

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF MWANZA  
AT MWANZA**

**CIVIL APPEAL NO.63 OF 2021**

*(Arising from the decision of Magu District Court in Civil Case No.03 of 2021)*

**ONESMO M. OSCAR.....APPELLANT**

Versus

**1. PETRO S/O**

**2. MEDARD SYLIVESTER**

**3. MADUHU S/O**

**4. MAJOGORO S/O**

**5. JOSEPH MABULA MATULALA**

..... **RESPONDENTS**

**JUDGMENT**

*Sept. 22<sup>nd</sup> & 30<sup>th</sup>, 2022*

**Morris, J**

Mr. Onesmo Mushobozi Oscar - the appellant, having been aggrieved by the decision of the District Court of Magu in Civil Case No.03 of 2021 appeals to this court with two grounds of appeal. Through the first ground, the appellant is challenging the trial court's decision that the Primary Court has jurisdiction to entertain a tortious claim. The second ground faults the trial court to had upheld a preliminary objection on a trivial and curable defect in the pleadings.

The brief facts of the matter may serve some use. The appellant's suit at the subordinate court related to a claim against the respondents herein whom he alleged had grazed cattle in his farm (*shamba*) thereby destroying the crops and upon intervening they assaulted him. Main reliefs in his pleadings included claims for specific and general damages at TZS 1,750,000/- and 33,000,000/- respectively. On the basis of a preliminary objection by the 5<sup>th</sup> respondent-defendant, the suit was struck out with costs. Hence, this appeal.

The appeal was pursued by the appellant in person, unrepresented; and Mr. Yuda Kavugushi, learned advocate, had the Respondents' instructions to challenge it. Submitting in support of the 1<sup>st</sup> ground of appeal, the appellant challenged the trial court's finding that it had no jurisdiction. He argued further that the matter before the said court was inherently tortious in nature. Thus, the trial court misdirected itself in determining the issue without paying due regard to the fact that tortious liability cases cannot be adjudicated in Primary Courts. Citing his plaint filed at the District Court, the plaintiff- appellant claimed for damages based on malicious damage to crops and common assault. To him these reliefs are complete tortious in context. It was his further submission that, according

to law, the 1<sup>st</sup> court with original jurisdiction is the District Court. For clarity, he referred the court to paragraph 7 of the plaint.

To buttress the foregoing argument, the appellant cited the case of **Ubongo v Kisumu Municipal Council** (1971) EACA; **Tluway Margwe Slaa v Benedict Seha Diyayi**, High Court, Civil Case No.24/2019 (Unreported). He argued that the latter case lists matters falling under tortious category and the appropriate court to adjudicate them despite specific damages claimed. He explicitly referred at pages 6 (last paragraph) and 7 (last but one para) of the typed judgment and stated that the court is being categorical in this regard. Furthermore, in the subject case (page 2), the amount claimed was TZS 1,794,000/= but the High Court reinforced that the Primary Court enjoys no jurisdiction to entertain the matter.

Consequently, he reasoned that jurisdiction of the court for all tortious liability cases is dependent upon the nature of the claim instead of the amount of money involved (pecuniary measure). In the present case, the appellant contended that he claimed for TZS 1,750,000/= being specific damages for malicious damage to crops; but no amount was specifically pleaded for assault. However, to him assault too falls within categories of

torts jurisdiction of which is beyond the Primary Court. Accordingly, he faulted the holding of the trial court in such basis. Concluding the first ground, the appellant referred the court to the 1<sup>st</sup> schedule of the **Magistrates Courts Act**, Cap. 11 R.E. 2019 and stated that malicious damage to crops is not one of the matters the primary court can adjudicate.

Turning to the second ground of appeal, the appellant submitted briefly that the trial court misdirected itself for taking into consideration trivial errors which are curable without affecting the root of justice. He argued that errors in the plaint could have been easily rectified. The main objective, to him, should have been substantive justice. He amplified his argument that the plaint was drawn by an advocate who did not append his name and signature. He instead, inserted the name of the firm and affixed the firm's stamp. To the appellant, this mistake is curable. The lawyer who drew the pleading was a legally practicing advocate.

In the upshot, the appellant prayed to this court to quash the trial court's decision, set aside all its orders and order that the suit should be heard by the trial court to its finality. He also prayed for costs of this appeal.

The respondents through counsel, on the other hand, challenged the appeal. He prayed for its dismissal for want of merit. To him, the trial court's decision is justifiable in law. He cited **Ernest Sebastian Mbele v Sebastian Sebastian Mbele and Other**, CAT -Iringa; Civil App.No. 66 of 2019 (unreported) particularly the last paragraph at page 15 of the typed judgement to drive home his argument that parties to the suit are bound by their pleadings.

