

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL CASE NO. 101 OF 2020

RICHARD K. N. RWEYONGEZA ----- PLAINTIFF

VERSUS

JITESH JAYANTILAH LADWA ----- DEFENDANT

Date of Last Order: 02/08/2021

Date of Ruling: 11/08/2021

R U L I N G

MGONYA, J.

Before me is a Civil claim based on the Tort of Defamation. The Plaintiff is praying for various reliefs against the Defendant, the substantive part of which reads as follows:

- a) An order for retraction of offensive/defamatory words complained of;***
- b) An order for unconditional apology to the Plaintiff and publication of the said retraction and apology in the same manner as done in his letter;***
- c) An order of permanent injunction restraining the Defendant from repeating similar or making any***

other offensive defamatory words/allegation regarding the Plaintiff;

d) Payment of general damages in an amount to be assessed by the Hon. Court but in excess of TZS 1 Billion; and

e) Payment of exemplary damages of TZS 500 Million.

Apart from denying that the Plaintiff has any claims against him, the Defendant has raised a single point of preliminary objection to the effect that:

"That the Hon. Court has no jurisdiction to entertain and determine the suit on the ground that since no specific damages are pleaded, the Plaintiff ought to have filed the same in the lowest competent court."

The above point of preliminary objection has been argued by way of written submissions, which were duly filed. Though I would ordinarily have begun with the Defendant's submissions, I find it necessary to begin with a point raised by counsel for the Plaintiff partly in resisting the preliminary objection, because the point is in the nature of a preliminary objection to the manner in which the Defendant raised his preliminary objection.

Through his advocate, the Plaintiff argued to the effect that a preliminary objection must be raised in the pleadings of the party

raising it, and not in a **"Notice"**, as the Defendant has done herein. **Order VIII Rule 2 of the Civil Procedure Code Cap. 33 [R.E. 2019]** has been cited to support this contention. I agree with the Plaintiff's counsel that the wording of rule 2 is couched in mandatory terms. However, I also understand our law to be that **where a point of preliminary objection touches on the jurisdiction of the court, it can be raised at any time, even on appeal.** A court's jurisdiction is one of such fundamental importance that the proceedings cannot be left to survive if the court finds itself lacking jurisdiction.

Hence, the argument that the Defendant must have raised the preliminary objection as to the court's jurisdiction in his Written Statement of Defence cannot hold water. It would have been unthinkable for a court of law to refuse to look into such a fundamental issue challenging its own jurisdiction simply because the issue should have been raised in a pleading, and not by way of a Notice. I would therefore reject this contention, and proceed to determine the Defendant's preliminary objection hereunder.

Going to the merits of the preliminary objection, it has been argued by counsel for the Defendant that this court has no jurisdiction to entertain the present suit because the Plaintiff's claims are based on **general damages** and not **specific**

damages and, for that reason, it should have been filed in the court of the lowest grade competent to try it.

The advocate for the Defendant submitted that under **Order VII rule (1) (i) of the Civil Procedure Code**, which is mandatory in its wording, the particulars of the Plaint must include a statement of the value of the subject matter of the suit for purposes of determining which court has jurisdiction to try the suit and the requisite court fees.

In support of his client's preliminary objection, advocate for the Defendant has cited several cases. They include the Court of Appeal cases of **TANZANIA - CHINA FRIENDSHIP TEXTILE CO. LTD. V. OUR LADY OF THE USAMBARA SISTERS [1996] TLR 70** and **TANZANIA BREWERIES LTD. V ANTHONY NYINGI, Civil Appeal No. 119 of 2014 [2016] TLR 99**. Others were decisions of this court in **INDEPENDENT POWER TANZANIA LTD. & 2 OTHERS VS. HON. DAVID KAFULILA AND CLOUDS ENTERTAINMENT CO. LTD. & 2 OTHERS VS. GALIUS MPEPO, EDITOR SANI NEWSPAPERS & 3 OTHERS**.

The central point in all the above decisions was stated by the Court of Appeal in **TANZANIA-CHINA FRIENDSHIP TEXTILE CO. LTD. (Supra)**, which formed the basis for the all the others, to the effect that it is specific damages that determine the

pecuniary jurisdiction of a civil court, and not general damages, and that this court cannot exercise jurisdiction in such a case because under **section 13 of the Civil Procedure Code**, every case has to be instituted in the lowest court competent to try it.

