

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 18 OF 2021**

**MICHAEL JOACHIM TUMAINI NGALO.....PLAINTIFF**

**VERSUS**

**JITESH JAYANTILAL LADWA..... DEFENDANT**

**RULING**

*Date of last Order: 31/08/2022*

*Date of Ruling: 07/10/2022*

**E.E. KAKOLAKI J.**

*"Jurisdiction is a creature of statute and as such, it cannot be assumed or exercised on the basis of likes and dislikes of the parties. That's is why the court has in number of occasions insisted that the question of jurisdiction is fundamental in court proceedings and can be raised at any stage even at the appellate stage. The court suo moto can raise it, in adjudication the initial question to be determined is whether or not the court or tribunal is vested with requisite jurisdiction."*

These are not my words but the voice of the Court of Appeal speaking through the case of **Commissioner General of Tanzania Revenue Authority Vs. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (CAT Unreported). The above quoted excerpt

of the highest Court in our land reflects the issue in which this court is called upon to determine in the preliminary objection raised by the Defendant herein, *whether the court has jurisdiction to entertain and determine the suit before it*. It is learnt from the pleadings in this matter that, the plaintiff is suing the defendant for a tort of defamation (libel) arising from the letter dated 14<sup>th</sup> June, 2020 addressed to Hon. Dr. Justice Nangela seeking his recusal from Commercial Cause No. 2 of 2020 and Misc. Commercial Application Nos. 56 and 62 of 2020, on the reason that he had private conversation/meeting in chambers, with the plaintiff who is the lawyer for his opponent, prior to the hearing session of the matter. The plaintiff avers further that, the said letter was published for being copied to different authorities such as Ministers, Permanent Secretaries, Inspector General of Police, Director of Criminal Investigations (DCI), the Hon. Chief Justice, the Hon. Principal Judge, Hon. Judges of the High Court, the Court Chief Administrator and advocates, hence tarnishing his name, image and reputation both personal and professional for no good or lawful cause as at all. He is thus claiming for the following reliefs:

- (a) An order for retraction of the offensive/defamatory words complained of;

- (b) An order for unconditional apology to the plaintiff and publication of the said retraction and apology in the same manner as done by his letter;
- (c) An order for permanent injunction restraining the defendant, his agents' assignees, employees and/ or servant or any person working on the defendant's behalf from repeating similar or making any other offensive/ defamatory words/allegations regarding the plaintiff.
- (d) Payment of general damages in an amount to be assessed by the Hon. Court but in excess of Tsh.1 billion
- (e) Payment of exemplary damages in excess of Tsh.500 million
- (f) Interest on the decretal sum at the court rate of 12 % per annum from the date of judgment till full and final payment
- (g) Costs of the suit and interest there on at the court rate of 12% from the date of the suit until full and final payment and
- (h) Any other relief (s) the Hon. Court may deem fit and proper to grant in the circumstances

When served with the plaint, the defendant filed his Written Statement of Defence, in which in his reply to, the plaintiff raised a preliminary point of

objection to the effect that, the said WSD was improperly verified, but the same was dismissed by the Court on 29/04/2022, thereby allowing the defendant to amend his WSD. In his amended WSD the defendant raised a preliminary point of objection to the effect that, this Court has no jurisdiction to entertain and determine the suit.

As per the practice of the court, where there is preliminary objection raised before the court, the same is to be disposed of first before going into substance of the case. It is from that settled practice, this Court ordered parties to submit on the said preliminary objection. By consensus both parties agreed and this Court cordially blessed and ordered them to proceed by way of written submission, the submissions which were drawn and filed by Mr. Kamara Mpaya and Mr. Sisty Benard, both learned advocates for the plaintiff and defendant respectively.

Submitting in support of the sole point of objection Mr. Bernard contended that, this court lacks jurisdiction to entertain the suit for want of pleaded specific damages by the plaintiff in his plaint. He said, for the court to entertain any suit, the same must satisfy itself of its jurisdiction not only over the subject matter but most importantly the value of the subject matter (pecuniary jurisdiction), the jurisdiction which is established by looking at

