

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL CASE NO. 8 OF 2020**

- LUCAS DAUDI MOLLEL .....1<sup>ST</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Hagai Lucas Mollel)*
- AUGUSTINO A NYOMA .....2<sup>ND</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Ntegayaje Augustino)*
- GERALD EMANUEL MCHOME .....3<sup>RD</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Gema Gerald Mchome)*
- SAID RASHID MKUNGA .....4<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Sabrina Said)*
- GODSON KIVUYO .....5<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Irene Moses)*
- LUCY SHIRIMA .....6<sup>TH</sup> PLAINTIFF**  
*(Suing as administratrix of the Estate of the late Ian R. Tarimo)*
- JESCA SIMON .....7<sup>TH</sup> PLAINTIFF**  
*(Suing as administratrix of the Estate of the late Julius Lomnyaki Mollel)*
- JULIANA LEMUNGE .....8<sup>TH</sup> PLAINTIFF**  
*(Suing as administratrix of the Estate of the late Junior Selemani Mwashuya)*
- MIRIAM ERASTO .....9<sup>TH</sup> PLAINTIFF**  
*(Suing as administratrix of the Estate of the late Heavenlight Enock)*
- DEOGRATIAS LUCAS .....10<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Joel Degratius)*
- ALEX JOHN SWAI .....11<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Arnold Alex Swai)*
- KASSIM MUSA MHINA .....12<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Musa Kassim Mhina)*
- FILEMON LAIZER .....13<sup>TH</sup> PLAINTIFF**  
*(Suing as administrator of the Estate of the late Witness Filemon Laizer)*

**MASRA SHAYO .....14<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Rukia Alfani)

**ZENA HASHIM .....15<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Sada Ally)

**NAZAHEDY G. MGONJA .....16<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Greyson R. Masawe)

**RUTH PETER KALINGA .....17<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Praise Roland)

**GOODLUCK MMARI .....18<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Gladness Goodluck Mmari)

**SAUMU MOHAMED .....19<sup>TH</sup> PLAINTIFF**  
 (Suing as administratrix of the Estate of the late Umulkher Rashid)

**CHARLES ISHEBAKAKI .....20<sup>TH</sup> PLAINTIFF**  
 (Suing as administrator of the Estate of the late Prisca Charles Ishebakaki)

**PRUDENCE PAPIAN .....21<sup>ST</sup> PLAINTIFF**  
 (Suing as administrator of the Estate of the late Innocent Papian)

**JOSEPH MOSSES .....22<sup>ND</sup> PLAINTIFF**  
 (Suing as administrator of the Estate of the late Witness Mosses)

**VERSUS**

**LUCKY VICENT COMPANY LIMITED .....1<sup>ST</sup> DEFENDANT**  
**THE SCHOOL BOARD**

**LUCKY VICENT PRIMARY SCHOOL .....2<sup>ND</sup> DEFENDANT**

**INNOCENT SIMON@MOSHI .....3<sup>RD</sup> DEFENDANT**

**LONGINO VICENT @ NKANA .....4<sup>TH</sup> DEFENDANT**

**RULING**

**07/09/2021 & 21/09/2021**

**KAMUZORA, J**

The plaintiff instituted a civil suit against the defendants jointly and severally. While responding to the plaint, the defendants raised two

preliminary points of objections that, the court lacked jurisdiction for the claim was entirely based on general damage and that, the plaintiffs had no capacity to sue on behalf of the deceased. On the 7<sup>th</sup> of May, 2021 his lordship Masara, J delivered the ruling on the two points of preliminary objection by upholding the first point. The court directed the plaintiffs to amend the plaint, if possible, in order to desegregate what they claim to be funeral expenses. The direction was made pursuant to **Order VI rule 17 of the CPC Cap 33 RE 2019**. The court was clear that, if those expenses will satisfy the pecuniary jurisdiction of this court, the suit will proceed. It however, directed that, if such desegregation can't be done or its value cannot meet the threshold required, the suit be filed in a court of competent jurisdiction without regard to time limitation.

