

**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. 73 OF 2022**

**JOHN CHRISTIAN METZEGER..... PLAINTIFF**

**VERSUS**

**DR JEAN CHRISTOPHER RICHARD LE GALL ..... 1<sup>ST</sup> DEFENDANT**

**EIFFEL CENTRE LIMITED**

**t/a EIFFEL EYE SPECIALIST CLINIC ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

30<sup>th</sup> August, & 6<sup>th</sup> September, 2022

**ISMAIL, J.**

This suit is founded on tort, arising out of the service that the defendants rendered to the plaintiff. The contention by the plaintiff is that, on the advice of the 1<sup>st</sup> defendant, an employee of the 2<sup>nd</sup> defendant, the plaintiff was taken through a procedure that was intended to cure the plaintiff's fledging sight on his eye due to the impact of diabetes. After administering some medication and performing a couple of procedures, the plaintiff's left eye sight debilitated, leading to the loss of sight by 90%. The

plaintiff attributes deterioration of his condition to negligence on the part of the defendants. As a result, the plaintiff has sued to claim damages, specific and general, both of which amount to USD 649,752.00.

The defendants have denied any liability or wrong doing. Besides rebutting the allegations levelled, they have raised a preliminary ground of objection, contending that the Court has no pecuniary jurisdiction to entertain the claim in the suit.

The objection was disposed of orally, and the hearing pitted Mr. Mohamed Muya, learned counsel who featured for the defendants, against Ms. Clara Mramba, learned advocate whose services were enlisted by the plaintiff.

Kicking off the discussion, Mr. Muya argued that the law provides that jurisdiction of the High Court regarding claims for movable property is limited to TZS. 200,000,000/-. Mr. Muya premised his argument on the provisions of Article 108 of the Constitution of the United Republic of Tanzania, 1977 (as amended); sections 7 (1) and 13 (1) of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC); and section 40 (2) (b) of the Magistrates' Courts Act, Cap. 11 R.E. 2019 (MCA). Mr. Muya argued that this position has been underscored in a number of court decisions some of which are: ***Bernard Kabonde (suing as the Personal Representative of the Estates of***

***the late Sophia M. Kabonde and Lugano Kabonde (both deceased)***  
***v. Methusela Bundala & Another***, HC-Civil Case No. 27 of 2011; and  
***Mwananchi Communications Limited & 2 Others v. Joshua K. Kajula***  
***& 2 Others***, CAT-Civil Appeal No. 126/01 of 2016 (both unreported).

Learned counsel further submitted that Order VII rule 1 (i) of the CPC requires that the value of the subject matter be stated, the rationale being to help in the determination of jurisdiction of the court and fees to be levied. He argued that value of the subject matter is derived from specific claims and not general damages. He argued that the emphasis placed by the law is that jurisdiction should be determined based on specific damages. On this, Mr. Muya referred the Court to the decisions in ***Tanzania Saruji Corporation v. African Marble Co. Ltd*** [2004] TLR 155; ***Manjit Singh Sandhu & 2 Others v. Robiri R. Robiri***, CAT-Civil Appeal No. 121 of 2014 (unreported); ***Bernard Kabonde*** (supra); and ***Mwananchi Communications Limited*** (supra).

Mr. Muya argued that, in the instant case, the claim of USD 649,752.00 is largely composed of general damages, save for items (b) and (d) of the prayers whose aggregate claim is USD 74,752. This sum, he contended, is below the threshold set out for cases which may be preferred to this Court.

It is on the basis thereof that the learned advocate urged the Court to strike out the suit for being filed in a court that is not vested with jurisdiction.

Ms. Mramba was opposed to the contention that the reliefs claimed are general. She argued that these claims or reliefs have been specifically pleaded. Making reference to her counterpart's identification of claims which are specific, Ms. Mramba took the view that entertaining the argument has the potential of denying the plaintiff of the opportunity to be heard and show that the claims are genuine.

On section 7 (1) of the CPC, the view held by Ms. Mramba is that there is no express or implied bar to jurisdiction of the Court to entertain this matter. She invoked the provisions of section 2 (1) of the Judicature and Application of Laws Act, Cap. 358 R.E. 2019 (JALA), which provides that this Court has full jurisdiction in civil and criminal matters. She added that jurisdiction can either be pecuniary or territorial and, in this case, the plaintiff believes that he entitled to the reliefs sought. Learned counsel was emphatic that this is the only forum before which the plaintiff's rights may be determined. She urged the Court to overrule the objection.

