

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM
CIVIL CASE NO. 40 OF 2022**

**RAMA AND SALUM ENGINEERING
GROUP R.S.E.G) LIMITED PLAINTIFF
VERSUS
MBASIRA FOOD INDUSTRIES LIMITED DEFENDANT**

RULING

27th June, & 26th July, 2022

ISMAIL, J.

This suit has been instituted by the plaintiff for declaratory orders and for damages for loss of business, profit and reputation. It is founded on the allegation that the defendant reneged on the contract entered by the parties, for joint involvement in the business of cereals, legumes; and carrying out of other agribusiness projects. Proceeds generated from the business would be shared by the parties to the contract. At the instance of the defendant, the plaintiff allegedly transferred funds to the defendant, purporting that the same would finance purchase of the said produces. These sums were paid on varied dates and they aggregated USD 126,000.00. The aggregate sum was to generate a profit amounting to USD 55,100.00. It is alleged that, after

payment of the said sum, the defendant reneged on his promise. She never fulfilled her part of the bargain, an act which founded the plaintiff's cause of action.

The suit has encountered an opposition from the defendant. The competence of the said suit is on the line owing to a couple of preliminary objections. These are to the effect that:

- 1. That the plaint is bad for being of commercial nature; and*
- 2. That the Court lacks territorial jurisdiction over the matter.*

These objections were argued by way of written submissions. Whereas Mr. Elipidius Philemon, learned counsel represented the defendant, the plaintiff enjoyed the services of Mr. Abdualziz Baisi, learned advocate.

Submitting on the first ground of objection, Mr. Philemon contended that, gathering from paragraphs 4, 5 and 6 of the plaint, the dispute in this matter emanates from a trade transaction which is of a commercial nature. This means, Mr. Philemon contended, the case is a commercial case which ought to have been filed in the Commercial Division of the Court. He argued that this is in view of rule 3 of the High Court (Commercial Division) Procedure Rules, GN. NO. 250 of 2012, as amended by High Court (Commercial Division) Procedures (Amendment) Rules, GN. No. 107 of 2019.

Mr. Philemon further argued that rule 5 of the Amendment Rules vests jurisdiction in the Commercial Division of the Court, provided that the values of the subject matters are TZS. 100,000,000/- for immovable property, and TZS. 70,000,000/- for movable property. It was the contention by Mr. Philemon that, since the value of the subject matter in the instant proceedings is USD. 126,000.00 then the appropriate forum is the Commercial Division of the Court.

With regards to ground two, the contention by the defendant's counsel is that, since the defendant's place of abode is Sumbawanga Municipality, then the appropriate forum before which the dispute was to be preferred is the High of Tanzania, Sumbawanga District Registry. He argued that this is in conformity with the trite position which is to the effect that jurisdiction is purely a statutory issue, as affirmed in ***Daniel Godwin Mamkwe v. Paul Temu***, HC-Civil Appeal No. 7 of 2021 (unreported); and ***Shyam Thanki & Others v. New Palace Hotel*** (1971) E.A. 199.

He urged the Court to dismiss the suit with costs.

Mr. Baisi's reply submission castigated the validity of the objections. The contention is that both of the objections are lacking in legal purity set out in the case of ***Mukisa Biscuit Manufacturing Company Limited v. West End Distributors Limited*** [1969] EA 696.

Regarding the 1st objection, the contention is that Order IV rule 1 (4) of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC) states that filing of a commercial case in the Commercial Division of the Court does not constitute a mandatory requirement. Dismissing the contention that this is a commercial dispute, Mr. Baisi argued that the suit is specifically on breach of contract, though it emanates from a commercial transaction.

On the second ground of objection, the argument is that section 17 of the CPC provides for flexibility for filing of a case where the defendant's place of abode is different from where the cause of action arose, if the two are different. In this case, the plaintiff contended, the defendant's place of business, appearing in the correspondences is Plot No. 138/41 India Street in Dar es Salaam. It was argued that, since the defendant's place of abode falls under territorial limits of this registry, then the Court is vested with jurisdiction to handle the matter. The plaintiff further argued that the contract she is suing on was dated and signed in Dar es Salaam.

It was the plaintiff's prayer that the objections be overruled with costs.

The defendant's rejoinder submission was a reiteration of the submission in chief and I see no point to reproduce it here. I choose to ignore it.

The issue to be resolved is whether the objections raised by the defendant have what they take to succeed. I wish to state, here and now, and without any contradiction that the answer to that question is an emphatic No! I will explain.

With respect to ground one, the obvious fact is that, going by the definition of a commercial case, the instant case emanates from a commercial transaction. In view thereof, this is a commercial case. On whether conduct of such cases is an exclusive remit of the Commercial Division of the Court, my unflustered answer is no, and the Court has pronounced itself on this many a time. This is in view of the fact that, Order IV rule 1 (4) of the CPC, cited by counsel for the plaintiff, is unequivocally clear that dealing with such cases is not entirely left to the said Commercial Division of the Court. The said provision states as hereunder:

"It shall not be mandatory for a commercial case to be instituted in the Commercial Division of the High Court."

The wording of the cited provision opens a door for other registries of the Court or, depending on the value of the subject matter, to entertain disputes which are, by definition, commercial cases.

I take the view, as well, that rule 5 (2), on which the defendant based her argument, does not confer exclusive jurisdiction on the Commercial

Division. Rather, it only states that the Division's powers in commercial cases shall be in exercise of original jurisdiction. This pronouncement is not meant or intended to be possessive as the defendant would want us believe.

In view of this position, I hold that the defendant's argument on this point is misconceived and I overrule it.

With regards to the second limb, I am in agreement that the defendant has a presence in Dar es Salaam where it also operates from. This is discerned from Annexure P-02, which shows that the defendant's Dar es Salaam Office is located at Plot No. 138/01 India Street. In other words, this is an alternative place where the defendant voluntarily resides, or carries on business or personally works for gain.

This fact opens up the possibility and choice of preferring a forum before which a dispute should be instituted, out of multiple places from which the defendant operates from, or where the cause of action arose. This makes the plaintiff's choice of the Court's Dar es Salaam Registry unblemished. It renders the objection hopeless and of no consequence. I overrule it, as well.

Consequently, both of the objections are overruled and let the matter proceed on merit. Costs to be in the cause.

Order accordingly.

DATED at **DAR ES SALAAM** this 26th day of July, 2022.



M.K. ISMAIL

JUDGE

26/07/2022

