be raised at any stage of the proceedings, even on Appeal stage, the same is a position of law which was confirmed by an earlier decision of the Appellate court in **M/S Tanzania – China Friendship Textile Co. Limited vs. Our Lady of the Usambara Sisters (2006) TLR, 70** following the series of Authorities of **MANDAVIA VS. SUNGH (1968) E.A. 118, JOHN VS. R 18 EACA** just a few to mention. Therefore the issue of jurisdiction is always an issue at any stage of the proceedings.

At this juncture, the question which taxes the mind is "what is the Pecuniary Jurisdiction the District Court in a matter of a Commercial nature? To answer this question there is no way whatsoever we can circumvent the law that confers jurisdiction to the District Court in matters of a commercial nature.

The Written Laws (Miscellaneous Amendment) Act No. 4 of 2004 Amended section 40 of the Magistrates Courts Act, Cap 11 by adding immediately after subsection (2) provisions which confer Pecuniary Jurisdiction of a District court in commercial disputes. Its reads;

"(3) Notwithstanding subsection (2) the jurisdiction of the District Court shall in relation to commercial cases be limited:-

(c) In proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed fifty million shillings.

(d) *In the proceedings where the subject matter is capable of being estimated at money value to proceedings in which the value of the subject matter does not exceed thirty shillings.*

(Emphasis added)

In the instant case the special or substantive amount claimed in the plaint by the plaintiff is TZS 171,000,000/= (Say Tanzanian shillings One Hundred Seventy one Million only) That is to say 120 heads of cattle valued at 1,200,000/ each Plus 27,000,000/= (Say twenty seven million only) which is the value of the Motor vehicle Isuzu Lorry T896 AMR amount which is beyond the pecuniary limit of a district court in cases of a commercial nature to the Written Laws (Miscellaneous Amendment) Act no. 2 of 2004 which amended section 40 of the Magistrates courts Act Chapter 11 .

With the above new position of the Law, make the case that the specific or substantive amount of TZS 171, 000,000/= as claimed by the Respondent does not fall within the pecuniary limits of the District

Court because this court is restricted to amount not exceeding to 30,000,000/= in civil matters of a commercial nature.

It is beyond doubt that the instant case falls within the ambit of the criteria set by the law on what type of dispute can be termed as a commercial dispute. They are categorically reflected in the Written Laws (Miscellaneous Amendment) Act no. 4 of 2004 which amended section 2 of the Magistrates' Courts Act, Chapter 11: For avoidance of doubt the provision is reproduced below. The Act is amended

- (b) Is section 2 by inserting in its appropriate alphabetical order the following new definition?

"Commercial case" means a civil case involving a matter considered to be of commercial significance including but not limited to

- (vi) The formation of a business or commercial organization
- (vii) The contractual relationship of a business or commercial organization with other bodies or persons outside it.
- (viii) The liabilities of a commercial or business organization or its officials arising outside its commercial or business activities.
- (ix) The liabilities of a commercial or business person arising out of that person's commercial or business activities.

Restructuring or payment of commercial debt by or to business or commercial organization or person.

On the issue of jurisdiction, I have ample time to read the case of **Timothy J. Flavellm vs. Pumziko Safari Lodge Limited-Commercial case No. 95 of 2018(unreported) (supra)** the Court has determined the issue basing on the facts of the case as to whether it has any commercial significance or not.

What is a commercial dispute? The rules establishing the Commercial Division defines a "Commercial Case". It provides the following definition: - "Commercial Case" means a civil case involving a matter considered to be of Commercial significance, including but not limited to: - i). The formation of a business or commercial organization; ii). The governance of a business or commercial organization; iii). The contractual relationship of a business or commercial organization with other bodies or persons outside it; iv). the liability of a commercial or business organization or official arising out of its commercial or business activities; v). The liabilities of a commercial or business person arising out of that person's commercial or business activities; vi). The restructuring or payment of commercial debts by or to business or commercial organization or person; vii). the enforcement of commercial arbitration award; viii). the enforcement of awards of a

regional court or tribunal of competent jurisdiction made in; ix). accordance with a Treaty or Mutual Assistance arrangement; to which the United Republic is a signatory and which forms part of the law of the United Republic; x. admiralty proceedings; and xi. Arbitration proceedings".

