

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**HC CIVIL APPEAL No. 26 OF 2020**

*(Originating from Civil Case No. 94 of 2019 in the Resident Magistrates Court of Mwanza at Mwanza  
(Hon. Jagadi- RM) dated 3<sup>rd</sup> April, 2020)*

**KABYESIZA MWEBESA.....APPELLANT**

**VERSUS**

**KHALIF MASHID.....1<sup>ST</sup> RESPONDENT**

**MUSWADIQ H. MUSSA & ANOTHER .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*15<sup>th</sup> October, 2020 & 10<sup>th</sup> December, 2020*

**J.C. TIGANGA, J.**

The appellant herein was dissatisfied with the ruling in Civil Case No. 94 of 2019, and has lodged this appeal before this court challenging the said ruling. It appears from the records attached that he filed a civil case at the Resident Magistrates Court of Mwanza in which he claimed against the respondents payment of Tshs 45,543,900/= being both general damages (25,000,000/=) and specific damages (20,543,900/=) for the breach of contract of sale. His claim bases on the contract he entered with the respondents to transport 825 bags of AB white cement from Dar es Salaam to Mwanza at his expenses. He then transported the said cement to Kahama and Geita for sale, however the same was not

successfully sold, they were rejected for being below the required weight and so he was forced to take all the cement back at his own expenses. He then informed the 1<sup>st</sup> defendant who agreed to compensate him. However, the 1<sup>st</sup> defendant has not been able and actually refused to pay the appellant regardless several demands and that the only amount that was paid was Tshs 3,600,000/= only.

Following that state of affairs, the appellant unsuccessfully filed a civil case against the respondents which was dismissed for the reasons that the court before which the case was filed lacked both territorial and pecuniary jurisdiction to try it. The appellant was aggrieved hence this appeal in which he has put forthwith the following grounds;

1. That the learned Magistrate erred in law and in fact for merely relying on the words of mouth of the learned counsel for the defendants with no facts presented whatsoever, to prove or support about the place where the contract was entered.
2. That the learned magistrate erred in law and fact for ordering the case to be instituted to the primary court; when the lower grade court competent to institute commercial claims is the District Court.
3. That the learned magistrate erred in law and fact for not entering the statement of the plaintiff on account of contracting and the nature of business between the parties before determining the question of jurisdiction.

The appellant's prayers before this court are that, this appeal be allowed, the ruling of the Resident Magistrates Court be quashed and an order for continuance of the case be made before another magistrate. He also prayed for the costs of this appeal.

When the appeal was placed before this court for hearing, the appellant represented himself whereas the respondents had the service of Mr. Daudi Mzeri, learned advocate.

Arguing in support of his appeal, the appellant claimed that the appeal is based on three main parts, the first one being whether the case was a normal civil case or a commercial case. The second one is on the issue of jurisdiction of the court where the case was supposed to be filed. And the third part is on the fact that some of his arguments were not recorded and those which were recorded and reflected in the judgment were misconceived. He complained that the trial court ordered the suit to be instituted in the primary court considering the specific damages to be the determinant of the court's pecuniary jurisdiction. However the appellant insisted that the case was a commercial case and not a normal civil case hence the primary court cannot entertain it.

On the issue of territorial jurisdiction the appellant claimed that the contract was signed in Dar es Salaam and urged this court to look at

paragraph 3 of the written statement of defence and on what the trial magistrate based on to determine the matter. The appellant maintained the claim that his case was a commercial case and not a normal civil case.

In reply, Mr. Daudi Nzeri, counsel for the respondents argued that the jurisdiction of courts is governed by law and the law that governs the jurisdiction of the Resident Magistrates Courts is the Magistrates' Courts Act [Cap 11 R.E 2019]. It governs both territorial and pecuniary jurisdiction. He contended that the Primary Courts are the ones allowed to entertain matters the value of which do not exceed 50,000,000/= . The specific damages claimed by the appellant was 20,543,900/= which is below the jurisdiction of the Resident Magistrates Court.

