

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO 141 OF 2021

MULT- LION SECURITY LIMITED.....PLAINTIFF
VERSUS
KNIGHT SUPPORT (T) LIMITED.....DEFENDANT

RULING

31st March 2022 & 8th March 2022

E.E. KAKOLAKI J.

Both parties in this suit are security companies. The defendant had sub-contracted the plaintiff to perform her works of provision of security services for a considerable time in some of its sites. It appears that on 19th March, 2018 the defendant terminated the plaintiff's contract in one of her sites by issuing her a Notice of termination of contract. Upon such notice issued, the plaintiff notified the defendant of the outstanding due payment worth Tsh.408,099,101/- for the service rendered. On attempt to solve the matter amicably, parties sought intervention of the District Commissioners office whereby ended up signing the deed of settlement on 27/04/2018 where the defendant agreed to settle the claimed amount by paying the plaintiff not

less than 50 million per month. Following that agreement, the defendant paid some amount and remained with an outstanding amount of Tsh.156,5999,101/- which was to be paid from 2019. However, the defendant defaulted payment of the same despite several reminders. It is from that background the plaintiff decided to pursue his right against the defendant in this court requesting the following;

- (i) Payment of sum of Tsh.156,599,101 being the principal amount,*
- (ii) Interest on principal amount at the rate of 25% per annum from defaulting time*
- (iii) Interest on the decretal amount at the courts rate from the date of judgment till when the decree is fully satisfied.*
- (iv) Costs of and incidental to the suit*
- (v) Any other orders this honourable Court may deem fit to grant.*

Responding to the plaintiff's claims the defendant filed his Written Statement of Defence and raised two preliminary objections to the effect that:

- (i) the plaint is incompetent as it is instituted in a court with no competent jurisdiction to try the matter.*
- (ii) The plaint is defective for non- disclosure of the person who draws the plaint.*

On 31st March 2022, when the Preliminary Objection was called for hearing, the defendant who had raised it without any notice defaulted appearance,

the fact which moved the plaintiff's advocate Mr. Herry Kimaro to pray for dismissal of the said preliminary objection, the prayer which was granted by the Court for want of prosecution. Nevertheless, despite of dismissal of the preliminary objection, the court invited Mr. Kimaro to address it on competence of the court to entertain this suit. The issue to be addressed on therefore was whether this court is clothed with jurisdiction to entertain the matter before it.

Responding to the court's invitation Mr Kimaro was quick to submit that, the court has jurisdiction to entertain this suit despite of its less pecuniary value of Tsh.156,5999,101/- as the dispute between parties has a commercial nature. He went on to argue that, the dispute is on breach of contract of service between the security companies as reflected in paragraph 4 and 5 of the plaint and that paragraph 11 of plaint states clearly that this court has jurisdiction to entertain the matter. To reinforce his stance Mr. Kimaro relied on the provision of Order IV Rule 1 (4) of the Civil Procedure Code, [Cap. 33 R.E 2019] which provides that, it is not mandatory for commercial case to be instituted at the commercial court division. He also cited to the Court the case of **Marwa Masanga Patrick and Another vs Stanbic Bank (T) Ltd**, Civil Case No 6 of 2019 (HC) page 5, where by this court when

confronted with similar situation dismissed the objection. On the strength of the above submission, he requested the court to find that it has jurisdiction to entertain the matter.

I have cautiously considered Mr. Kimaro's submissions which are based on the assertion that, despite of less pecuniary value of the subject matter still this court is clothed with jurisdiction to entertain the matter as the same has commercial nature hence a commercial case. As to what amount to commercial case, the same was defined in the case of **Zanzibar Insurance Cooperation Limited Vs. Rudolf Temba**, Commercial Appeal No 1 of 2006, (HC-unreported) to mean:

The liability of a commercial or business organization or its officials arising out of its commercial or business activities.