Referring to the plaint, the learned counsel stated that in paragraph 7 the appellant discloses the cause of action, jointly and severally, for TZS 34,750,000/= being specific and general damages arising out of injuries caused by defendants-respondents. However, such claims is conjoined in respect of damaged crops and assault to the appellant. In breaking down the general damages under para 14 of the plaint, the appellant pleaded for specific damages of TZS 1,750,000/= as certified by the Agro-expert. But para 15 of the plaint is disclosing TZS 33,000,000 as general damages for assault.

According to the counsel, reliefs claimed by the appellant are TZS 1,750,000/= and TZS 33/- million specific and general damages respectively. In this regard, pursuant to **Ernest Mbele's case** (*supra*),



the Appellant is not disclosing that his suit arose from tort. Thus, his claims were clearly quantified as specific and general damages. He argued that law prevents parties to be granted reliefs not prayed for. He also insisted that jurisdiction of court is a fundamental principle. He cited section 40(3)b of the **Magistrates' Courts Act**, Cap. 11(R.E 2019) (elsewhere MCA) to cement his argument on courts' jurisdiction. That is, the District Courts' pecuniary jurisdiction starts from TZS 30,000,000/=specific damages. Any amount below 30 million is for Primary Court's mandate. Moreover, he submitted that the above provision should be read together with section 13 of the **Civil Procedure Code**, Cap. 33 [(R.E. 2019)(CPC)]; that matters should be filed in lowest court competent to adjudicate them. In law general damages do not confer jurisdiction to courts. Specific damages do.

The case of **Khamis Muhidin Musa v Mohamed Thani Mattar**, CAT-Zanzibar; Civil App. No. 237 of 2022 (unreported) particularly pages 9-12 was cited to emphasize counsel's point. He added that, by separating specific reliefs from general ones, the matter herein squarely fell into the mandate of the primary court. Thus, to him **Tluway case** (*supra*) cited by the appellant conversed different matters from the present case. It was criminal case (malicious damage to property per charge) to which the

court dealt with conviction and discretion to award compensation resulting from conviction. Thus, tests of proving criminal liability and outcomes therefrom are different from the present matter. He also argued that, tort in law can be criminal or civil in nature. Consequently, the injured person may opt for either in order to recover reliefs. He submitted further that the appellant, first attempted to take the criminal-proceedings route (para 13 of the plaint) via criminal case 330/2020 but he was unsuccessful. Damages envisaged by appellant would have been given to him if he were successful. Thus, the trial court was justified to strike out the plaint and direct the appellant to the appropriate primary court.

As regard the second ground of appeal, the counsel argued that the major premises of the trial court's decision in upholding the preliminary objection was in respect of pecuniary jurisdiction. Notwithstanding, the pleadings were improperly endorsed by the drawers, if any. According to sections 43 & 44 of the **Advocates Act**, Cap 341(R.E. 2019), documents drawn by advocates must be properly endorsed. The appellant's pleadings did not comply accordingly. The appellant's argument that the responsible advocate was legally practicing law is misconceived because the name of such advocate is not disclosed on the plaint (drawn and filed section). Hence, it was proper for the matter to be struck out. Finally, Mr. Kavugushi

prayed that the decision of the District Court of Magu should be upheld and this appeal be dismissed with costs.

Having summarized the parties' submissions above, this court is, in my view, invited to determine two issues: whether or not the primary court has jurisdiction to determine the appellant's claims; and if pleadings purportedly drawn by an advocate but not endorsed by him are fatally defective.

To begin with, the first issue related to jurisdiction of court. It is very crucial. Time-and-again, it has been held by courts that jurisdiction is one of such important points of law which cannot be dealt with sparingly. In the present appeal, the question of which between the Primary Court and District Court enjoys power to preside over a tortious-integrated claim whose specific value is TZS 1,750,000/- and general damages at TZS 33,000,000/- comes to the fore. I am alive to two long-settled principles that civil cases should be filed at lowest courts competent to try them; on the one hand, and that general damages are not to be considered when determining the court's pecuniary jurisdiction, on the other.



In **Tanzania Breweries Limited v Anthony Nyingi**, CAT-Mwanza; Civil Appeal No. 119 of 2014 (unreported) the Court of Appeal citing its previous decision in **Tanzania - China Friendship Textile Co. Ltd v Our Lady of The Usambara Sisters** (2006) TLR 70, had the following to state:

*'If the trial court had considered those provisions along with the decision in TANZANIA - CHINA FRIENDSHIP case (supra) it could perhaps have come up with a different decision. In that case, the Court held among others: that:- It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court...according to the principle contained in section 13 of the Civil Procedure Code (that) every suit must be instituted in the court of the lowest grade competent to try it.'*

From the excerpt above, it is vivid that a party intending to file a suit must ascertain three critical matters. One, the nature of the claim. That is from what branch of law his claim(s) emanate. Two, the magnitude of the claims in terms of specific and general reliefs. Three, the competent court in the judicial hierarchy which is the lowest to adjudicate such claim(s). It really calls no magic to establish whether or not a particular court is empowered by law to preside over the matter. Jurisdiction of any court is

a statutory garment. That is, every court is given mandate under specific piece of legislation.

