

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL CASE NO. 9 OF 2018

PIUS PAULO MBARUKU.....PLAINTIFF

Versus

FRANK RAMADHANI NYAKI..... DEFENDANT

RULING

Last Order: 26th Nov, 2020

Date of Ruling: 14th Dec, 2020

MWENEMPAZI, J.

The Plaintiff - Pius Paulo Mbaruku, claims against the defendant Frank Ramadhani Nyaki Tshs 320,000,000/= being specific damages for defamation. The plaintiff alleged in his plaint that the defendant did publish false statements and malicious stories in a letter written by the defendant and circulated to famous business persons who reside in Moshi and Arusha and religious leaders where the plaintiff enjoys spiritual life. The plaintiff also prays for an order to the defendant to pay interest at court's rate on decretal

sum from the date of judgment to the date of payment in full, a written apology by the defendant, cost of the suit and any other relief the Court may deem fit to grant.

The defendant on the other hand while responding to the plaint he raised a preliminary objection on points of law as follows: -

1) That this Honorable Court has no jurisdiction to determine the suit for two reasons;

(a) the plaint has been filed in a court which does not exist in law and

(b) the court has no pecuniary jurisdiction to hear the suit.

2) That the suit is fatally defective for bearing a verification which does not distinguish matters of belief and facts in the knowledge of the plaintiff such as Para 3, 7, 8, 9, 10, 11 and 12 are views opinion not facts.

On 26th November, 2020 it was scheduled for hearing of the preliminary objection and the same was done by way of oral submission. Mr. Elia Kiwia learned advocate appeared for the Plaintiff and Mr. Benedict Bagiliye also learned advocate appeared for the defendant.

Submitting in support of the preliminary objection Mr. Basiliye stated that this Honorable Court has no jurisdiction to determine the suit for two reasons;

first, the plaint has been filed in a court which does not exist. He argued that the High Court is established under Article 108 of the **Constitution of the United Republic of Tanzania of 1977** and according to section 4 of the **Interpretation of Laws Act, Cap 1** High Court means the High Court of the United Republic or the High Court of Zanzibar. He submitted therefore that the plaint cannot be entertained in this court.

The learned counsel submitted that the second reason is that this court has no pecuniary jurisdiction to hear the suit because the plaint is based on the claim of defamation. He argued that the jurisdiction of the court is determined by specific damage while we cannot have a specific damage from defamatory publication. He contended that the claim from defamatory publication is supposed to be of general damages. While explaining this position further the learned counsel submitted that section 13 of the Civil Procedure Code, Cap. 33 R.E.2019 requires that all suits to be commenced in the lowest court in absence of specific damages assigning jurisdiction in the High Court.

Still on the same point the learned counsel supported his submission by citing the case of **Tanzania Breweries Ltd vs. Anthony Nyingi [2016] TSLR 99**. Where the Court of Appeal held that: -

"... it is the substantive claim and not general damages which determine the jurisdiction of the court and that every suit must be instituted in the court of lowest grade competent to try it. Since the High Court's Decision in this case was reached in total disregard to the Court of Appeal's Decision in Tanzania and China Friendship Textile [2006] TLR 70, so it is null and void. The High Court had no pecuniary jurisdiction to try the suit".

It is for that reason the plaintiff prayed for the case to be dismissed with cost.

Submitting on the second point of preliminary objection with respect to the verification clause of the plaint Mr. Basiliye stated that the verification clause has to distinguish matters known and those believed. He faulted the plaintiff for failure to show such distinction in his verification clause. He argued thus the plaint was fatally defective by referring to the case of **Salima Vuai**

Forum vs. Registrar of Cooperative Societies and Three Others

[1994] TLR 75. The learned counsel then prayed for the plaint to be dismissed with cost.

Responding to the submission Mr. Kiwia submitted that he accepted the first objection with respect to the pecuniary jurisdiction of the court and that the matter should be instituted in compliance to section 13 of the Civil Procedure

Code. That notwithstanding Mr. Kiwia objected to the prayer of dismissal of the suit by arguing that according to Rule 10 of Order VII of the Civil Procedure Code [Cap 33. R.E 2019] the remedy is to return to the court of competent jurisdiction where the plaintiff could have instituted the claim. He argued further that this point did not qualify to be a preliminary objection as directed in the case of **Mukisa Biscuit vs. West End Distributors Ltd** [1969] E.A 696 that preliminary objection has to be a pure point of law. He contended further that the plaint should be returned and the judge shall endorse the name of the person returning and the reason of its return. He submitted that this is according to the case of **Godwin Biswalo and Three Others vs. Board of Trustees of St. Augustino University of Tanzania, Civil Appeal No. 18 of 2014 Court of Appeal at Mwanza** at pg 18 – 22. Where it was stated that **Mukisa Biscuit case (supra)** does not qualify because there is an option that is the plaint has to be returned to the plaintiff. Responding to the issue of the name High Court of Moshi Mr. Kiwia submitted that they acknowledge the mistake but argued that it was just a slip of which is curable under section 3 A and B of the Civil Procedure Code he urged this court to invoke the overriding objective principle so that substantive justice

would prevail. He then prayed for this court to allow them to amend the same as it is not a point of law.