Mr. Muya rejoined by reiterating his rallying call that the matter is misplaced. Regarding section 7 (1) of the CPC and section 2 (1) of the JALA, the argument is that the plaintiff would still go to lower courts and institute

his claims, allaying fears that the plaintiff's claims would not be heard. He maintained that the Court has no jurisdiction.

These rival submissions breed one critical question. This is as to whether the Court is vested with jurisdiction to handle the matter.

I will begin disposal of the matter by quoting an excerpt from the decision of the Court in ***Director of Public Prosecutions v. Jitesh Jayantilal Ladwa & Another***, HC- Criminal Appeal No. 111 of 2022 (unreported). It was held:

*"The clear message distilled from the foregoing excerpt is that powers to handle proceedings by courts must be real, apparent and not assumed or conferred on the parties' consensual basis. It must be a creation of a statute that establishes the judicial organ or body or those that creates rights or offences."*

Instructively, the foregoing quotation was derived from this Court's ruling in ***Shyam Thanki and Others v. New Palace Hotel*** [1972] HCD No. 97. In the latter, the Court sounded a warning against the parties conspiring and vest jurisdiction in an organ that enjoys none of it. It was guided as follows:

*"All the courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is an elementary principle*

*of law that parties cannot by consent give a court jurisdiction which it does not possess.”*

These two decisions serve to demonstrate that jurisdiction is, by and large, a statutory prescription, and that invocation of the court’s jurisdiction is not a matter of fashion, done at the convenience of the parties.

As Mr. Muya alluded to, pecuniary jurisdiction of our courts has a clustered structure that graduates as one moves up the ladder. In the case of pecuniary jurisdiction, the power of the Court to handle a matter is conditioned on such matter having a subject value matter that is in excess of TZS. 200,000,000/-. This is where the subject matter is a movable property. This is stipulated in section 40 (2) (b) of Cap. 11, which states as follows:

*“A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited-*

*(a) N/A;*

*(b) 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.”*

There is no denying that the value of the subject matter in this case is USD. 649,752.00, derived from different heads of claims. Whilst the sum, as pleaded, is above the threshold set for this Court, the contention by Mr. Muya is that such aggregate sum contains claims of general damages which should not be counted as the basis for determining pecuniary jurisdiction. This view is fiercely opposed to by Mr. Muya.

I have scrupulously gone through the plaint, with a specific attention to the reliefs sought by the plaintiff. Whilst medical and travel expenses to the tune of TZS. 2,752, and lost income between May 2019 and May 2019, amounting to USD 72,000, were allegedly incurred and would be proved specifically, the rest of the reliefs sought are futuristic. It follows that their proof would not have anything specific to rely on, other than the simulation and the projection of what would be suffered for the next 15 years. These claims do not, in my considered view, constitute specific damages. They are, for all intents and purposes, general damages which cannot be used to determine jurisdiction of the Court. This position has been voiced by this and the superior Bench times without number. They include the case of **M/S**

***Tanzania China Friendship Textiles Co. Ltd v. Our Lady of the Usambara Sisters*** [2006] TLR 70, which was quoted with approval in ***Manjit Singh Sandhu*** (supra). The upper Bench's decision in ***Mwananchi Communications Limited*** (supra) was more authoritative when it held at p. 21 as follows:

*"The most important matter for our consideration at this juncture under the current circumstances as deduced from the decisions of this Court referred above is that, **in determining the jurisdiction of the High Court what should be considered is the specific claims and not the general damages claimed in considering the pecuniary jurisdiction of the High Court.**"* [Emphasis added]

What this decision guides us to do is to disregard any quantum that arises from the claim of general damages when the same is used as the basis for computing value of the subject matter for purposes of determining the Court's jurisdiction. Consistent with this guidance, I accede to Mr. Muya's request and hold that what should be computed as a claim that decides jurisdiction is USD 74,752.00. This sum falls short of the threshold set by law, which is TZS. 200,000,000/-.

Given the insufficiency of the specific damages to trigger the Court's discretion, I feel constrained to invoke the provisions of section 13 of the



CPC, and hold that the suit ought to have been filed in a court subordinate this Court. Doing so will also be in coping with the spirit of section 40 (2) (b) of the MCA. I am not convinced that doing so will prejudice the rights of the plaintiff or stifle his efforts to seek compensation from the defendants. It is simply that pursuit of such right must conform to the legal framework that sets limit to powers conferred on the courts.

Consequent to all this, I take a conviction that this matter is misplaced and that discretion of this Court has not been properly triggered. Accordingly, I sustain the objection and strike out the suit. I make no order as to costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 6<sup>th</sup> day of September, 2022.



**M.K. ISMAIL**

**JUDGE**

**06/09/2022**