Following those directives, on the 21/05/2021 the plaintiffs filed in this court, an amended plaint to which the defendant again raised four points of preliminary objection as follows;

- a) That, this court has no jurisdiction over the suit*
- b) That, the plaint is bad in law for containing an improper quantification of the item of punitive damage.*
- c) That, the suit is incompetent for lack of the particulars of special damages incurred by each plaintiff on the items pleaded under paragraph 6 of the plaint.*
- d) That, the second defendant has no legal capacity of being sued.*

As a matter of legal representation, Mr. Samwel Kahunduka appeared for the plaintiffs while Mr. Method Kimomogoro and Mr. Emmanuel Sood represented the defendants. The preliminary objections

were argued by way of written submissions and both parties complied to the submissions schedule.

In his submission in support of the preliminary points, the counsel for the defendant dropped the 4<sup>th</sup> preliminary point of objection and confined the submissions to the three remaining points. The defendant's counsel also opted to jointly argued the points of objection under paragraph 1(a) and (b) because the arguments in support thereof are overlapping. The first two points reads;

*(a) That this court has no pecuniary jurisdiction over the suit*

*(b) That the plaint is bad in law for containing an improper quantification of the item of punitive damages.*

Submitting on the first two points, the counsel for the defendant argued that, the plaintiff is claiming for specific damage at the tune of Tshs 239,656,000/= . That, in total defiance to the court's order, the plaintiffs have claimed and quantified what is termed as punitive damage in the sum of Tshs 150,000,000/= per deceased child as shall be assessed by court. That the quantification of punitive damage by the plaintiffs is an act of defiance; in total disregard of the court's order made on 7<sup>th</sup> May, 2021. The defendant's counsel was of the view that, once the quantification is disregarded, this court automatically loses its pecuniary jurisdiction as it ceases to be the court of lowest grade competent to try the suit.

Responding to the first and second points of objection the counsel for the plaintiff submitted that, the submission by the defendant's counsel that this court has no pecuniary jurisdiction is based on the quantification of punitive damages. The counsel was of the view that,

section 40 (2) (a) and (b) of the Magistrate Court Act confers pecuniary jurisdiction to the district court 300million for immovable and 200million for movable properties. That anything above 200million for movable properties, the jurisdiction is vested to the High Court. The counsel averred that, the amended plaint contained specific claim of Tanzanian shillings two hundred thirty-nine million six hundred and fifty-six thousand only Tshs 239,656,000/= which is well beyond the pecuniary jurisdiction of the lower courts and therefore within the jurisdiction of the High Court. The counsel insisted that, paragraph 6 (i) to (vii) of the plaint clearly stated that the same shall be proved during hearing. The counsel maintained that, what is raised as objection does not qualify as preliminary objection as they are calling for evidence which shall be given during hearing. On the question of quantification of general damage, the counsel for the plaintiffs submitted that it is the substantive claim that determines the jurisdiction of the court and not general damage. Reference was made to the case of **China Friendship Textile Vs Our Lady of Usambara Sisters, Civil Appeal No. 84 of 2002** and the case of **Mantrac (T) Ltd Vs Summer Communication Company Ltd, Civil Appeal No. 279 of 2018**.

The counsel for the plaintiffs also added that, quantification of general damages in itself cannot amount to preliminary objection on point of law as the court is not bound by the amount quantified by either of the plaintiff or the defendant. that even if the amount of general damage is quantified in any matter still the court is not ousted its discretion to grant general damages as it deems fit. The counsel insisted that, quantifying general damage cannot render the suit into a nullity. Reference was made to the case of **Ivanna Felix Teri Vs MIC Tanzania Public Ltd Co, Civil Case No. 5 of 2019**.

In rejoinder, the counsel for the defendant insisted that, the counsel for the plaintiff failed to comprehend that the mandatory requirement to attach documents when the plaint is presented is the wants of the law under Order VII, Rule 14 (1) of the Civil Procedure Code, Cap 33 RE 2019. The counsel claimed that, the figure claimed under paragraph 6 (i) to (vii) of the plaint is fictitious and dubious because the same has been inflated so as to bring the suit within the jurisdiction of this court. He insisted that, if the same was actual, the counsel for the plaintiff would have attached the supporting documents reflecting the same on the plaint. That, the claim by the plaintiff's counsel that what is pleaded will be proved during hearing does not conform to law that parties are bound by their pleadings.

