

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 51 OF 2020

GOOD NEIGHBORS TANZANIA ----- PLAINTIFF

VERSUS

DOREEN AUGUSTINE DOMINIC T/A DAWSON WATER

DRILLING CO. LIMITED ----- DEFENDANT

Date of Last Order: 10/06/2021

Date of Judgment: 29/07/2021

RULING

L. M. MLACHA, J.

The plaintiff, GOOD NEIGHBORS TANZANIA filed a suit against the defendants DOREEN AUGUSTINE DOMINIC T/A DAWSON WATER DRILLING CO. LIMITED. The gist of the claim is reflected in paragraph 3 to 9 of the plaint which are reproduced as under for easy of reference:

- 3. "The Plaintiff claims against the Defendant compensations for the breaches of the contracts for wells drillings at Salasala, Fukayoki and Mkenge in terms of repayments of advances for the three unperformed contracts to the tune of Tanzanian Shillings Sixty eight Million One Ninety Four Thousand Nine Hundred and Nine and*

Seventy cents (TZS. 68,194,979.70), payment of Tanzanian shillings Three Hundred Million (TZS. 300,000,000.00) beings specific damages for loss occasioned by deliberate breaches of the well drilling contracts, general damages for loss of reputation as a result of breaches of the wells drillings contracts and inconveniences caused. The Plaintiff further claims for a monthly compound interests at the prevailing commercial bank market rate of 23% from the dates of breaches to the date of judgment, until the same liabilities are paid in full, and cost of the suit.

- 4. That the Plaintiff contractually engaged the services of the Defendant as Contractor and consequently concluded binding contracts for wells drilling projects at Salasala, Kilimahewa in Kinodnoni District, Dar es Salaam Region, and at Fukayosi Secondary School, Fukayosi Village at Bagamoyo Pwani, which were executed on 20th December 2017 and another well drilling contract at Mkenge Village, Bagamoyo, Pwani Region, which was executed on 3^d March, 2017. ...*
- 5. That, it was agreed that the contract for the two projects at Salasala and Fukayosi be implement and completed before 19th January, 2018 and the Defendant was paid advances payments in form of first instalments to the tune of Tanzanian Shilling 18,533,752.00 being 70% of the contractual value (i.e TZS. 26,505,360.00) for Salasala well project and TZS. 26,622,827.00 being 70% of the contract value (i.e TZS. 38,032,611.00) for Fukayosi well project. ...*
- 6. That the well drilling projects at Mkenge Village, Bagamoyo Pwani Region was executed on 18th March, 2017 whereby the Defendant expressly and unequivocally agreed with the Plaintiff to implement*

and contract and complete the project on before 30th April, 2017 and the Plaintiff paid the Defendant an advantage payment in the form of the first instalment to the tune TZS, 23,018,400.00 being 80% of the Mkenge well project contractual value TZS. 28,773,000.00. ...

- 7. That the total amount paid as advances for the above three unperformed well drilling Contracts at Salasala, Fukayosi and Mkenge is to the tune of TZS. 68,194,979.70.*
- 8. That after executions of the three well drilling Contracts, the Plaintiff performed her obligations in the Contracts by providing the Defendant with advances payments, immediately thereafter as agreed, following the Defendant's commitments to accomplish the Projects in time as agreed, the commitments which were wilfully without any justifiable reason neglected or ignored to be honoured by the Defendant, despite the Defendant's written bindings covenants. ...*
- 9. That despite the fact that the Plaintiff communicated with the Defendant through formal letters, emails and phone calls, the Defendant did not take any reasonable measure to correct the mistakes to rescue the situations, and this omission portrays a reasonable inference that the Defendant wilfully and deliberately breached the well drilling Contracts she entered with the Plaintiff, and probably shifted the advance payments made her other personal uses, rather than well drilling projects.".*

The defendant filed a Written Statement of Defence which had a preliminary objection. The preliminary objection was that the court lacked jurisdiction to hear the case in view of the provision of section 40 (2) (b) of the Magistrates Courts Act, Cap 11 R.E. 2019 which requires a suit which has claims below 200,000,000/= to be filed in the District Court.