The commercial Division's pecuniary jurisdiction on cases of Commercial nature is lower than the pecuniary jurisdiction in the other Land Division and General Registry of the High Court. The pecuniary jurisdiction is TZS. 30,000,000/= for movable property and TZS. 50,000,000/= for immovable. See Act No. 25/ 2002 Written Laws (Misc. Amendment) and Act No. 4 / 2004 Written Laws.

From the above analysis, in my view, by virtue of this amendment to the Magistrate Courts Act,Cap.11 District Courts have no jurisdiction in commercial cases whose value exceeds TZS. 30,000,000/-. In a case of such a nature, the primary duty of the subordinate court is first to determine whether or not the case before, is a commercial one by reference to the definition of that term in section. 2 of the Magistrate Courts Act,Cap.11.

The claim before the Court, in my view, involved the determination of the liability of a commercial or business organization or its officials arising out of its commercial, or business activities.

On the case at hand, the suit was set to determine the liability of the Appellant to indemnify the respondent, which arises out of its commercial or business activities. Therefore the relationship that subsists between the appellant and respondent is a contractual relationship in a business arena.

It is therefore a matter of commercial significance, and therefore, by definition, a commercial case, had the trial court had jurisdiction to try this case? It would, I think, have found that it was a commercial case and that the court had no pecuniary jurisdiction to try it.

On the question of quantum of TZS. 70,000,000/- it is quite clear from the appellant's counsel submission that the trial magistrate has not addressed the pertinent issue and parameters used by the trial court to award the general damages to the tune of TZS. 70,000,000/- The trial magistrate did not follow the laid down principle on the discretion of the court to award damages as laid down principles on the discretion of the court to award damages as laid down by Lord Macughaten in the case of **Storms vs. Hutchson 1905AC.515 (supra)**, similarly in the case of **Antony Ngoo, Paris Antony Ngoo VS. Kitinda Kimaro Civil Appeal No. 25/204(CAT) at DAR-ES-SALAAM**.

In this case, there was no reason provided for the award of general damages to the tune of TZS. 70,000,000/- for the breach of contract

and illegal seizure. Though it is the discretion of the court to grant the general damages, the law requires that this discretion must be done cautiously. Also, the magistrate was supposed to state the reasons for awarding general damages to the tune of TZS 70,000,000/-. Even in Order XX Rule 4 of the Civil Procedure Code, Cap. 33 [R.E 2019] insists the reasons be advanced on awarding the general damages.

In the instant case, the trial Magistrate awarded the respondent TZS. 70,000,000/- without justification or proof. Given the cited authority, such award arises question on how the trial Magistrate arrived at that award of TZS. 70,000,000/ to the respondent as general damages bearing in mind that the respondent defaulted to repay the loan. This being the case, the awarded amount as damages for a party who has defaulted to pay TZS 32,189,739.73/- is at large.

As, I have failed to ascertain the principle that guided the trial magistrate in awarding such amount as aforesaid. In the final analysis, the amount of TZS 70,000,000/- is set aside.

From the above reasons, I join hands with Mr. Amos G. Gondo assisted by Mr. Sylvester Mulokozi. I find what was before the trial court was a commercial case involving more than 30,000,000/- million and in the circumstances, it lacked pecuniary jurisdiction to try the suit.

Since the fourth ground sufficiently disposes of the appeal, I find it unnecessary to determine the other grounds of appeal.

Consequently I hereby declare the proceedings, judgment, and decree null and set them aside. The respondent is at liberty to file a fresh suit in the appropriate division of the High Court, subject to limitation.

The appeal is hereby allowed with costs.

Order accordingly.

