

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)**

AT TANGA

CIVIL CASE NO. 4 OF 2018

SHUKURU M. BANZI.....PLAINTIFF

-VERSUS-

CRDB BANK PLC.....RESPONDENT

RULING

*Date of last order: 09/09/2021
Date of Judgment: 15/08/2021*

AGATHO, J.:

The present case is a claim for damages for malicious prosecution. On the date fixed for hearing, the counsel for the Defendant raised a Preliminary Objection on the point of law that this Court lacks jurisdiction because the pecuniary jurisdiction pleaded relates to general damages that by law are discretionary and granted by the Court when it deems fit. The general damages cannot be used to give the Court jurisdiction. The jurisdiction of the Court is determined basically on the specific claims and specific damages and not general damages.

The Plaintiff counsel referred to the case of **Ivanna Felix Teri v MIC Tanzania Public Limited Company, Civil Case No. 5 of 2019, High Court of Tanzania, Moshi District Registry**, but this case was about privacy violation. It is therefore distinguished from the case at hand. While the present case is about malicious prosecution whose

damages are prescribed by the law, the **Ivanna Felix Teri's case** the amount of money for damages are not prescribed by the statute. Moreover, the decisions of the High Court are not binding upon the High Court. With due respect, the **Ivanna Felix Teri's case** being a decision of the High Court at Moshi is not binding upon another High Court. However, as per the doctrine of stare decisis the High Court is bound by the decisions of the Court of Appeal unless amended by the statutory law or there is a solid reason to depart from the Court of Appeal decision. This was held in **Tanzania Breweries Ltd v Anthony Nyingi, Civil Appeal No. 119 of 2014, Court of Appeal of Tanzania at Mwanza.**

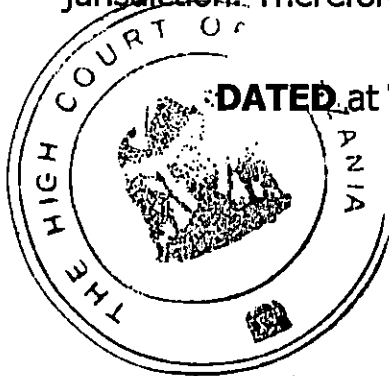
As to the second point raised, when should the Preliminary Objection be raised the answer is brief. It can be raised at any time and at any stage. It was held in the case of **Tanzania-China Friendship Textile v Our Lady of Usambara Sisters, Civil Case No. 84 of 2002** that Preliminary Objection being a point of law, can be raised at any time, and at any stage even at appellate stage. The plaintiff counsel's argument that the said Preliminary Objection is an afterthought does not hold water.

Jurisdiction is a point of law. For that matter, the Preliminary Objection raised with respect to pecuniary jurisdiction of this Court which was drawn by the general damages was correctly raised.

Regarding the submission that the Written Law Misc. Amendment Act No. 4 of 2016 (Section 13 of Civil Procedure Code Act [Cap 33 R.E. 2019] and its proviso) to have changed the position on jurisdiction. This Court is of the view that the amendment was not intended to overrule the law on jurisdiction. It was not meant to give the High Court jurisdiction through pleading general damages. Jurisdiction is a fundamental principle and without it, a court cannot entertain the case. The amendment was intended to allow the High Court to deal with matters that otherwise were dealt by subordinate Courts. However, the rule is clear that the suit has to be filed in the lowest Court competent to try it.

It was the Plaintiff's prayer that the Preliminary Objection be overruled with costs, or the plaint be returned. I would like to say that to hold that the plaint be returned is a pleasing way of starting otherwise a bad thing in law. In this case this Court has no jurisdiction and I have no other option than to struck out the plaint which was incompetently and inadvertently filed before this Court with costs.

It is my settled view that **Ivanna Felix Teri's case** was not aimed at unsettling the rule that general damages cannot give a Court jurisdiction. Therefore, the plaint is struck out with costs.



DATED at **TANGA** this 15th Day of September, 2021.


U. J. AGATHO
JUDGE
15/09/2021

Date: 15/09/2021

Coram: U. J. Agatho, J

Plaintiff: Kilule (Advocate)

Defendant: Sangawe and Gerald Mosha Advocates

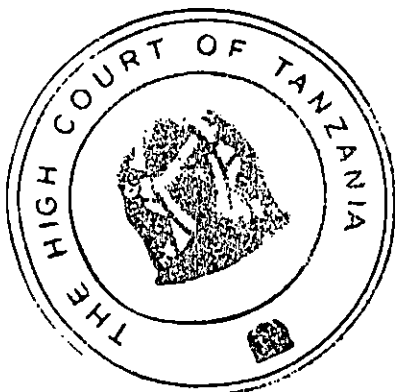
C/C: Zayumba

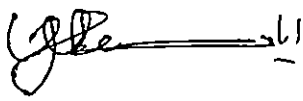
Court: Ruling delivered on this 15th day of September 2021 in the presence of the Plaintiff and his Advocate, Mr. Kilule, and Mr. Sangawe and Mr. Mosha (Advocates) for the Defendant.




U. J. AGATHO
JUDGE
15/09/2021

Court: Right of Appeal explained.




U. J. AGATHO
JUDGE
15/09/2021