

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)  
AT BUKOBA  
CIVIL CASE NO. 09 OF 2022**

**LEONARD REVELIAN KABUTELANA..... PLAINTIFF  
VERSUS  
ALLIANCE FINANCE CORPORATION LIMITED.....DEFENDANT**

**RULING**

*Date of Ruling: 22.07.2022*

*A.Y. Mwenda, J.*

This ruling is in respect of the Preliminary objection raised by the defendant against the plaintiff's suit. The said preliminary objections reads as follows;

- 1) That this honourable court has no pecuniary jurisdiction to entertain the suit.
- 2) That this honourable court has no territorial jurisdiction to entertain the suit.

When this matter came up for hearing, the plaintiff hired the legal services of Mr. Projestus Mulokozi the learned counsel whilst the defendant was represented by Mr. Rukaya the learned counsel. By the consent of the parties, it was agreed to dispose this preliminary objection by the way of written submissions. The scheduling order was then fixed and the parties complied accordingly.

In his written submission in respect of first limb of preliminary objection on pecuniary jurisdiction the learned counsel for the defendant submitted that, the plaintiff claims TZS 90,648,600/= for specific damages. He submitted that the amount claimed is what determines pecuniary jurisdiction of the court. ~~According to him the question to ask ourselves is whether this court has~~ jurisdiction to entertain this matter. He cited the case of *TANZANIA-CHINA FRIENDSHIP TEXTILE CO. LTD VS OUR LADY OF THE USAMBARA SISTERS CIVIL APPEAL NO. 84 OF 2002* and section 13 of the Civil Procedure Code [CAP 33 R.E 2019] to support his argument.

The learned counsel for defendant submitted further that the amount claimed in this suit is within the jurisdiction of the District Court and for that matter this suit is improperly filed before this court. He added that if this court continues to determine this matter, then the entire proceedings will be a nullity. To support his argument, he cited the case of *MIC TANZANIA LIMITED VERSUS HAMISI MWINYIJUMA AND ANOTHER.*

In regard to the second limb of preliminary objection in that this court lacks territorial jurisdiction, the learned counsel for the defendant submitted that the defendant carries on his business on Plot No. 18&2 at Vingunguti Industrial area Nyerere Road, Dar es salaam. He submitted that every suit shall be instituted in a court within its local limits. To support his argument, he cited section 18 of the Civil Procedure Code [CAP 33 R.E 2019] and the case of *ABDALLAH ALLY SELEMANI (OTTAWA ENTERPRISES V TABATA PETRO STATION CO. LTD &*

*MOHAMED J LARDHI (CAT) CIVIL APPEAL NO. 89 OF 2017.* He further submitted that this court does not have the requisite territorial jurisdiction to entertain this matter. He concluded his submissions with a prayer that this matter to be dismissed with costs for want of jurisdiction.

In reply to the submission by the learned counsel for the defendant, Mr. Mulokozi, the counsel for the plaintiff submitted that the preliminary objections raised by the defendant are misconceived and should be dismissed with costs.

With regard to pecuniary jurisdiction the learned counsel for the plaintiff submitted that, the amount claimed is TZS 90,648,600/=. He submitted that this is a civil suit involving the matter of commercial significance as provided under section 2 (iii) (iv) (v) and (vi) of the Magistrate Court Act. He submitted that the District and Resident Magistrate's Court have no jurisdiction as per section 40(3) of Magistrate Court's Act. He said this court has jurisdiction in term of the proviso to section 13 and Order IV Rule 1 (4) of the Civil Procedure Code.

With regard to Preliminary Objection over lack of territorial jurisdiction, the learned counsel for the plaintiff submitted that the entire business between the parties was transacted at Kagera Sugar within Missenyi District in Kagera Region which is the same area where the cause of action arose. He further submitted that this court has jurisdiction in terms of section 18 (c) of the Civil Procedure Code. He submitted that the subject matter of this suit is the motor vehicle with

registration No. T378 DSE make TATA which is situated at Kagera Sugar within Missenyi District in Kagera Region. He further said that the location of the subject matter is within the territorial limits of this Court. To cement his argument, he cited section 14(f) of the Civil Procedure Code [CAP 33 R.E 2019]. ~~He then concluded by submitting that the preliminary objections by the~~ defendant have no merits and should be dismissed with costs.