A. A. BAHATI

JUDGE

11/12/2020

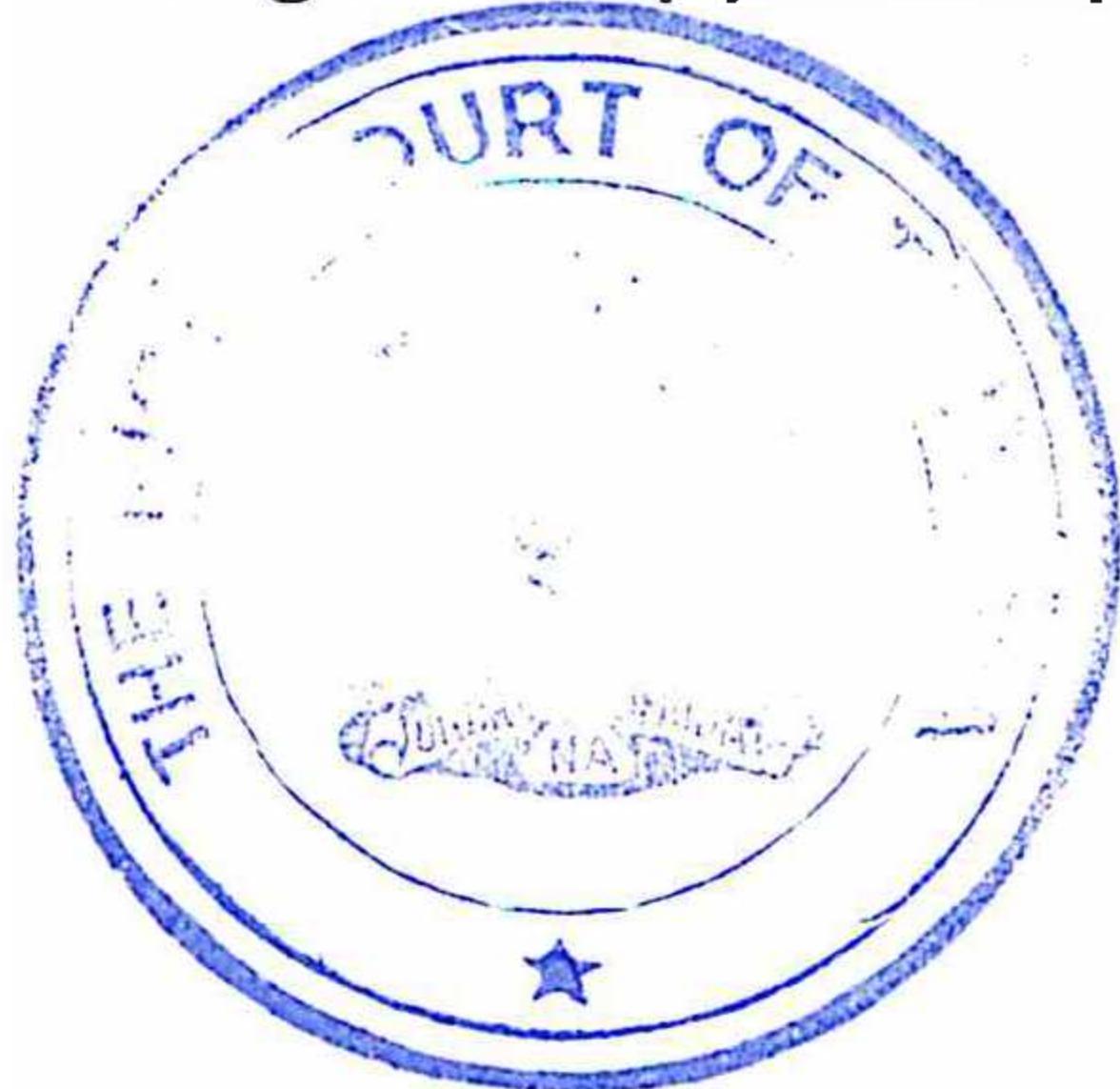
Judgment delivered under my hand and seal of the court in chamber, this 11th day December, 2020 in the presence of the respondent and in absence of the appellant.

A. A. BAHATI

JUDGE

11/12/2020

Right of appeal explained.



A. A. BAHATI

JUDGE

11/12/2020