the law establishing that court, judicial precedents and the pleadings. He argued, what is pleaded and claimed as reliefs by the plaintiff against the defendant in the present matter under paragraph 29 of the plaint is unconditional apology and general and exemplary damages in excess of Tshs. 1,500,000,000, for loss of reputation. In view of Mr. Bernard, this Court cannot entertain such claims for want of special amount/substantive claim pleaded as per the mandatory requirement of the provisions of Order VII Rule 1(i) of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC), which provides that, particulars of the plaint must include a statement of the value of the subject matter of the suit for the purpose of determination of court's jurisdiction and the requisite fees. He further argued, it was mandatory that the plaint includes particulars which would lead the Court to satisfy itself of its jurisdiction as it was stated in the case of **Mwananchi communication Limited and 2 others Vs. Joshua K. Kajula and 2 Others**, Civil Appeal No.126/01 of 2016 (Unreported) where it was insisted that, it a substantive claim which determines jurisdiction and not general damages. Mr. Benard further relied on the cases of **Tanzania-China Textile Co. Ltd Vs. Our Lady of the Usambara Sisters**, [2006] TLR 70 (CAT), **Clouds Entertainment Company Ltd and 2 Others Vs. Gallus Mpepo, Editor**

**Sani Newspaper and 3 Others**, Civil Case No. 13 of 2006, **Independent Power Tanzania Ltd and 2 Others Vs. Honourable David Kafulila (MP)**, Civil Case No. 131 of 2014, **Rev. Christopher Mtikila Vs. Yusufu Mehboob Manji and 9 Others**, Civil Case No. 89 of 2006 and **Richard K. N. Rweyongeza Vs. Jitesh Jayantilal Ladwa**, Misc. Civil Case No. 101 of 2020 (All HC-unreported). He therefore implored the court to follow the positions in the above cited case to find that the preliminary objection has merit.

In rebuttal, Mr. Kamara contended that, it is erroneous to challenge any courts' pecuniary jurisdiction basing on monetary claims made, be it special or general damages as not all suits filed in court involve monetary claims as some are claimed as substantive reliefs. In view of Mr. Kamara, this court has all the requisite jurisdiction to try and determine the plaintiffs suit as under the constitution, the High court has unlimited jurisdiction irrespective of the monetary claim involved in any given matter. According to him, the plaintiff's substantive claims are neither special nor general damages, rather (a) **retraction of the offensive words**, (b) **unconditional apology** and (c) **permanent injunction** as stated in the prayer clause of the plaint. He said, the claimed general and exemplary damages can only be considered

and determined once the court makes a finding that the words complained of are defamatory entitling the plaintiff to the three substantive reliefs. Concerning the assertion of non-compliance of Order VII Rule 1 (f) of the CPC by the plaintiff, Mr. Kamara submitted that, what is required to be pleaded is the estimated value not the substantive claim prayed for by a claimant or plaintiff for the purposes of assessment of courts fee and for determination of courts pecuniary jurisdiction. He cited the case of **Tanzania-China Textile Co. Ltd** (supra) which according to him, the same was decided before the amendment of section 13 of the CPC. He thus implored the court to depart from the decision in the above case and abide to the proviso under section 13 of the CPC, which does not oust the jurisdiction of the High court. To support his stance, he referred the Court to the case of **Ivanna Felix Teri Vs. Mic Tanzania Public Limited Company**, Civil Case No 5 of 2019 (HC-unreported), where the objection like the present one was raised and this Court invoked the proviso to section 13 of the CPC and ruled that, the Court may entertain the suit, the value of the subject matter notwithstanding. In view thereof he implored me to follow the opinion my brother (Dr. Twaib J as he then was) in the above case and depart from the rest of the cases as the same were decided before

amendment of Section 13 of the CPC. With regard to the case of **Mwananchi Communication** cited by the defendant's counsel, he said, the same is distinguishable to the facts of this case as the provisions of section 13 of the CPC was never drawn to the attention of the Court of Appeal in that decision. In conclusion he submitted that, since the plaintiff's substantive claim is not monetary, the defendants Preliminary Objection is misconceived, untenable and without merit deserving to be overruled. The Court was called therefore to overrule the objection.

In a short rejoinder Mr. Bernard submitted that, the submission by Mr. Kamara are not laws to overturn the Court of Appeal decision in **Mwananchi Communication Ltd** (supra), which is the most recent decision and binding to this Court. He argued, when the Court of Appeal rendered **Mwananchi Communication Ltd** decision, Misc. Amendment No. 4 of 2016, which the counsel for the plaintiff is seeking to hide in, had more than 4 years in place, thus it was no longer a new law as the Court was aware of it. In his view, other decisions that are relied on by the plaintiff's counsel are bound and superseded by the decision in **Mwananchi Communication Ltd** (supra), which this court is bound to follow, hence enhance the principle of judicial conformity of decisions.



