

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI.
CIVIL CASE NO. 9 OF 2021**

HANCE CHARLES MACHA.....PLAINTIFF

VERSUS

ALLIANCE INSURANCE CORPORATION LIMITED.....DEFENDANT

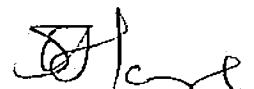
RULING

28/6/2022 & 29/7/2022

SIMFUKWE, J.

The plaintiff Hance Charles Macha has instituted the case against the defendant claiming that the defendant had failed to indemnify him the loss of his car which was insured by the defendant company to the tune of Tsh 70,000,000/- (seventy million). As usual, the court issued summons to the defendant who filed Written Statement of Defence and raised the following preliminary objections:

- 1. That, the trial court lacks pecuniary jurisdiction to hear and determine the suit.*
- 2. That, the plaint contravenes Order VII Rule 1(f) of the Civil Procedure Code [Cap 33 R.E 2019]*

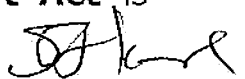


Following such objections, the court was obliged to determine the same first. The Preliminary Objections were argued orally. Mr. Innocent Msaki, learned counsel appeared for the plaintiff while the defendant was represented by Ms Tabitha Maina, learned counsel.

Ms. Tabitha for the defendant abandoned the 2nd ground of objection and argued the 1st Objection.

In support of the objection that this court lacks jurisdiction, the learned advocate stated that the issue of jurisdiction is so vital when it comes to hearing and determination of the suit. She argued that this court lacks pecuniary jurisdiction since the nature of this case is commercial and the amount claimed is within pecuniary jurisdiction of the District Court.

The learned advocate referred to **section 2 of the Magistrate Court Act, Cap 11 R. E 2019** which defines commercial cases to mean liability of commercial or business organisation or its official arising out its commercial or business liability. Also, it defines commercial case to mean liability of a commercial or business person arising out of that person's commercial or business activities. Having established that position, Ms. Tabitha submitted that it is undisputed fact that the plaintiff entered an insurance contract with the defendant after execution of the insurance contract. Thus, as far as **section 2 of Magistrates' Court Act** is



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concerned, the kind of the relationship among the two is commercial relationship and should there be any dispute between the two from the said insurance contract, then such dispute is to be determined and heard in a commercial court.

Ms Tabitha contended that this court had similar challenge during an appeal on determination as to whether a case or dispute between the insurer and insured is a commercial case once there is a dispute and it ruled out that the matter should be referred as commercial case. She referred the case of **Zanzibar Insurance Corporation Ltd vs Rudolf Temba, Commercial Appeal No. 1 of 2006** Hon. Massati J had this to say at page 9:

"In a case of such nature the primary duty of a subordinate court is first to determined whether or not the case before it is a commercial one by reference to the definition of that term in section 2 of the Magistrate Courts Act."

In the above cited case, it was concluded that the matter was a commercial case. Ms. Tabitha also referred the court to the case of **Heritage Insurance Company Limited vs Abihood Michael Mnjokava, Civil Appeal No. 1 of 2020** (HC) in which this court through Hon. Masara J at page 11 agreed with the Appellant's counsel that the

relationship between the Insurer and the Insured is a commercial relationship and any dispute between them is a commercial case and it falls under **section 2 of the Magistrate Courts' Act**. In that case the court quashed and set aside the decision of the trial court.

Moreover, Ms. Tabitha argued that the amount claimed is within pecuniary jurisdiction of the District Court for Commercial cases. That, at paragraph 6, 8 and 9 of the plaintiff's plaint, the plaintiff stated that on the contract they entered with the defendant, the amount of the contract was up to 70 million. She said that it is undisputed fact that it is a substantive claim that determines the pecuniary jurisdiction of the court. She cemented her argument with the case of **Tanzania China Friendship Textile Company Ltd vs Our Lady of the Usambara Sisters [2006] T.L.R 70**.

The defendant's advocate also referred to paragraph 29 (ii) of the Plaint, where the plaintiff claims Tshs 70,000,000/= as specific damages. Ms. Tabitha was of the view that it is from the above paragraph that the substantive claim is established.

The learned advocate also referred to **section 40(3)(b) of the Magistrates Courts Act**, and argued that the plaintiff's claim falls under



the said section which is within the jurisdiction of the District Court since 70 million shillings is the specific amount value for the insured trucks.

Ms. Tabitha submitted further that since courts are the creature of statutes and their pecuniary jurisdiction is statutory established, then every court should protect its jurisdiction with strong jealousy. She opined that should this court proceed to hear and determine the matter to its finality, it will be totally against the binding principle established in the case of **Fanuel Mantil Ng'unda vs Herman Mantil Ng'unda [1995] T.L.R 159.**

The learned advocate further referred the court to the provision of **section 13 of the Civil Procedure Code, Cap 33 R.E 2019** which states that:

"Every suit shall be instituted in the court of the lowest grade competent to try it."