Regarding the submission on the quantification of general damage, the counsel for the defendant referred the case of **Said Kibwana & general Tyre E.A. Ltd Vs Rose Jumbe (1992) TLR175**, the case of **Elizabeth Mckee Vs 30 Direct Pay Ltd, Misc. Commercial Case No.5 of 2018** and the case of **Nkupa Tanzania Company Ltd Vs 30 NMB Bank PLC & Gadau Auction Mart & Co Ltd, Civil Case No. 179 of 2019** to insist on the point that quantification of general damage is the discretion of the court and parties cannot quantify them.

In considering the submissions by the parties, the amount pleaded as specific damage confirm this court with the jurisdiction to determine the suit. As well submitted by the counsel for the plaintiff, what is claimed under paragraph 6 is specific damage for funeral expenses at the tune of Tshs 239,656,000/= which is within the jurisdiction of this court.

It was however contended by the counsel for the defendant that, the plaintiffs also claimed and quantified what is termed as punitive damage in the sum of Tshs 150,000,000/= per deceased child in disregard of the court order. I do agree that the order of the court was on the desegregating the funeral expenses. However, that order did not relate to other types of damages claimed. The original plaint shows that, the plaintiffs quantified punitive damage at tune on 1,100,000,000/= but it was not raised in the first objection. When the amended plaint was filed, again the plaintiffs quantified punitive damage at the tune of Tshs 150,000,000/=.

I do not agree with the defendant's counsel submission that by quantifying the punitive damage, the plaintiffs were in disregard of the court's order. In the first place, quantification of punitive damage was not among the points of objection raised and discussed by the court during the objection against the original plaint. But being raised now, I still see no harm in indicating the amount of punitive damage in the plaint. I say so for obvious reason that, punitive damage does not determine the jurisdiction of this court. The authorities cited by the parties; **Kibwana & general Tyre (supra)**, **Elizabeth Mckee (supra)**, **Nkupa Tanzania Company (supra)**, **China Friendship Textile (supra)** and **Mantrac (T) Ltd (supra)** support the argument that general damage cannot determine the jurisdiction of the court. It is the substantive claim that determines the pecuniary jurisdiction of the court.

In the present matter, the substantive claim is Tshs. 239,656,000/= which is within the jurisdiction of the court thus the court does not need to rely on punitive damage to determine its

jurisdiction. Punitive damage is usually assessed by the court irrespective of the amount being mentioned or not. The court is not bound to consider the figure pleaded rather to apply its best judgement in assessing the punitive damage. In my considered view, pleading and quantifying general damage cannot be a reason to nullify the plaint.

On the third point of objection, it was contended by the defendant's counsel that, the suit is incompetent for lack of the particulars of special damages incurred by each plaintiff on the items pleaded under paragraph 6 of the plaint. That, the plaint is filed by 22 plaintiffs claiming the total amount of Tshs 239,656,000/= as specific damage. That, the plaint is silent as to who among the 22 plaintiffs incurred which sum of money on items I, ii, iii, iv, v and vii. The counsel insisted that, the costs for each of the plaintiff was important because the bodies of the deceased were transported to different destinations in Tanzania. That, if the exact sum of claim is not disclosed in the plaint, the defendants will be prejudiced in their defence for the following reasons;

1. That, non-disclosure of the sum claimed by each plaintiff will be in contravention of the provision of Order VII Rule 2 of the CPC.
2. That, the defendant will be denied the opportunity to admit or dispute the particular item.
3. That, the plaintiff will be at liberty to go on shopping spree for evidence.
4. That, the absence of sufficient particulars will cause delay of the fair trial as envisaged under Order VI Rule 16 of the CPC and in contravention of Order VII Rule 14 (1) of the same law.