In rejoinder to the submission by the counsel for the plaintiff the learned counsel for the defendant submitted that if the dispute is of commercial nature, then it was to be clearly specified in jurisdiction clause in the applicant's Plaint. To support his argument, he cited the case of *CHINA PESTICIDE (T) LIMITED VS SAFARI RADIO LIMITED COMMERCIAL CASE NO 170 OF 2014*.

With regard to preliminary objection that this court lacks territorial jurisdiction, the counsel for the defendant submitted that there is no dispute that the respondent's offices are situated in Dar es salaam and Mwanza and that it does not have any branch in Kagera. He submitted that Mwanza was the place where the cause of action arose since all the loan applications and agreements were requested and signed there at.

He further submitted that under section 19 of the Civil Procedure Code it is provided that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken into account in the court of first instance at the earliest possible opportunity and all cases where

issues are settled at or before such settlement and unless there has been a consequent failure of justice. He then prayed the raised preliminary objections to be upheld and this matter be dismissed with costs.

Having gone through submission by both parties the issue for determination is whether the defendant's Preliminary objections are maintainable.

In this suit the subject matter the specific damages claimed by the plaintiff is TZS 90,648,600/=. It is from this amount where the defendant raised a preliminary objection that this Court lacks pecuniary jurisdiction to entertain it. In his submission he cited section 13 of the Civil Procedure Code which reads as follows;

***"Every suit shall be instituted in the court of the lowest grade competent to try it and for the purpose of this section, a court of a resident magistrate and district court shall be deemed to be courts of the same grade"***

To him the amount claimed is within the jurisdiction of the District Court and therefore this court is not appropriate court to entertain this matter as per the above cited section. He also relied on section 40(2) (b) of the Magistrate Court Act which reads as follows that;

*"The District Court shall have limited jurisdiction in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred million shillings".*

On his part the counsel for the plaintiff was of the view that this is the civil case which involves a matter of commercial significance and therefore this court is vested with jurisdiction to entertain it. He relied on section 2 (iii), (v) and (vi) of the Resident Magistrate Courts Act.

I have considered the submission by the learned counsels for both parties and found it prudent to see if the present suit is a civil case involving a matter considered to be of commercial significance.

To do so this court went through section 2 of the Magistrates' Courts Act which defines commercial case as follows;

*"Commercial Case means a civil case involving a matter considered to be of commercial significance including but not limited to the liability of commercial or business organization or its officials arising out of its commercial or business activities".*

In paragraph three (3) of the plaint and in the prayers by the plaintiff, is claiming for specific damages to a tune of TZS 90,648,600/= for failure to hand over the new motor vehicle as was agreed in the terms of the contract.

From the plaintiffs claim, it is clear that this matter is a normal civil suit arising from a breach of contract for supply of new motor vehicle. In other words, this suit does not fall under Section 2 of the Magistrate Court Act and Rule 3 of the High Court (Commercial Division Procedure) Rules, of 2012. On top of that in the pleading of the present suit, the jurisdiction clause does not show that it is a commercial case, let alone a failure to file the same in a commercial register.

That being said, this court is of the view that the present suit falls under section 13 of the Civil Procedure Code which provide that every suit shall be instituted in the court of the lowest grade competent to try it and that Court of Resident Magistrates and District Courts shall be deemed to be courts of the same grade. The purpose of the said provision is to prevent overcrowding in the court of higher grade where a suit may be filed in a court of lower grade.

From the foregoing observation since in our present suit, the sum claimed is TSH 90,648,600/= and under section 40(2) (b) of the Magistrate Court Act the District Court has jurisdiction to entertain the same, this court finds merits in this preliminary objection and it is hereby maintainable by striking out the plaintiff's suit with costs. Since this preliminary objection has finalized this

matter, this court finds no need of discussing the second limb of preliminary objection on pecuniary jurisdiction.

It is so ordered.



  
A.Y. Mwenda

**Judge**

22.07.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Projestus Mulokozi the learned counsel for the plaintiff and in the absence of the Respondent.



  
A.Y. Mwenda

**Judge**

22.07.2022