On the strength of the above provision, it was Ms. Tabitha's argument that in the instant matter a court of Resident Magistrate and the District Court shall be deemed to be courts of the same grade.

Moreover, the defendant's counsel cited the provision of **section 53(2) of Interpretation of Laws Act Cap 1 R.E 2019** and argued that where



the word shall is used in written laws in conferring functions such word shall be interpreted to mean that the function so conferred must be performed.

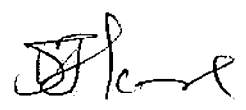
Basing on the above arguments, the defendant's advocate urged this court to find merit in the 1st preliminary objection raised, since the plaintiff miserably failed to comply with the requirement of the law.

She concluded by stating that this court lacks jurisdiction to determine this matter to its finality. She prayed that:

- 1. This matter be dismissed*
- 2. Costs be granted to the defendant.*

Replying the above submission, the plaintiff's advocate drew attention to the Written Statement of Defence to the effect that the same indicate that the objection is raised by a third defendant while there is only one defendant in this case.

Without prejudice to the above, Mr. Innocent submitted that **Article 108 of the Constitution of the United Republic of Tanzania** establishes the High Court and its powers which should be exercised in compliance to the Constitution and other laws. He also referred to **section 2(1) of the Judicature and Application of Laws Act, Cap 358 R.E 2019** which



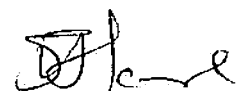
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empowers the High Court to entertain all matters. **Section 6 of the Civil Procedure Code** (supra) provides how courts should invoke its powers according to pecuniary jurisdiction. That, **section 3 of the CPC** provides that the High Court is among the courts which has powers to entertain civil matters according to its pecuniary jurisdiction.

Also, **order VI of the CPC** provides that no commercial matter shall be entertained in other courts if the same has been instituted before the court of competent jurisdiction.

Having stated the above position of the law, Mr. Innocent submitted that in the instant matter the suit was not instituted in other courts because other courts have no jurisdiction to entertain the matter.

The learned advocate submitted that **Section 40(3) of the Magistrates Courts Act** (supra) stipulates limitation that the subordinate court on commercial matters, the value of the claim should not exceed seventy million (70,000,000/). Mr. Innocent alleged that the pecuniary value of this matter is above that amount. To substantiate his argument, he referred to **section 7(1) of Civil Procedure Code** which provides the jurisdiction of the court including the High Court to have powers to entertain all matters which are civil in nature without prejudice to section 13 of the same Act.



Mr. Innocent went on to state that pursuant to the requirement of section **10 of the Law of Contract Act, Cap 345 R. E 2019** all agreements are contract if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. That, in the instant matter, the plaintiff entered into contract with the defendant and the defendant failed to perform his duties as required under **section 37(1) of the Law of Contract Act** (supra) which provides that:

"Parties to the contract must perform their respective promises unless such promises are regulated by other laws."

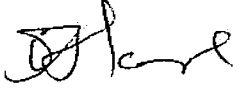
The plaintiff's advocate was of the view that, failure to do so, **section 73 of the Law of Contract Act** (supra) shall apply as the same amount to breach of contract. He quoted section 73 of the Act and concluded that in the instant case there was a contract between the defendant and the plaintiff and that such contract was commercial contract.

Regarding the submissions that substantial damages are the one used to establish the jurisdiction of the court; Mr. Innocent submitted that substantive claim is awarded as a means to compensate the plaintiff where he has suffered an actual loss. He continued to argue that substantive

claims or damages are of two types; specific and general damages. Specific damages are those which can be quantified for specific losses or expenses actually incurred and that loss can be proved before the court of law. On the other side, general damages are those damages which are quantified by the court. In that respect he argued that roman xxix, ii, iii and iv of the plaint, are for specific damages and not general damages. By saying so, normally specific damages are the one used to establish the jurisdiction of the court. He stated that the case of **China Friendship** has explained well the said issue. That, in that case the plaintiff filed his suit showing his specific damages and general damages and it was stated that general damages are not determined by pecuniary jurisdiction of the court rather than a specific claim.

He argued further that the plaintiff in this matter has separated the claims and general damages were not specified as the same is on the discretion of the court.

The plaintiff's advocate averred that **order VII Rule 1(1)(i) of the Civil Procedure Code** provides that in the plaint there should be a statement of the value of subject matter of the fact for the purpose of jurisdiction and court fees in which as per the plaint under paragraph 28 there is statement in compliance with the said provision showing that the suit was



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supposed to be instituted in this court and not otherwise as alleged by the learned counsel of the defendant.