In the present case, therefore, counsel contended, the suit being one that has no claim of **specific damages**, should have been instituted in either a District Court or a Resident Magistrates' Court.

In response to these submissions, counsel for the Plaintiff dismissed the preliminary point as having been raised out of context because the Paint complies with the requirements of **Order VII rule (1) (i) of the CPC** requiring a statement of the value of the subject matter for purposes of jurisdiction and court fees. Learned counsel reproduced **paragraph 22** of the Plaint which contains all the Plaintiff's prayers, and concluded with the submission that the point of preliminary objection be dismissed.

Given my overall findings in this ruling, I do not think that this issue has much significance. Even though I agree with the Defence argument that the Plaint does not have a clause specifically complying with **Order VII Rule (1) (i)**, such finding would, at most, only result in an amendment of the Plaint.

In responding to counsel for the Defendant's central point, the Plaintiff's counsel contended that this court has jurisdiction to

entertain the suit. Counsel divided the various cases cited by the Plaintiff's counsel into two groups. On one hand, there are those cases which were decided before 8th July, 2016 (including **TANZANIA-CHINA FRIENDSHIP TEXTILE CASE, TANZANIA BREWERIES' CASE**, which was decided in 2014, the **INDEPENDENT POWER TANZANIA LTD.'S CASE**, decided on 2nd April 2012, and **MWANANCHI COMMUNICATIONS' CASE** decided on 22nd October 2021.

Learned advocate further submitted that his reason for citing 8th July 2016 was that (presumably effective that date) **section 13 of the CPC was amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016** adding a proviso that stated:

"Provided that the provisions of this section shall not be construed to oust the general jurisdiction of the High Court."

Counsel spent quite some space in explaining the importance of this amendment, relying heavily on a decision of this court (Twaib, J., as he then was) in the case of **IVANNA FELIX TERI VS. MIC TANZANIA PLC, Civil Case No. 5 of 2019** (decided on 21st November 2019). In that case, Twaib, J. traced the historical background leading to the amendment, the reasons for it and its effect in preserving the general jurisdiction of this court

to entertain cases such as the present, if it so wishes, even though the pecuniary jurisdiction for the case may lie in a subordinate court.

The learned Judge also explained that this court has the option of either returning the Plaint, or trying and determining the same. Counsel stresses that ***Ivanna Teri's Case*** was decided after the amendment to section 13 of the CPC, and thus should be taken to represent the current position of the law.

Having gone through the relevant statutes and case law, the pleadings, and submissions filed by the Parties, the issue for this court's determination is a straightforward one relating to whether this court has jurisdiction to entertain the suit, given that the same is a claim for general damages. Resolving it, however, is not that straightforward.

That the suit before this court is one in which no specific pecuniary value is claimed, and that the only damages are general damages is not denied by any of the parties. Apart from that, it would also have been easy to say that the matter would not have presented any particular difficulty if it were not for two chronological events that have changed the legal landscape considerably. Counsel for the Plaintiff also saw this as crucial, which is why he divided the cases into two periods (before and after 18th July 2016). But I think the two events I have in mind

divides the law into three periods - the period **before the amendment to section 13 of the CPC in July 2016**, the period **between that amendment and the decision of the Court of Appeal in *Mwananchi Communications Ltd. Case* in October 2020**, and the period **after that decision**. I would therefore consider the law to be as follows:

- (1) Had it not been for the amendment to section 13 of the CPC adding the *proviso* thereto in July, 2016, the law would have been as it was held to be by the Court of Appeal in *Tanzania-China Friendship Textile (Supra)* to the effect that this court has no pecuniary jurisdiction to entertain the matter because it relates purely to general damages and jurisdiction only lies with subordinate courts.
- (2) Had it not been for the decision of the Court of Appeal in *Mwananchi Communications Ltd.*, the position of the law would be in terms proposed by Twaib J. in *Ivanna Felix Teri's Case (Supra)*, a decision that I find highly persuasive, to the effect that this Court can exercise jurisdiction in a case such as the present, if it so pleases, or reject the Plaintiff to be filed in a subordinate court competent to try it.