The plaintiff was represented by Mr. Gema Mrina while the defendant had the services Ms. Fatuma Songoro, learned counsels. Hearing of the preliminary objection was done by written submissions.

It was submitted for the defendant that the principle amount in this case is Tshs. 68,194,979. And that a claim of this amount ought to have been lodged in the District Court because the amount of Tshs. 300,000,000 which was termed special damages is actually general damages which are not counted in assessing the jurisdiction of the court. Counsel for the defendants referred the court to **Tanzania China Friendship Textile Ltd v. Our Lady of Usambara Sister**, Civil Appeal No. 84 of 2002, reported as [2006] TLR 70 and **Mwananchi Communications Ltd and 2 others v. Joshua K. Kajula and 2 others**, CAT Civil Appeal No. 120/01 of 2016 for reference and guidance on this aspect. In *Tanzania China Friendship Textile Ltd* (Supra) the court held thus: -

"It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court".

And in Mwananchi Communications Ltd (supra) the court held as under: -

"normally claims for general damages are not quantified. But where they are erroneously quantified, we think this does not affect the pecuniary jurisdiction of the court".

Based on section 13 of the Civil Procedure Code Act, Cap 33 R.E. 2019 which requires a suit to be instituted in the court of the lowest grade competent to try it, she argued the court to struck out the case so that it can be filled in the District Court.

Counsel for the plaintiff submitted in reply and said that the claim for Tshs. 300,000,000 which appear in the plaint is not a claim for general damages. It is a claim for special damages. He proceeded to argue that the total claim of Tshs. 368,194,979.70 is a claim for specific damages. And that general damages have been pleaded separately at page 5 of the Plaint at roman (c). He requested the court to find that it has jurisdiction to hear the case.

I have examined the Plaint carefully. The question of jurisdiction has been a subject of many decisions of this court and the Court of Appeal. In **Fanuel**

Mantiri Ng'unda v. Herman M. Ng'unda & Others [CAT] Civil Appeal

No. 8 of 1995, it was said thus:-

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature... The question of jurisdiction is so fundamental that courts must as matter of practice **on the face of it be certain and assured of their jurisdictional position at the commencement of the trial... It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case.**" (Emphasis added)*

See also **Richard Julius Rukambura v. Issack N. Mwakajila & Another** [CAT] Civil Appeal No. 3 of 2004 and **Baig and Batt Construction Ltd v. Hasmati Ali Baig**, [CAT] Civil Appeal No. 9 of 1992.

Further to that, it the position of the law that the jurisdiction of court is established by examining the plaint and documents attached to it only. We are not supposed to travel outside the plaint to bring new facts.

My look of the plaint in the cited paragraphs and annextures has revealed that the case is based on three water drilling contracts which has a total claim of Tshs. 68,194,979.70 being money advanced to the defendant in the execution of the work which it is alleged that was not performed. This claim

arise of breach of contract and is in the nature of specific damages and the particulars have been shown clearly in the relevant paragraphs and attached documents. The claim of Tshs. 300,000,000 is referred to as a claim for special damages but there are no particulars attached for it in the plaint. It is only mentioned that way. The defendant was thus correct, in my view, when she said that the claim was erroneously named as special damages while in actual sense it was general damages. On the strength of the decision of the Court of Appeal in **Tanzania – China Friendship Textile Ltd** (Supra) I will hold that it was a claim for general damages not special damages. It was thus erroneously quantified and recorded as special damages while in actual sense it is general damages, which are not relevant in assessing the pecuniary jurisdiction of the court.

That said, the suit is struck out for want of jurisdiction. Cost to follow the event.




L. M. MLACHA
JUDGE
29/07/2021