

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 42 OF 2022**

**MILLENIUM LOGISTICS ..... PLAINTIFF**

***VERSUS***

**AFRICARRIERS LIMITED ..... DEFENDANT**

**RULING**

12<sup>th</sup> July & 5<sup>th</sup> August, 2022

**KISANYA, J.:**

Millenium Logistics Limited, the plaintiff has sued Africarriers Limited claiming for the following reliefs:

- (i) That the Defendant be ordered to give/handle to the plaintiff original certificate registration cards for each Eicher Trucks with registration number T110 DEW, T110 DEV, TT100 DET and T33DER in the name of the Plaintiff.*
- (ii) That the Defendant be ordered to pay the Plaintiff the sum of Tsh.100,000,000/= being general damages for inconveniences caused by the Defendant or any sum as shall be assessed by the court.*
- (iii) Costs of the suit to be borne by the Defendant.*
- (iv) And any other relief(s) this court shall deem just and equitable to grant.*

A brief account of the background of this matter is depicted in the plaint as follows. The plaintiff and defendants are companies carrying on the

business of transportation and selling vehicles, respectively. It is alleged that in 2015, 2016 and 2017, the plaintiff purchased from the defendant four Eicher Trucks with registration number T110 DEW, T110 DEV, T100 DET and T33DER in consideration of USD 192,000. The plaintiff alleges that, upon paying an instalment of USD 100,500, the defendant delivered all trucks to the latter.

The plaintiff claims that the defendant retained the registration cards of the vehicles on agreement that the same would be handed over after payment of the remaining balance of USD 91,500/=. It is the plaintiff's case that the said amount was paid on 28/04/2017 but the defendant continued to retain the registration cards of the above stated vehicles. As the defendant persisted holding the said registration cards, the plaintiff resolved to approach this Court claiming for the above stated reliefs.

Against this suit, the defendant filed a notice of preliminary objection raising the following point of law: -

- (i) *That the Plaintiff's claim being not return of the original motor vehicle registration cards and payment of general, this Court lacks jurisdiction.*

With leave of this Court, the preliminary objection was argued by way of written submissions. The defendant was represented by Mr. Ngassa Ganja

Mboje, learned advocate, while the plaintiff had the legal service of Mr. Nickson Ludovic, learned advocate.

Mr. Mboje commenced his submission in support of the application by referring this Court to the principle on preliminary objection as set out in the landmark case of **Mukisa Biscuit Manufacturing Co. vs West End Distributors Ltd** (1969) 696 which was adopted by the Court of Appeal in which the term preliminary objection was defined as follows: -

*“...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which if argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”*

In view of the above position, the learned counsel contended that the objection at hand is premised on a matter of law and thus, sufficient to dispose of this suit. He was of the firm view that the issue of jurisdiction goes to the root of the case and that it is created by statutes as held in the case of **Frank Marealle vs Paul Kyauka Njau** [1982] TLR 32.

The learned counsel went on submitting that the plaintiff is not claiming for return of the registration cards of the vehicles without praying for specific damages. Making reference to section 13 of the CPC, he argued that suits are required to be filed in courts of lowest grade competent to try them. He

further argued that jurisdiction is determined by looking at the cause of action. To bolster his argument, Mr. Mboje cited the case of **Anold Moshi and Another vs Shirwa Company Limited and Another**, Land Case No. 125 of 2019, HCT at DSM (unreported). Citing further the case of **Investment House Limited vs Webb Techonologies (T) Ltd and Two Others**, Commercial Case No. 97 of 2015, HCT at DSM (unreported), the learned counsel argued that the court is required to look at the pleading. He also submitted that the decision made without jurisdiction is a nullity as held in the case of **John Agricola vs Juma Rashid** (1990) TLR.

The learned counsel went on contending that much as the plaintiff claims for the return of the original registration cards and general damages to the tune of Tshs 100,000,000, this Court has no jurisdiction to try the matter. As indicated earlier, his submission was premised on the reason that the plaintiff has not prayed for specific damage. Citing the case of **Ms Tanzania China Friendship vs Our Lady of Usamabara Sisters**, Civil Appeal No. 84 of 2002 and **Mwananchi Communications Limited and 2 Others vs. Joshua K. Kajula**, Civil Appeal No. 126/01 of 2016 (both unreported) learned counsel argued that jurisdiction is not determined by general damages.

Although Mr. Mboje conceded that paragraph 10 of the plaint shows the value of the vehicle upon which the registration cards are sought, he

contended that the same cannot be used to determine the pecuniary jurisdiction of this Court. That said, he invited this Court to uphold the preliminary objection and strike out the suit with costs.

In rebuttal to the preliminary objection, Mr. Ludovic conceded that the plaintiff has prayed for return of the registration cards. However, he argued that the Court is clothed with jurisdiction to determine the matter. His argument was based on the reason that paragraph 10 of the plaint shows that the value of the vehicles to which registration cards are retained is Tshs. 350,000,000/=. It was his further argument that ownership of vehicles is proved by the registration cards and thus, the value of the vehicles and the registration cards are inseparable. For that reason, the learned counsel was of the view that this Court has mandate to determine the matter under section 40 and 41 of the Magistrate Courts' Act, Cap. 11, R.E. 2019.

Mr. Ludovic proceeded to submit that specific damage is not necessarily in monetary form and that it can be in form of a declaratory order. His argument was based on the contention that the court fees was paid basing on the value of vehicles. It was his argument that in terms of section 2 of JALA, this Court is not prohibited from granting a declaration order.