With respect to the second point of objection concerning the issue of verification clause being defective, the learned counsel submitted that the same is not meritorious as the defendant did not point out the specific paragraphs which he ought to have indicated. The learned counsel argued in the alternative that even if there is any problem this court should not strike out the plaint rather, he prayed to be allowed to amend the same.

Submitting further on the point of jurisdiction of this court the learned advocate stated that since this court has no jurisdiction then it cannot also decide on this matter as the same should be decided by a competent court. The learned counsel prayed for the plaint to be returned to the plaintiff to be filed to the competent court. He also prayed for this court not to give orders as to cost because the matter will be refilled in the competent court.

Rejoining the submission Mr. Basiliye submitted that the decision in the case of **Tanzana Breweries (supra)** was given in 2015 so it is recent decision compared to the one relied by the defendant which was given in 2014 and it should therefore prevail. With respect to the issue of overriding objective the learned counsel submitted that the Court of Appeal has made it very clear

in the case of **Mondorosi Village Council & 2 Others vs. Tanzania Breweries Ltd Civil Appeal No.66 of 2017, CAT Arusha.**

Finally, with respect to cost the learned council argued that the law is very clear that cost must follow the events given the fact that they have incurred cost travelling from Dar es Salaam to appear and represent their client. He thus prayed for the suit to be dismissed with cost.

Having thoroughly considered the submissions by both parties let me start by stating that as I was going through the points of preliminary objection raised, I have observed that one of the points seeks to challenge the jurisdiction of this court. Since jurisdiction is a fundamental subject that deals with authority of the court to determine a matter before it, I find it proper to look at it first as it could determine the whole matter conclusively. The issue to be determined is therefore whether this court has pecuniary jurisdiction to hear the suit. According to the pleadings the plaintiff's claim in this suit is Tshs. 320,000,000/= being specific damages for defamatory publications of false statements and malicious stories in a letter alleged to have been written by the defendant. I do agree with the learned counsel for the defendant that one cannot have specific damages based from defamatory publications therefore this claim by the plaintiff was just general. It is trite law that specific

damages must be specifically pleaded and proved. The damages were specifically pleaded to the tune of Tshs. 320,000,000/= however the plaintiff did not prove how he came up with that amount he claimed. There was no evidence which proved the amount so claimed. Furthermore, the nature of the suit itself does not warrant claim for specific damages since specific damages need to be proved by evidence. Now, since the general damages are subject to the assessment by the court depending on the particular case one cannot rely on general damages to ascertain 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.

Now, given the requirement under section 13 of the **Civil Procedure Code** (supra) that the suit be instituted in the court of the lowest grade competent to try it then this court has no pecuniary jurisdiction to determine this suit as there are no specific damages. Arguing his point, the learned counsel of the defendant relied on the case of **Tanzania Breweries Ltd vs. Nyingi** (supra) where the court of appeal of Tanzania faced with a similar case held that the High Court had no pecuniary jurisdiction to try the suit and proceeded to quash the proceedings, judgment and decree of the trial court for that reason.

In light of what I have discussed above and based on the precedents as cited by the plaintiff I find this point of objection meritorious and I see no need to discuss the other points as this point of jurisdiction is enough to complete the case. I hold therefore that this suit is incompetent before this Court. I accordingly proceed to strike out the Plaint with costs from the record of this Court. The plaintiff is at liberty to file a fresh suit in a competent court with the necessary jurisdiction.

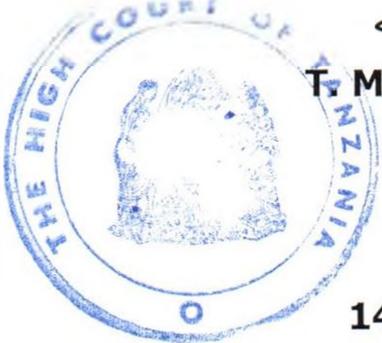
It is so ordered.


T. MWENEMPAZI

JUDGE

14/12/2020

Ruling delivered in Court in the presence of Mr. Mussa Mziray, learned advocate for the plaintiff and the Defendant who appeared in person.



T. MWENEMPAZI
JUDGE
14/12/2020

