

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 124 OF 2019

BARNABAS KACHIRA MPABANSI.....PLAINTIFF

VERSUS

THE BOARD OF TRUSTEES PUBLIC

SERVICE SOCIALS SECURITY FUND.....DEFENDANT

Date of last order: 19/11/2021

Date of Ruling: 04/03/2022

R U L I N G

MGONYA, J.

Before this Honourable Court is **Civil Case No. 124 of 2019** where the Plaintiff claims against the Defendant a total sum of **Tshs. 345,690,936/=** being a total claim from unpaid benefits and damages accrued.

The Plaintiff enjoyed the services from the **EMESU & COMPANY ADVOCATES** while the Defendant was represented by **Ms. Anna Shayo learned Advocate**. Before the hearing of

the instant Case, the Defendant raised a preliminary objection on point of law and pray for orders that:

1. The suit is incompetent for being filed in the Court that has no pecuniary jurisdiction contrary to section 13 of the Civil Procedure Code Cap. 33 [R. E. 2002].

The Defendant submitted that a Court before entertaining a matter, it has first ascertain if it has power to try and determine the matter before it. With regards to the **section 13 of Civil Procedure Code** which provides that:

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

It is a Defendant suggestion that the plaintiff should consider the direction of section **40 (2) (b) of the Magistrate Court Act, Cap. 11 [R. E. 2019]** which provides for guidance, and I quote:

"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 other court or courts, but subject to any express exception in any other law, such jurisdiction shall be

limited in other proceedings where the subject matter is capable of being estimated at a money value of the subject matter does not exceed two hundred million shillings"

The Defendant referred this court to visit the **paragraph 4** of the Amended Plaintiff when read together with **items (a) and (b)** in the relief sought therein, where the Plaintiff claims **Tshs. 345,690,936** being unpaid pension benefits and damages accrued as a result of the Defendant. However, he proceeds to claim **Tshs. 45,690, 936/=** being his rightful unpaid pension benefits. The Plaintiff's claim of **Tshs. 345,960,936**, being the collective of substantive and general damages.

Further, the Defendant submits that, it is the substantive claim and not general damages which determines the pecuniary jurisdiction of the Court. In the case of ***M/S TANZANIA-CHINA FRIENDSHIP TEXTILE CO. LTD vs OUR LADY OF THE USAMBARA SISTERS, Court of Appeal Case No. 84 of 2002***, held that:

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

In this case, it is the Defendant's observation that the substantive amount of claim and which can be ascertained is

Tshs. 45, 690,936, an amount which is below the pecuniary jurisdiction of the High Court. That the Plaintiff cannot simply claim of general damages in order to confer this Honourable Court with jurisdiction to hear and determine this suit. In the event therefore, the Defendant prayed the suit to be strike out from court for lack of pecuniary jurisdiction.

On the contrary, the Plaintiff was of the view that if the Defendant is citing **section 13 of the Civil Procedure Code**, then is duly bound to rely only on that section. That, it is not proper to cite **section 40 (2) of the Magistrate Court Act, Cap. 11 [R. E. 2019]** since parties are bound by their own pleadings.

The Plaintiff further stated that, for the Court in order to asses and determine whether it has or it doesn't have pecuniary jurisdiction to entertain the matter, then reference must base in the Plaintiff. Further that **Order VII of the Civil Procedure Code**, sets standards and content thereof jurisdiction clause inclusive by virtual of order **VII Rule 1 (i) of the Code** which provides:

"The plaintiff shall contain the following particulars:

(i) A statement of value of the subject matter of the suit for purposes of jurisdiction and court fees so far as the case admits."

Further, the Plaintiff referring to the plaint, paragraph 12 as jurisdiction clause which pleads the total sum claimed to be **Tshs 345,690,336/=** giving jurisdiction to this Honourable Court. It is the Plaintiff's stand that to ascertain what amount that the Plaintiff entitled as a liquidated or principal sum and which is general damages, the Court must hear evidence or further explanation.

To this Court, it is not a dispute that the Defendant's objection raised under **section 13 of the Civil Procedure Code**, challenging the court whether it has such jurisdiction to entertain the matter or not. The Defendant submitted that the cited section was relevant on conferring the Court jurisdiction. I quote;

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

Section 40 (2) (b) of the Magistrates Court Act, Cap 11 [R. E. 2019] cited by Defendant was a mere the guidance and giving direction to the Plaintiff.

Under paragraph 3 of the Amended Plaint when read together with **items (a) and (b) in the relief sought therein**, the Plaintiff claims **Tshs. 345,690,936/=** being unpaid pension benefits and damages accrued as a result of the Defendant. However, he proceeds to claim **Tshs. 45,690,**

936/= as unpaid pension benefits. Indeed, the plaintiff's claim of **Tshs. 345,960,936,** is collective of substantive and general damages of which cannot confer jurisdiction of the Court. In the case referred above of ***M/S TANZANIA-CHINA FRIENDSHIP TEXTILE CO.LTD*** (supra), stated that:

"... since the general damages are awarded at the discretion of the court, it is the court which decides which amount to award. In that respect, normally claims of general damages are not quantified..."

In the instant case, the substantive amount is the one stated by the Plaintiff under prayers, **item (b)** of the Plaint which is **Tshs 45,690,936/=** being his **rightful pension benefits arising from over 15 years contributions.** Otherwise it is wrong construction that the pecuniary value is over **Tshs 390,000,000/=** without any convincing findings before this court as mentioned under **paragraph 12** of the Plaint.

It is from here that the Civil Case before this honourable court is improperly filed hence the same has no pecuniary jurisdiction to entertain.

In the event therefore, **the preliminary objection by Counsel for the Defendant is sustained and the Civil Case**

No. 124 of 2019 before this Honourable Court is hereby dismissed out for want of jurisdiction.

No order as to costs.

It is so ordered.




L. E. MGONYA

JUDGE

04/03/2022

COURT: Ruling delivered in chamber before Hon. Luambano, Deputy Registrar in the presence of the Plaintiff and Defendant, and Richard RMA.




L. E. MGONYA

JUDGE

04/03/2022