On the issue as to whether the case is a normal civil case or a commercial one, the learned counsel was of the view that, by its nature it is a normal civil case. He referred this court to the cases of **M/S Tanzania China Friendship Textile Company Ltd versus Our Lady of Usambara Sisters** [2006] TLR 67 and **Tanzania Breweries Ltd vs Anthony Nyingi**, Civil Appeal No. 119 of 2014 CAT-Mwanza in which it was insisted that the jurisdiction of the court must be stipulated on the specific damages which draws out the pecuniary jurisdiction of the court.

That according to the plaint, the specific damages was Tshs 20,543,900/= which meant that the appellant was aware of the pecuniary limit. He prayed that the appeal be dismissed for want of merits. With regard to the territorial jurisdiction, the counsel claimed that the contract was entered into in Dar es Salaam and that the defendants reside in Dar es Salaam, the cause of action arose in Dar es Salaam too, hence the trial court lacked jurisdiction. He therefore prayed that the decision of the trial court be sustained and appeal be dismissed with costs.

In his rejoinder, the appellant stated that the cause of action arose in Mwanza where the luggage was seized. He further stated that the case was pure commercial, since it involved buying and selling cement. He prayed that the appeal be allowed with costs and the matter be returned to the District Court for trial before another magistrate.

The above summary constitutes the arguments advanced by the parties both in support of and against the appeal. Upon consideration of both the arguments and the grounds raised by the appellant, the question that calls for determination is whether the trial court was right in dismissing the case for the reasons that it lacked both territorial and pecuniary jurisdiction.

On the issue as to whether or not the trial court had territorial jurisdiction, what is to be looked at is the place where the cause of action arose to determine whether or not it arose within the geographical area in which the trial court is situated. To ascertain the nature of the case, a brief background is of utmost importance. From the record and the arguments, it can be ascertained that, appellant entered into a contract with the defendants for purchasing 825 bags of AB white cement weighing 40kgs each. However, as he claims, the defendants breached the said contract after they transported the said bags of cement which were below the 40kgs net-weight each as agreed.

It is from the claim by the appellant where it can be ascertained as to when the cause of action arose and where, and from the pleadings it is clear that the cause of action arose in Dar es Salaam at the very moment the defendants breached the contract.

As for the issue of pecuniary jurisdiction, this will not take much of my time simply because it is trite law that what really determines the pecuniary jurisdiction of the court is the specific damages claimed and not general damages. This is because general damages are awarded at the discretion of the court. The principle was illuminated by the Court of Appeal in the case of **Mwananchi Communications Ltd & 2 Others**

**vs Joshua .K. Kajula & 2 Others**, Civil Appeal No. 126/01 of 2016, dated 22<sup>nd</sup> October, 2020 (unreported) where it was held that;

*"as expounded above, the position of the law as pronounced in various decisions is that it is the substantive claim which determines jurisdiction and not general damages as expounded herein above in our holding in Tanzania- China Friendship Textiles Co. Ltd case (supra)"*

Although the appellant has insisted in his submission that the case fell under the pecuniary jurisdiction of the trial court simply because it is a commercial case, section 2 of the Magistrates Courts Act Cap. 2019 defines Commercial Case to mean;

"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 business or commercial organization
- (iii) Contractual relationship of a business or commercial organization with other bodies or person outside it.
- (iv) The liability of commercial or business organization or its officials arising out of its commercial or business activities,

- (v) The liability of commercial or business person arising out of that persons commercial or business activities,
- (vi) The restructuring or payment of commercial debts by or to business or Commercial organisation or person,
- (vii) The winding up or bankruptcy of a commercial or business organization or person,
- (viii) The enforcement of Commercial arbitration award
- (ix) The enforcement of awards of a regional court or tribunal of competent jurisdiction made in 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."