Apart from that, Rule 2 of the High Court Registries Rules, GN. No. 162 of 2002, defines commercial cases to mean;

A civil case involving a matter considered to be of commercial significance, including but limited to:

- (a) the formation of a business or commercial organisation*
- (b) the governance of a business or commercial organisation;*
- (c) the contractual relationship of a business or commercial organisation with other bodies or persons outside it;*

- (d) the liability of a commercial or business organisation or its official arising out of its commercial or business activities;*
- (e) the liabilities of a commercial or business person arising out of that person's commercial or business activities;*
- (f) the restructuring or payment of commercial debts by or to business or commercial organisation or person*
- (g) the winding up or bankruptcy of a commercial or business organisation or person*
- (h) the enforcement of commercial arbitration award;*
- (i) the enforcement of award of a regional court or tribunal of competent jurisdiction made in accordance with a treaty or mutual assistance arrangements to which the United Republic is a signatory and which forms part of the law of the United Republic;*
- (j) Admiralty proceedings;*
- (k) Arbitration proceedings*

In the light of the above authorities; it can be safely concluded that, for the matter to be treated as a commercial one must be a civil case, which involve commercial or business activities connected to buying and selling of goods or services. Additionally, the transaction involved must be of considerable commercial significance. The importance of having the transaction of considerable commercial significance is not far-fetched as our daily lives are surrounded by small transaction of commercial nature such as oral contracts

of transportation of goods from one place to another and supply of services such as food, water and security. To entertain every selling and buying transactions of goods or services as commercial cases without considering nature of claims involved in each case, in my view is tantamount to opening a pandora box whereby small transaction cases which would be treated as normal civil cases for arising from less valued and simple contracts to flood in the High Court, which court is meant to deal with complicated matters.

Apart from that, it will be going against the essence of section 13 of the Civil Procedure Code Cap 19 R.E 2019. Which provides that:

Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade: Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.

The object and purpose of the above section is not to oust the unlimited jurisdiction of this court, but rather to prevent overcrowding of cases in the Court of higher grade in a situation where the suit may be filed in a court of lower grade and pave a way for the cases with huge amount to be entertained by experienced Courts. Similar stance was once held by this

court in the case of **Peter Keasi Vs. The Editor, Mawio Newspaper and Another**, Civil case No. 145 of 2014 (HC-unreported), this court had an opportunity to observe the object and purpose of the said section 13 of the CPC which observation I subscribe to when stated:

*“The object and purpose of the said provision is I think three fold. **First**, it is aimed at preventing overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. **Second**, to avoid multifariousness of litigation and **third**, to ensure that the case involving huge amount must be heard by a more experienced court.”*

As alluded to above, not every transaction or contract dispute shall constitute a commercial case, the regard being paid to the nature and extent of transaction as each case has to be determined basing on its own fact as deposed in the plaint.

In the present case, having considered the cause of action and the reliefs sought as deposed by the plaintiff in paragraphs 3,4,5,6 and 7 of the plaint, I am of the profound view that, the facts therein do not fall under the ambit of the matter of commercial significance but rather one which would be treated under normal civil case. I so hold as the plaintiff does not claim any breach of contract/services agreement between her and the defendant,

rather an outstanding due payment worth Tsh.156,599,101/- for the services rendered. Looking at the nature of plaintiff's claims, it is apparent to me that, the same is worth consideration and determination by the District Court as per the dictates of the provisions of section 40 (2) (b) of the Magistrates Courts Act, [Cap. 11 R.E 2019], for being less than Tshs.200 million, which is outside the jurisdiction of this Court to try. I therefore hold that; the suit is incompetent before this court for want of pecuniary jurisdiction as it ought to have been entertained by the District Court or Resident Magistrates Court. I would have struck out this plaint but for the interest of justice I refrain from so doing but rather invoke the provisions of section 21(1)(a) and (2) of CPC, and proceed to order for transfer of this case to the Resident Magistrates Court for Dar es salaam at Kisutu, to be tried there. I direct that parties should not pay any filing fees to the already filed pleadings.

No order as to costs.

It is so ordered.

DATED at Dar es salaam this 08th day of April, 2022.



E. E. KAKOLAKI

JUDGE

08/04/2022.

The Judgment has been delivered at Dar es Salaam today on 08th day of April, 2022 in the presence of Mr. Heri Kimaro, learned advocate for the Plaintiffs and Ms. Asha Livanga, Court clerk and in the absence of the Defendant.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

08/04/2022

