

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI.**

**CIVIL CASE No. 6 of 2021**

**SARAPIA M. VERULI.....PLAINTIFF**

**VERSUS**

**MULTICHOICE TANZANIA LIMITED.....DEFENDANT**

**RULING**

*30/9/2021& 4/11/2021*

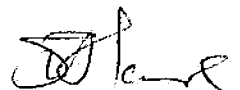
**SIMFUKWE, J.**

The above plaintiff has instituted the case against respondent claiming that the defendant had infringed its copyright by disseminating, broadcasting, exhibition and airing her film titled "**AHAVA**" without her consent.

In their Written Statement of Defence, the Defendants raised the following preliminary objection on point of law; -

- i. That the honourable Court (Moshi District Registry) has no territorial jurisdiction to entertain the suit.*

The preliminary objection was ordered to be argued orally. Mr. Wilbard Massawe, learned counsel appeared for the plaintiff while the respondent was represented by Mr. Johnson Kagilwa, learned counsel.



Submitting in support of the Preliminary Objection, Mr. Kagilwa referred the Court to paragraph 2 of the plaint where the plaintiff stated that the defendant conducts his business in Dar es Salaam. Also, he referred to paragraph 12 of the plaint which shows that the cause of action is unlawful broadcasting of a picture of the defendant without prior consent of the defendant. He also referred to **section 18 of the Civil Procedure Code, CAP 33, R.E 2019** (CPC) which provides that the suit should be instituted where the defendant resides or where the cause of action whole or part arises.

Under **Explanation II** of the same section Mr. Kagilwa contended that the same provides that for a corporation a suit should be instituted where its principal office is located. In that respect, the learned counsel was of the view that since the defendant is a corporation then under **Explanation II**, the defendant was to be sued against any cause of action where it has permanent, or establishes its principal office, or where it has a subordinate office which to Mr. Kagilwa, is in Dar es Salaam since the defendant has its principal office there and it has no subordinate office in Moshi. He thus commented that, suing the defendant before this court contravenes **section 18 of the CPC**. To buttress this point, the learned counsel referred to the case of **Abdallah Ally Seleman t/a Ottawa Enterprises (1987) vs Tabata Petrol Station Co. Ltd and Another, Civil Appeal No 89 of 2017 at page 15 and 16** which is in respect of the place of suing, and the court concluded that for any cause of action the place of suing is governed under **section 18 of CPC** i.e., where the defendant resides or carries on his business.



Mr.Kagilwa prayed for the court to uphold the preliminary objection and strike out Civil Case No. 6 of 2021.

In reply Mr. Wilbard Massawe for the plaintiff stated among other things that, Mr. Kagilwa's submissions are misconceived since he has failed to grasp the cause of action. He drew attention of the court by quoting **Mogha's Law of Pleadings** at page 11, 3<sup>rd</sup> paragraph which states that; -

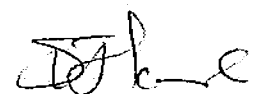
*"It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner."*

Mr.Massawe argued further that if one reads specifically the 3<sup>rd</sup>, 12<sup>th</sup>,14<sup>th</sup>,19<sup>th</sup> and 23<sup>rd</sup> paragraph he/she will notice that the plaintiff's claim is copyright infringement which is unauthorised airing of emotional picture titled "AHAVA." At paragraph 23 the plaintiff specifically stated that the defendant provides services all of Tanzania including Moshi and the cause of action arose here in Moshi and it is common knowledge that DSTV services are available in Moshi.

Responding to the authority cited by respondent's learned counsel Mr. Massawe argued the same is distinguishable and irrelevant to this matter since it concerned convention of a motor vehicle and not copyright claim.

Moreover, Mr. Massawe referred to the marginal note of **section 18 of the CPC** which reads that;

*"Other suits to be instituted where the defendant resides or cause of action arises."*



Also, he referred to **section 18 (c) of the CPC** which provides to the effect that the local limits where the suit can be instituted is where a cause of action wholly or part arises. On that basis, it was submitted that, by looking at the plaint in its entirety, the film was broadcasted here, within the jurisdiction of this court. He argued further that, the allegation could be relevant if it concerned immovable properties.

Mr. Massawe again referred to **Article 108 (1) (2) of the Constitution of United Republic of Tanzania** read together with **section 2 of Judicature and Application of Laws Act (JALA)** provides overall jurisdiction of the High Court in Civil and Criminal matters. That jurisdiction can only be qualified by specific laws. He was of the view that since there is no specific law in respect of copyright claims, the jurisdiction of this court cannot be ousted by even a piece meal reading of the plaint.

The learned counsel referred to **section 36 (1) of the Copyright and Neighbouring Act** which states that; *a person whose rights have been infringed under the Act, may institute proceedings in the United Republic of Tanzania*. He argued that there is no mention of locality under the Act.

Mr. Massawe also submitted in respect of the case of **Abdallah Ally Selemani (supra)** in which at page 17 it was held that other suits may be instituted where the defendant resides or cause of action arises.

Also **Rule 7(1) of the High Court Rules GN No.9 of 2005** provides that proceedings may be instituted where the cause of action arose or where the defendant resides.



Mr. Massawe challenged the learned counsel's allegation that the registered office of the defendant is in Dar es Salaam by arguing that the same is not in the pleadings thus it raises a factual inquiry which cannot be done at this stage. He drew the attention of the Court by referring to **Mulla Code of Civil Procedure 16<sup>th</sup> Edition** at page 440 which provides that:

*"In the case of a company registered under the Companies Act, the controlling power is, as a fact, generally exercised at the registered office, and that office is, therefore, not only for the purposes of the Act, but for other purposes, the principal place of business. This is not however, necessarily the case."*

Regarding the issue as to whether the place is a principal place of business or not is a question of fact. He referred the Court to the case of **MUKISA Biscuit** in which the meaning of Preliminary Objection was stated. That, first it must arise from pleadings. Also, it must be based on pure point of law and if the has to be ascertained, then it loses qualification. In the instant matter, it was argued that the plaintiff did not state where his office is registered even at paragraph 13 of the Written Statement of Defence, the defendant has not specifically stated where his office is.