In bolstering his argument that specific damage must be specifically pleaded and proved, the counsel for the defendant referred the case **Metropolitan Tanzania Insurance Co Ltd Vs Frank Hamad Pilia , Civil Appeal No 191 of 2018** and the case of **Stanbic Tanzania Ltd Vs Abercombie & Kent (T) Ltd, Civil Appeal No. 21 of 2001**. The counsel for the defendant concluded with a prayer for the dismissal of the suit with costs.

Responding to this point, the counsel for the plaintiffs was in agreement with the fact that, special damage must be specifically pleaded and strictly proved. The counsel however maintained that, specific damage was pleaded under paragraph 6 of the amended plaint and the proof will be done during hearing through evidence. Regarding the case of **Stanbic Bank (supra)** as cited by the counsel for the defendants, the counsel for the plaintiffs argued that, the decision was that, special damages must be specifically pleaded first then they will be strictly proved. It was the counsel for the plaintiffs' view that, the preliminary objections are premature and out to be dismissed.

In rejoinder, the counsel for the defendant reiterated his submission in chief and added that, the amount claimed under paragraph 6 (i) to (vi) of the plaint are fictitious and dubious intending to bring the suit to jurisdiction while no supporting documents were attached to the plaint. On the submission by the counsel for the plaintiffs that the claim under paragraph 6 of the plaint will be proved during hearing, the counsel for the defendant reiterated that, that view does not confirm to the law that parties are bound by their pleadings.

I agree with the counsel for the defendant that parties must be bound by their pleadings. On that basis, all evidence in terms of

documents is expected to be part of the pleadings and cannot be brought at the later stage unless the legal process is adhered to. I also agree with the counsel for the defendant that, specific damage based on funeral expenses as claimed by the plaintiff must be specifically pleaded for each of the plaintiff as each plaintiff will be required to prove the same. As well argued, the costs for funeral cannot be uniform for each of the plaintiff to be claimed in a blanket figure. The plaintiffs' counsel while responding to this point was in agreement that, special damage must be specifically pleaded and to and strictly proved. The counsel however was of the view that, the plaintiffs complied to the requirement under paragraph 6 by pleading special damage and insisted that, strict proof of damage is to be done during hearing through evidence.

The question here is whether the specific damage pleaded under paragraph 6 complied to the requirement of the law. As prior discussed, parties are bound by their pleadings. Having pleaded the total amount of Tshs239,656,000/= as specific damage, the plaintiffs are expected to bring strict proof of the same. It is unfortunate that, the claim for specific damage is based on funeral expenses to which each of the plaintiffs incurred separately and if proof is to be brought to court, each of the plaintiff is expected to present evidence proving the costs incurred by him/her. In the event the suit is decided in favour of the plaintiffs, it is expected that each of the plaintiff will be awarded the amount which he/she specifically pleaded and strictly proved. In my view, there could not be strict proof for the special damage not specifically pleaded by each plaintiff.

In the instant case, the plaintiffs under paragraph 6 of the plaint pleaded for specific damages for funeral expenses including; food and

drinks, costs for tents and chairs, costs for music appliances, master of ceremonies, family transport costs, still and moving pictures, post traumatic treatment costs and building the deceased children graves. The above listed costs are the essential facts which the plaintiffs are bound to prove in evidence. In my view, the listed costs cannot be similar for each and every plaintiff. It was therefore necessary for the specific damage to be desegregated for each and every plaintiff. I therefore agree with the counsel for the defendant that the quantification by the plaintiff of the specific damage was in disregard of the court's order made on 7<sup>th</sup> May, 2021. I therefore find merit in the third point of objection hence sustain the same.

Since the plaintiff were already accorded a chance for amendment and still did not comply to the legal requirement, I find no reason to order the amendment for the second time. The plaint is therefore struck out with costs. The Plaintiffs are at liberty to file a fresh plaint if they so desire without regard to time limitation considering the nature of this matter.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", positioned above a horizontal dotted line.

D.C. KAMUZORA

JUDGE

21/09/2021