In further view of Mr. Bernard, the amendment of section 13 of the CPC does not in any way remedy the present situation because the same falls under the subtitle "Place of suit" which caters for territorial jurisdiction other than pecuniary jurisdiction in the sense that, without there being a specific amount pleaded, as per the decision supplied in the defendant's submission in chief, the Court cannot not be in a position to determine its jurisdiction. In concluding, Mr. Bernard implored the court to find and hold that, the Court of Appeal decision in **Mwananchi Communication** case supersedes all other decisions in which this court is bound with.

Having accorded the rival submissions by the parties herein the deserving weight, and upon perusal of the pleadings filed by the respective parties, my endeavour now is to determine the issue as to whether this court has jurisdiction to entertain and determine this suit as raised by the defendant.

The term Jurisdiction is defined in **Halsbury's Laws of England**, Vol. 10 paragraph 134 to mean:

*"The authority which a court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision.*

As stated earlier on, the question of jurisdiction of any Court is basic as it goes to the very root of the authority of the court to adjudicate upon cases of different nature. As a matter of practice, courts must be certain and assured of their jurisdiction at the commencement of their trial. See the case of **Fanuel Mantiri Ng'unda Vs. Herman M. Ng'unda**, Civil Appeal No. 8 of 1995 (CAT-unreported). Further to that and as alluded to above, all courts in this land are creatures of statutes and their jurisdiction is purely statutory as parties cannot consent to crown the Court with jurisdiction it does not possess. The jurisdiction can be either territorial, pecuniary or appellate jurisdiction depending on the subject matter. See the case of **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 and **Commissioner General of Tanzania Revenue Authority** (supra).

In this case, the defendant is claiming that this court has no pecuniary jurisdiction to entertain the suit as the plaint does not disclose specific claim which is in infraction of the provisions of Order VII Rule 1 (i) of the CPC, while on the other hand, Mr. Kamara contends, since the suit is not for monetary claims but rather for retraction, apology and permanent injunction reliefs, then it should not be judged by pecuniary jurisdiction. He also insists that, the proviso to section 13 of the CPC crowns the Court with jurisdiction

to determine the matter. To disentangle parties conflicting arguments I find it apposite to reproduce the provisions of Order VII Rule 1(i) and section 13 both of the CPC. Order VII Rule 1(i) of the CPC reads:

*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.*

And section 13 of the CPC provides:

*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.*

It is settled law that, pecuniary jurisdiction of the court in civil matters is determined by substantive claims and not general damages as it was held by the Court of Appeal in the cases of **Tanzania - China Friendship Textile Co. Ltd. Vs. Our Lady of the Usambara Sisters** [2006] TLR 70, **John Mome Morro Vs. Gratian Mbelwa and 3 Others**, Civil Case No. 80 of 2011, **Tanzania Breweries Vs. Anthony Nyingi**, Civil Appeal No. 119 of 2014 (all CAT unreported), **Rev. Christopher Mtikila** (supra) and

**Mwananchi Communication Limited** (supra). The Court of Appeal in the case of **Tanzania- China Friendship Textiles Co. Ltd** (supra) on what determines jurisdiction of the Court observed thus:

*"... it is a substantive claim which determines jurisdiction and not general damages which determines jurisdiction as general damages are awardable at the court's discretion..."*

In **Mwananchi Communication** case the Court of Appeal at page 21 was even more specific on what determines the jurisdiction of this Court where had the following to say:

*"In determining the jurisdiction of the High Court what should be considered is the specific claims and not general damages claimed ..."*

It is Mr. Kamara's contention that in this case the plaintiff's substantive claims are retraction of the statements made by the defendant, apology and permanent injunction order against the defendant from repeating his defamatory allegations, which claims cannot be quantified, hence this Court has and can exercise its jurisdiction over the matter. In order to appreciate Mr. Kamara's assertion let me throw a glance of an eye to paragraph 29 of the plaintiff's plaint referring to this court's jurisdiction. The said paragraph states that:

*29. The cause of action has arisen in Dar es Salaam Region, where the offensive words were authored, edited, printed, published and circulated by the defendant. In addition, the defendant's place of residence and business is in Dar es Salaam and the plaintiff's substantive claims are retraction and apology and the amounts claimed as general and exemplary damages are in excess of shillings One Billion Five Hundred Million (TZS 1,500,000,000/=). This Hon. Court is therefore seized with the requisite jurisdiction to admit, entertain and determine the suit.*