Responding to the respondent counsel's suggestion that the case should be strike out, Mr. Massawe suggested that if the Preliminary Objection is found to have merit, the remedy is to transfer it to its jurisdiction as it was held in the case of **CR. F Lwanyantika Masha vs The Attorney General, Civil Case No. 136 of 2001.**



In his rejoinder, Mr. Kagilwa did not dispute the fact that the cause of action is infringement of copyright which is tort. Also, he did not dispute the fact that the infringement was through broadcasting.

Responding to the issue of immovable properties he submitted that **section 18 of CPC** is an exception of place of suing as indicated under **sections 14,15,16 and 17 of the CPC**. He argued that if the suit does not fall under those sections, then it is filed under **section 18 of the CPC**.

Concerning the cited article of the Constitution of the United Republic of Tanzania which provides general jurisdiction of the High Court; it was Mr. Kagilwa's argument that the same does not provide about the Registries which are governed by **Rule 7(1) of the High Court Registry Rules** (supra) and section 18 of the CPC.

Responding to the issue of **section 36(1) of the Copyright and Neighbouring Act** (supra) he said that the section is subject to the rules of jurisdiction. He cemented his point by referring to the case of **Lwanyantika Masha** (supra) and the observation under **MULLA**. That the requirement is whether there is a principal office or a subsidiary office.

Concerning the issue that the Preliminary Objection is a matter of fact, it was argued that, on the 2<sup>nd</sup> paragraph of the plaint the plaintiff disposes the place of the defendant, so it is not a matter to be ascertained since it is clearly stated in the plaint. He thus called upon the Court to disregard such misconception.

It was further rejoined by Mr. Kagilwa that, the plaintiff's counsel did not raise any issue under **Explanation II of section 18 of the CPC**.

The learned counsel contended that as to the issue of whether the defendant provides services in Moshi or not does not confer jurisdiction under **section 18** as the condition is not providing services, it is having a subordinate office and the defendant does not have any subordinate office in Moshi and the Principal office is stated under paragraph 2 of the Plaint.

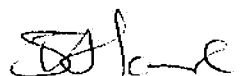
The learned counsel reiterated that, in case their preliminary objection is upheld, the matter should be strike out with costs.

Having considered submissions of the learned counsels of both parties, the only issue is ***whether the raised Preliminary Objection has merit.***

The raised Preliminary Objection is that this court has no territorial jurisdiction to entertain this suit. From the outset, I wish to state clearly that this is a civil case which has been instituted in this court (**High Court of Tanzania-Moshi District Registry**). Therefore, to know whether this court has territorial jurisdiction or not, the applicable laws are **the Civil Procedure Code Cap 33, R.E 2019** and **The Judicature and Application of Laws Act, Cap 358, R.E 2019 (JALA)** especially section 18 and section 2 respectively. I shall thus revisit and quote these laws for easy reference. **Section 18 of the CPC** reads; -

*18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-*

*(a) the defendant, or each of the defendants where there are more than one, at the time of the*



*commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;*

*(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry-on business, or personally work for gain, as aforesaid, acquiesce in such institution; or*

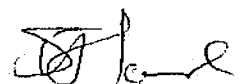
*(c) the cause of action, wholly or part, arises.*

**Explanation I:** *Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect any cause of action arising at the place where he has such temporary residence.*

**Explanation II:** *A corporation shall be deemed to carry on business at its sole or principal office in Tanzania, or, in respect of any cause of action arising at any place where it is, has also a subordinate office, at such place.*

**Section 2(2) of JALA** provides that; -

*"2. -(1) Save as provided hereinafter or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters.*





*(2) For the avoidance of doubt, it is hereby declared that the jurisdiction of the High Court shall extend to the territorial waters”[emphasis added].*

From these provisions of the law, it goes without saying that, the jurisdiction especially territorial jurisdiction of this Court is covered under **section 18 of the CPC** and **section 2(2) of JALA** which I am of the firm opinion that, must be read together.

In this matter, the plaintiff's claim is that her film with a title "AHAVA" was aired by the defendant without her consent and that she noticed the same while in Moshi and its effects is or maybe all over Tanzania. Since the effects is all over Tanzania then, pursuant to **section 2(2) of JALA**, this Court is conferred with jurisdiction to entertain the matter.

The address of the Defendant might be in Dar es Salaam as contended by Mr. Kagilwa but as per **section 18(2) of the CPC**, it is not certain as to whether Dar es Salaam is the Principal Office as envisaged under **Explanation II**. To ascertain this, it will require the factual evidence to support the same which automatically lacks the criteria of being a Preliminary Objection, since a Preliminary Objection must be purely point of law. See the case of **Moto Matiko Mabanga vs Ophir Energy PLC and 6 others, Civil Appeal No. 119 of 2021** (CAT at Dodoma) (Unreported)

Moreover, **section 36(1) of the Copyright and Neighbouring Rights Act, Cap 218** which has been amended by **Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019** gave room to a person whose rights have been infringed to institute the proceedings in



the United Republic of Tanzania. Which means a suit may be instituted anywhere in the United Republic of Tanzania.

For the reasons I have given above, I find that the raised Preliminary Objection has no merit. I therefore dismiss it with costs. The main suit should proceed on merit.

It is so ordered.



Handwritten signature of S.H. Simfukwe

**S.H. SIMFUKWE**

**JUDGE**

**4/11/2021**