Looking at the categories of cases which can be termed as the commercial case apparently, the business between the parties in this case though not categorically so provided, but in my opinion, falls under the items (iii) and (v) above. However, it not every case of a commercial nature becomes a commercial case, it becomes a commercial case if it is so registered. In my considered view, for the case to be registered as a commercial case it starts from the plaintiff who files it, it is only when the plaintiff indicates in the pleadings, that he intends his case to be a



commercial case and so register it as a commercial case. It is not automatic that every case of commercial nature becomes a commercial case. This is so because after the commercial case has been determined, the appeal goes to the Commercial Court not to the normal High Court.

In this case there is no any indication in the plaint that the plaintiff intended the case to be commercial. Not only that he registered it as a normal civil case, but also when it was finalised before the subordinate court, he appealed to this court (High Court District Registry) not the High Court Commercial Division. Had the appellant wanted this case to be a commercial case, then he would have indicated so in the plaint and would have appealed to the commercial court. For that reasons, I differ from the contention by the appellant, and share that of the respondents' counsel that the matter is a normal civil case arising out of breach of contract; therefore it was not a commercial case as contended by the counsel for the appellant.

After finding that the case was a normal Civil Case, with the claim of Tshs. 20,543,900/= which is claimed as special damage, it goes without saying that the amount is bellow the pecuniary jurisdiction of the court of Resident Magistrate, but it is within the jurisdiction of the Primary Court as provided under section 18(1)(a)(iii) of The Magistrates

Courts Act, [Cap 11 R.E 2019] therefore without explanation, it was not right for the appellant to institute the matter at the Resident Magistrates Court, instead he was supposed to institute the same before the Primary Court because the value of the subject matter is well within the jurisdiction of the Primary court. It is trite law of law that every suit shall be instituted in the court of the lowest grade competent to try it.

Regarding the fact that, the contract was entered in Dar Es Salaam, it is also the fact that the cause of action which is the subject matter of the disputed which is built on the discovery that the consignment was under weight arose in Mwanza, therefore the matter can be instituted in Mwanza because most of the evidence can be found in Mwanza not in Dar es Salaam.


Regarding the issue as to whether the trial Court was correct to hold that it had no jurisdiction, it is the principle of law that cases must be instituted before the lowest court competent to try it. See section 13 of the Civil Procedure Code [Cap 33 R.E 2019]. In this case as earlier on pointed out, the lowest court competent to try the suit regarding the pecuniary jurisdiction is the Primary Court. Therefore the trial Court was justified and correct when it held that it had no jurisdiction to try the

matter, under section 13 of the CPC (supra) the appeal is dismissed for the reasons given.

While regarding the territorial jurisdiction, it is the Primary Court of Mwanza which has Jurisdiction to entertain the case. Having found as above that the matter was supposed to be filed in Mwanza, therefore it is the Primary Court of Mwanza which had territorial jurisdiction to try. The appeal is partly allowed, and partly dismissed, to the extent explained above. It has been dismissed, after sustaining the decision of the trial court in respect of the pecuniary jurisdiction, but the same has been sustained in respect of the decision of territorial jurisdiction. It is ordered that, it is the Primary Court of Mwanza which has jurisdiction to hear the case. As the appeal has been partly allowed and dismissed no order as to costs is made.

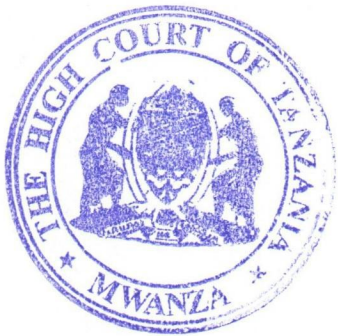
It is so ordered

**DATED** at **MWANZA** this 10<sup>th</sup> day of December, 2020.

  
**J.C. Tiganga**  
**Judge**  
**10/12/2020**

Judgment delivered in the absence of the parties, with instruction that the parties be informed of the result by the bench clerk. This is

after the applicant has been not found on line for the same to be delivered by Tele conference.



**J.C. TIGANGA**

**JUDGE**

**10/12/2020**

ORIGINAL