It is significant at this juncture to take a more concerted look at the Court of Appeal decision in ***Mwananchi Communications Ltd.*** In that case, the Court of Appeal expressed itself in very clear terms, as follows:

"It is obvious from the plaint that the claims were not specific damages and thus fall under general damages....The position of the law as pronounced in various decisions is that it is substantive claim which determine jurisdiction and not general damages as expounded hereinabove in our holding in Tanzania-China Friendship Textile Co. Ltd. case (Supra)."

In concluding its findings, the Court of Appeal stated:

"In this case...the pleading failed to highlight the specific claims and only had a general statement of claims, which thus means that there was no specific amount shown to facilitate determination of the pecuniary jurisdiction on the High Court where the suit was filed. The absence of such specification meant the suit should have been tried in the lower courts, that is the District Court or Resident Magistrate Court under section 40 (2) of the MCA. For the foregoing reasons, it is clear that the High Court

erroneously crowned itself with jurisdiction in entertaining and determining the suit that it did not possess.”

As a consequence of its above findings, the Court of Appeal allowed the appeal, declared the proceedings in the High Court a nullity, quashed and set aside the Judgment, Decree and all orders therein.

Learned advocate for the Defendant has placed a lot of emphasis on this decision, while learned advocate for the Plaintiff considers it as irrelevant. The latter's point is that even though the Court of Appeal judgment was delivered in October 2020 (after the amendment) the High Court decision came in June 2016 (before the amendment). Hence, as far as the jurisdiction of the High Court at the time the case was filed and determined was concerned, the High Court did not have jurisdiction.

It would have been quite easy to agree with the Plaintiff's counsel on this point, despite the amendment to section 13 of the CPC. What is curious, however, is that the Court of Appeal in ***Mwananchi Communications Ltd.*** did not consider the amendments that added the *proviso* to that section at all. Neither did the parties, in their submissions before the Court of Appeal address it on the issue.

I have thoroughly read the judgment, and nowhere did the Court of Appeal say that it was taking the position it took because the case was filed before the 2016 amendments, as counsel for the Plaintiff suggests. It cannot even be implied that the Court of Appeal had that fact in mind when deciding the case. In fact, the 2016 amendments were not considered at all in the judgment.

In explaining this scenario, it was further argued on behalf of the Plaintiff that the Court of Appeal "*was not bothered*" by the new law, that "*it is not inadvertence on part of the CAT not to discuss the amendment to section 13*". Counsel thus invited this court to hold that it can exercise jurisdiction. This submission may perhaps be a legitimate explanation for the Court of Appeal decision and its omission to consider the amendments.

But accepting the Plaintiff's explanation and thus ignoring the overall effect of the decision of the Court of Appeal in ***Mwananchi Communication Case*** (which was to return to the position of the law as enunciated by its decision in ***Tanzania-China Friendship Textile Case***) would be tantamount to reading the mind of the Court of Appeal and finding fault in its reasoning or the scope of it. That is something that this court should not and cannot do. It shall remain with the Court of Appeal itself to decide whether ***Mwananchi Communication Case*** is good law or not, and under what circumstances, in view

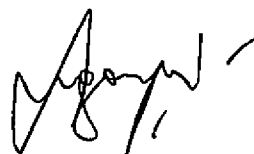
of the **proviso to section 13 of the CPC**, this court's general jurisdiction could be exercised.

On my part, and in so far as there is no other Court of Appeal case after ***Mwananchi Communication Case***, I must consider myself bound by that decision, in which the Court of Appeal expressly stated:

"In determining the jurisdiction of the High Court what should be considered is the specific claims and not the general damages....The absence of such specification meant the suit should have been tried in the lower courts, that is the District Court or Resident Magistrate Court under section 40 (2) of the MCA."

In the final analysis, I am constrained to hold that this suit, being one involving no specific damages at all, but purely general damages, cannot be entertained by this court, which lacks jurisdiction to try and determine it. **I would therefore uphold the preliminary objection raised by the Defendant, and dismiss the suit with costs.**

It is so ordered.

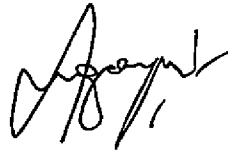


L. E. MGONYA

JUDGE

11/08/2021

Court: Ruling delivered in my chambers in the presence of Irene Mchau, Ndehurio Ndesamburo, Advocates for the Plaintiff, Elly Musyengi, Sisty Benard, Advocates for the Defendant and Mr. Richard, RMA this 11th day of August, 2021.



L. E. MGONYA

JUDGE

11/08/2021