Mr. Innocent prayed the preliminary objection to be dismissed with costs as this suit has merit but the defendant is delaying justice on the reason known by them.

In rejoinder, the defendant's advocate reiterated what's he submitted in chief. She argued that the plaintiff's advocate has admitted that there was a commercial contract between the plaintiff and defendant as he cited **section 40(1) of Magistrates Court Act** (supra). He insisted that paragraph 6 of the plaint indicates that there was a contract. Also, paragraph 8 and 9 shows that the pecuniary value of the contract was Tshs 70 million. Thus, the High Court has no jurisdiction to determine the matter.

The learned advocate also argued that the counsel for the plaintiff cited **Order VI of Civil Procedure Code** (supra) which has so many Rules.

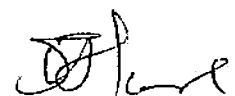
Concerning the cited case of **China Friendship**, the learned counsel has not stated how much they claim since paragraph 29 of the plaint has different claims.

Ms. Tabitha stated that the contract which was breached pursuant to the plaint is valued at Tsh 70,000,000/- which is the basis of their preliminary Objection.

The defendant's counsel prayed this matter to be dismissed with costs.

Having summarised the submissions of both parties, the issue is *whether the raised Preliminary Objection has merit*. The preliminary Objection is in respect of pecuniary jurisdiction. Through the parties' submissions I have learned that the parties' advocates are in agreement with the requirement of the law that it is the substantive claim which determines the pecuniary jurisdiction of this court in line of the case of **China Friendship** (supra). Also, they agreed that the pecuniary jurisdiction of the district court in respect of commercial cases is limited to 70 million shillings. Thus, the issue for determination is whether this court has jurisdiction to entertain this matter or not.

The jurisdiction of this court is provided for under several laws which are **Article 108 of the Constitution of United Republic of Tanzania**, and **section 2(1) of JALA** (supra) which empowers this court to entertain all matters. The plaintiff's advocate relied **on section 2 (1) of JALA** (supra) and was of the view that this court has jurisdiction to entertain this case.



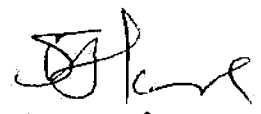
In answering this query, I will first reproduce the provision of **Article 108 of the Constitution** which reads:

"108.- (1) There shall be a High Court of the United Republic (to be referred to in short as "the High Court") the jurisdiction of which shall be as specified in this Constitution or in any other law.

*(2) Where **this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose,** then the High Court shall have jurisdiction to hear every matter of such type..."* [Emphasis added.]

Construing the above provision of the Constitution, it is my considered view that whenever the Constitution or any other law doesn't provide the matter to be heard by a specific court, then the High Court shall have jurisdiction.

In this matter, there are **other laws** which governed the jurisdiction of the High Court which are **section 13 of Civil Procedure Code** and **section 40(3)(b) of the Magistrates Court Act** which I am of considered opinion that should be read together.



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As a matter of reference, I will quote these provisions. **Section 13 of the Civil Procedure Code** (supra) 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."*
Emphasis added.

Section 40(3)(b) of the Magistrate Courts Act (supra) provides that:

"Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited-

(b) in the proceedings where the subject matter is capable of being estimated at money value, to proceedings in which the value of the subject matter does not exceed seventy million shillings."

In the case of **Tanzania - China Friendship Textile Co. Ltd Vs Our Lady of Usambara Sisters (supra)**, the Court of Appeal held as follows:



"In our view, it is the substantive claim and not the general damages which determines the pecuniary Jurisdiction of the Court."

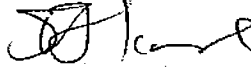
Looking at the plaint especially under paragraph 8, 9 and 10 the plaintiff specifically claimed for 70 million shillings which as per **annexure 'H1'** is the amount which he had insured his car which he is now claiming from the defendant. According to the case of **Tanzania China Friendship** it is the specific claim which determines the pecuniary jurisdiction of the court. Therefore, since substantive claim in this case is 70 million shillings which as **per section 40(3) (b) (supra)** falls within the jurisdiction of the District Court, then this court has no jurisdiction to entertain the claim. Although the **Constitution** and **JALA** have vested this court with unlimited jurisdiction in civil cases, still in line of **section 13 of Civil Procedure Code** (supra) the District Court which has concurrent jurisdiction with the Resident Magistrate's Court is the lowest court to entertain this matter. Other claims raised by the plaintiff under paragraph 23, 24 and 25 of the plaint are general damages which are in the discretion of the court to award.



In the upshot, I hereby uphold the preliminary objection raised by the learned counsel for the Defendant and dismiss this suit with costs.

It is so ordered.

Dated and delivered at Moshi this 29th day of July, 2022



S. H. SIMFUKWE

JUDGE

29/7/2022