Glancing at the above paragraph, it is apparent to me that, the plaintiff's substantive claims are not only unquantified claims of retraction, apology and permanent injunction as put by Mr. Kamara but also quantified general damages to the tune of Tshs. 1,500,000,000. Applying the principles from the above cited cases, undoubtedly the plaintiff is in violation of Order VII Rule 1 (i) of the CPC for not stating the value for the purpose of determination of court's jurisdiction and fees which is specific damages. Thus, the plaintiff has failed to establish that, this court has requisite pecuniary jurisdiction to entertain this matter for pleading quantified general damages only. I so find as the law is settled that, it is the specific claims which determine the Court's jurisdiction and not general damages as rightly held in the cases of **Tanzania-China Friendship Textile Co. Ltd** (supra), **John Mome**

**Morro** (supra) and **Mwananchi Communication Ltd** (supra). Had the plaintiff pleaded specific damages as per the requirement of Order VII Rule 1(i) of the CPC, I hold that would have accorded this Court with an opportunity to determine its pecuniary jurisdiction, as absence of such specific damages means that this matter is supposed to be tried in the lower the Courts that is the District Court or the Resident Magistrate's Court. My findings are premised on the most recent decision of the Court of Appeal which is binding to this Court in the case of **Mwananchi Communication case** (supra) where the Court roared that:

***"If 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 of the High court where the suit was filed. The absence of such specification meant that the suit should have been tried in the lower the Courts that is the District Court or the Resident Magistrate's Court under section 40 (2) (b) of the MCA." (Emphasis supplied)***

Mr. Kamara invited this court to follow its own decision in the case of **Ivanna Felix Teri**, (supra) which considered the proviso to section 13 of the CPC and concluded that, the Court had jurisdiction to determine the matter

despite of non-disclosure of specific damages by the plaintiff, on the ground that, in reaching at its decision in **Mwananchi Communication Ltd** (supra) the Court of Appeal did not deliberate on the applicability of the provisions of section 13 of the CPC and its proviso. While I am in agreement with Mr. Kamara's submission that, the proviso to section 13 of the CPC, does not oust jurisdiction of this Court and that, the same was not considered in **Mwananchi Communication Ltd** (supra), I distance myself from his proposition that, this Court is clothed with the jurisdiction to entertain this matter under that proviso of section 13 of the CPC. I so do as the purpose of the proviso in my firm view was to retain the inherent powers (jurisdiction) of this Court to entertain any matters placed before it as it deems fit but not to render redundant or inoperative the mandatory provisions of Order VII Rule 1(i) of the CPC. It is now common ground that, the object and purpose of section 13 of the CPC is to prevent overcrowding of cases in the Court of higher grade in a situation where the suit may be filed and heard in a court of lowest grade and to pave a way for the cases with huge amount to be entertained by experienced Courts. See the case of **Peter Keasi Vs. The Editor, Mawio Newspaper and Another**, Civil case No. 145 of 2014 (HC-unreported). With that settled position in mind, I am of the firm view that,

the good purpose of the proviso to section 13 of the CPC cannot supersede the primary object of the said section which is to ensure that, a suit is instituted in the court of the lowest grade competent to try it, which Court for the purposes of that section is, a court of Resident Magistrate and District Court. In this case like in **Mwananchi Communication Ltd** (supra) where the specific damages were not specifically stated, I hold that, in absence of specific claims pleaded by the plaintiff, the competent court to try this matter is the District Court or the Resident Magistrate's Court under section 40 (2) (b) of the MCA.

I therefore uphold the preliminary objection by the defendant and hold that, the suit is incompetent to be tried by this Court for want of pecuniary jurisdiction as it ought to have been entertained by the District Court or Court of Resident Magistrate. I would have struck out this suit for being incompetent. However for the interest of justice, I transfer the same to the Resident Magistrates Court of Dar es salaam at Kisutu under section 21(1)(a) of the CPC, to be tried and determined there to its finality on merits. For avoidance of doubt parties are excluded from paying any court fees for the already filed pleadings.

Costs to follow the event.



It is so ordered.

Dated at Dar es salaam this 07<sup>th</sup> day of October, 2022.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

The Ruling has been delivered at Dar es Salaam today 07<sup>th</sup> day of October, 2022 in the presence of Mr. John Chuma, advocate for the Defendant and Ms. Asha Livanga, Court clerk and in the absence of the Plaintiff.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