The learned counsel further submitted that sections 7 (1) and 13 of the CPC do not bar the general jurisdiction of this Court and that the nature of the

claim is based on the decision of the High Court and the Court of Appeal. He maintained the stance that the claim cannot be lodged in the courts below.

It was his further argument that the plaintiff has deposed facts which establishes jurisdiction of the Court. On the foregoing submission, the learned counsel reasoned that the preliminary objection has been misconceived. He, therefore, asked this Court to dismiss the same with costs.

In his rejoinder, Mr. Mboje reiterated his submission in chief in support of the preliminary objection. He called upon this court to take note that the plaintiff has admitted that she is claiming return of the vehicles' registration card. The learned counsel asked this Court to be guided by the cases of **Anold Moshi** and **Investment House Limited (supra)** in determining whether it has jurisdiction to entertain the matter.

On the contention that the specific damages can be in form of declaration, the learned counsel argued that specific damages cannot be equated to declaration. He bolstered his argument by citing the case of **Solvochem Holland B.V. vs Chang Quing International Investment Co. Ltd**, Commercial Case No. 63 of 2020, HCT Commercial Division at DSM. Therefore, he reiterated his prayer that this suit be dismissed with costs.

I have dispassionately considered the submission made by the learned counsel for the parties. The issue is whether this Court has jurisdiction to try the matter.

My starting point is to restate the established principle of law that, jurisdiction is created by statute and not otherwise. As a result, parties cannot enter into agreement to give jurisdiction to the court. [See for instance, in the case **Shyam Thanki and Others vs. New Palace Hotel** [1971] 1 EA 199).

It is worth noting here that, in terms of Article 108 (1) and (2) of the Constitution of the United Republic of Tanzania, 1977 (as amended), the jurisdiction of this Court (High Court) is not absolute. It is subject to the provisions of other written laws. As far as civil cases are concerned, the CPC is among the written laws referred to in Article 108 (1) and (2) of the Constitution. It is provided for under section 13 of the CPC any suit must be instituted in the court of lowest grade competent to try the same. The section reads as follows:

*"13. 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 above provisions are aimed, among others, at prevention of overcrowding cases in the higher courts while the same can be dealt with in court below. This stance was taken in the case of **Peter Keasi vs The Editor Mawio Newspaper and Another**, Civil Case No. 145 of 2014 (unreported), this Court (Dyansobera, J) held:

*"The object and purpose of the said provision is I think three fold. First, it is aimed at prevention overcrowding in the court of higher grade where the 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 more experienced court."*

Another written law in terms of Article 108 (2) of the Constitution is the MCA. According to section 40(2)(b) of the MCA, the pecuniary jurisdiction of this Court is limited to the proceedings in which the value of the subject matter is no less than two hundred million shillings.

I also agree with the counsel for the defendant that, in order to ensure that the issue of jurisdiction is well determined, the plaint must contain the particulars on a statement of the value of the subject matter of the suit. This is pursuant to Order VII, Rule 1(i) of the CPC which stipulates: -

*"1. The plaint shall contain the following particulars-*  
*(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits."*



It is also trite law as argued by the defendant's counsel that, jurisdiction of the Court is determined by special damages and not general damages. There is a list of authorities on that position, one of them being the case of **Ms Tanzania China Friendship** (supra) and **Mwananchi Communications Limited and 2 Others (supra)**. In the former case, the Court of held as follows: -

*"Our view, it is the substantive claim and not the general damages which determines the pecuniary jurisdiction of the court."*

Having scanned the plaint filed by the plaintiffs, I agree with the plaintiff's counsel that, the value of vehicles was quantified in paragraphs 10 of the plaint. However, as rightly submitted by the defendant's counsel, this suit is not related to claims of vehicles. The plaintiff prays for a declaration order in respect of the vehicle's registration cards and general damages to the tune of TZS 100,000,000.

Reading from above paragraphs of the plaint as a whole, it is clear that the plaintiff does not claim for specific damages. The plaintiff has not cited a law which provides that the relief sought must be tried by this Court. In the case of **Mwananchi Communications Limited and 2 Others** (supra), the Court Appeal had this to say on the omission to indicate the specific claims in the plaint:

*“In the case which is the subject of the current appeal, the pleadings failed to highlight the specific claims and only had a general statement of claims, which thus means that there was no specific amount shown to facilitate determination of the pecuniary jurisdiction on the High Court where the suit was filed. The absence of such specification meant the suit should have been tried in the lower courts, that is, the District or Resident Magistrate's courts under section 40(2)(b) of the MCA. For the foregoing reasons, it is dear that the High Court erroneously crowned itself with jurisdiction in entertaining and determining the suit that it did not possess.”*

Guided by the above position of law, I hold that the instant suit ought to have been lodged in the District courts or Resident Magistrate's courts under section 40(2)(b) of the MCA and not in this Court. This is when it is considered that the said decision was given at the time when the proviso of section 13 of the CPC which does not bar this Court from exercising its general jurisdiction was in force. Therefore, the preliminary objection is found meritorious.

On the way forward, Mr. Ganja asked me to strike out this matter. I have considered that in view of the proviso of section 13 and that the plaint was duly admitted in this Court. In the circumstances and for interest of justice, I find it not appropriate to strike out this case. In lieu thereof, I hereby exercise the powers conferred to this Court under 21(1)(a) and (2) of

CPC, and order for transfer of this case to the Resident Magistrates Court of Dar es salaam at Kisutu. Each party shall bear its own costs.

DATED at DAR ES SALAAM this 5<sup>th</sup> day of August, 2022.



S.E. Kisanya  
JUDGE  
05/08/2022