In respect of this appeal, it is argued by the appellant that his claims are tortious in nature. That is, damage to crops and assault. So, the first matter to determine is, by the statutory creation, to which court between Primary Court and District Court should his claim fall. This aspect will not detain us for long. The law governing both courts is the **MCA**, Cap 11. Looking at the Fourth Schedule of MCA, especially rule 3, the Primary Court is mandated to give numerous civil reliefs.

Further, in **Jeptther Soka Sanan v The Standard Chartered Bank (T) Limited** CAT Civ. Appeal No. 16 of 2016 (unreported) the court held that:

*'The common law torts related to **negligent** and reckless misstatements, injurious falsehood, false imprisonment or malicious prosecution.'*

The question which crops from the above quoted is whether, according to the facts of this case; particularly grazing cattle in the appellant's field (*shamba*) and thus maliciously damaging the crops establish a common law tort. That is, whether it constitutes negligent. In my considered view,

the acts of the respondents were intentional; incapable of being taken as common law tort but rather customary law tort [see. section 18 (1) (a) (i) MCA]. Julie A. Davies, in his article, "The Role and Future of Customary Tort Law in Ghana: A Cross-Cultural Perspective" (p.309) underscores the purpose of customary law tort: to maintain social equilibrium by redressing injuries that may be individual or collective in nature.

Further, the respondents' acts are also squarely covered under sections 241 and 326 (1) of the **Penal Code**, Cap. 16 (R.E. 2019) also triable by Primary Court under MCA. Consequently, the appellant's claims may be tried by Primary Court. The appellant cited the case of **Tluway** (*supra*). To me, this case is distinguishable from the facts of present case. In the said case, the appellant had negligently left the cart without control (negligence) leading to the destruction of the respondent's car. It was under common law tort. The matter at trial revolves under customary law tort (See, **Jacob Mwangoka v Gurd Amon** (1987) TLR 165). I, also, am mindful of the fact that the appellant might be thinking along the lines that his interest is pursuit of compensation. Under MCA, the Primary Court is empowered to grant such a relief as well.

Equally important, is the aspect of pecuniary jurisdiction of the two courts. Pursuant to section 40 of MCA, the maximum pecuniary jurisdiction of the District Court is between TZS 200m/- and 300m/-. For the Primary Court, the maximum is TZS 50m/-. Lastly, between the two courts, the Primary Court is subordinate to its counterpart. Thus, pursuant to section 13 of CPC, it is the lowest competent court hereof. Hence, the matter subject of this appeal was legally triable in the Primary Court. Accordingly, the first ground of appeal lacks merit and is hereby overruled.

Although the holding above determines this appeal fully, I will discuss the second ground in brief. As rightly submitted by the respondents' advocate, the suit was struck out at the trial court because of lack of jurisdiction. This fact notwithstanding, I have perused the records from the trial court's file. The plaint was drawn by MMN Advocate. The said section bears a stamp and signature. Whose signature, it is not possible to establish. Hence, the matter to determine is whether failure to affix a name was so fatal. In my view, it was not.

In the case of **Alliance Insurance Corporation Ltd. v Arusha Art Ltd.**, CAT-Arusha Civ. Appeal No. 297 of 2017 it is stated:



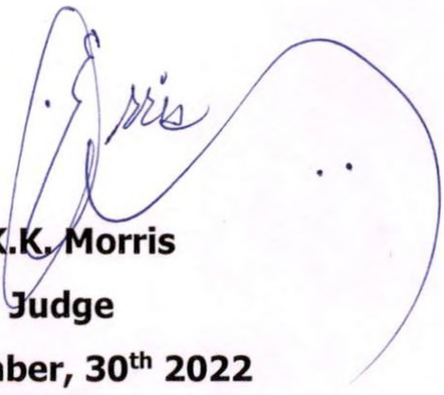
*'There is no dispute that, although they are shown to have been drawn by ENSAFRICA, a juristic person, the documents have been signed. They could not have been signed by a juristic person but a natural person. The issue whether or not the person who signed them is an unqualified person or not is a matter which requires evidence to ascertain. In the circumstances, the point raised by the respondent' counsel does not qualify as a pure point of law.'*

Guided by the above holding, the trial court was not legally justified to use this point in order to have the suit struck out. Consequently, the second ground of appeal is allowed.

All matters discussed above and reasons given being put in perspectives, I dismiss the appeal on the basis of the court's finding in respect of the first ground of appeal. Each party to bear own costs.

It is accordingly ordered.



  
**C.K.K. Morris**  
**Judge**

**September, 30<sup>th</sup> 2022**



**Court:** Judgement delivered in the presence of Mr. Onesmo M. Oscar (Appellant); Mr. Joseph M. Matulala (5<sup>th</sup> Respondent); and in the absence of 1<sup>st</sup> - 4<sup>th</sup> Respondents.



**C.K.K. Morris**

**Judge**

**September, 30<sup>th</sup> 2022**