

**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. 99 OF 2022

ROBERT MALISA PLAINTIFF

VERSUS

CRDB BANK PLC DEFENDANT

RULING

8th September & 7th October, 2022

KISANYA, J.:

On the 13th day of June, 2022, Robert Malisa, the plaintiff herein, sued CRDB Bank PLC, the defendant praying for the following reliefs:-

- i. A finding that, the Defendant had frivolously and maliciously persecuted the Plaintiff and has failed negligently to act upon the prescribed standards set by law hence breached duty of care in relations (sic) to the contract he had with the Plaintiff.*
- ii. An order that the Defendant should pay the Plaintiff the sum of Tanzania Shillings One Billion and Ninety Seven Million Six Hundred and Forty Thousand Nine Hundred and Ninety Eight (Tshs. 1,197,643,998.72) being compensation for that breach as the result of undesirable damages caused to the plaintiff.*

- iii. *An order for the Defendants to pay the Plaintiff Tanzania Shillings Two Billion (2,000,000,000) being general damages suffered by the Plaintiff on:
 - a. *Breach of contract.*
 - b. *Loss of income.*
 - c. *Loss of family, separation and other losses as mentioned in paragraph.**
- iv. *Payment of Tanzania Fifty Million Shillings (Tshs 50,000,000) being special damages on account of cost incurred by the Plaintiff and its agent regarding to this action.*
- v. *Interest on the amount stated in the judgment and decree for the plaintiff on the Bank of Tanzania (BOT) interest rate of 22% from the date of filing this case until the date of judgment.*
- vi. *Interest on the amount stated in the judgment and decree at the court rate of 12% from the date of judgment until the date of final satisfaction of the decree.*
- vii. *Costs of this suit be provided for with an interest thereon at the court rate of 12%.*
- viii. *Any further relief granted by this honourable court.*

Responding to the plaintiff's claim, the defendant filed a Written Statement of Defence. She opposed all claims raised by the plaintiff and prayed for dismissal of the suit. In addition, the defendant lodged a notice of preliminary objection on points of law that:-

1. *This Honourable Court has no jurisdiction to determine suits arising from employment related matters as per*

section 51 of the Labour Institutions Act, No. 7 of 2004 read together with section 88 of Employment and Labour Relations Act, No. 6 of 2004 as amended from time to time, and

- 2. The case is res judicata as it was adjudicated and determined by the Commission for Mediation and Arbitration and thereafter by a court with competent jurisdiction, thus it contravene section 9 of the Civil Procedure Code Cap. 33, R.E. 2019.*
- 3. The suit is hopelessly time barred in terms of section 3(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 read together with item 3 of the 1st Schedule to the Act.*

When the matter was called on for orders on 3rd August, 2022, the plaintiff was represented by Mr. Walter Goodluck, learned advocate, whilst Mr. Sweetbert Eligidius, also learned advocate appeared for the defendant. As is the practice in this jurisdiction, I found it appropriate to dispose of the preliminary objection first.

With leave of the court, the preliminary objections were argued by way of written submissions. Parties were given the time frame within which to file their respective submissions for and against the preliminary objections. However, the plaintiff did not file his submission in reply to the preliminary objection. In terms of the settled law, the plaintiff is deemed to have defaulted to appear when the preliminary objection was called on for hearing.

I will therefore proceed to determine the preliminary objections basing on the submissions filed by Mr. Juvenalis Ngowi, learned counsel for the defendant.

Mr. Ngowi commenced his submission on the first limb of objection. He argued that this Court lacks requisite jurisdiction to entertain the matter. The learned counsel predicated his submission on the contention that the subject matter of the suit arose out of and in connection with the plaintiff's employment with defendant. To support his contention, Mr. Ngowi implored this Court to consider paragraphs 3, 4, 5 and 6 of the plaint. Therefore, referring this Court to section 51 of the Labour Institutions Act, Cap. 300, R.E. 2019 (the LIA), section 94(1) of the Employment and Labour Relations Act, Cap. 366, R.E. 2019 (the ELRA) and section 7 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), he argued that the mandate to determine this matter is vested in the High Court, Labour Division (henceforth "the Labour Court") or the Commission for Mediation and Arbitration (the CMA). To cement his argument, the learned counsel cited the case of **Dar es Salaam City Council vs Raphael Ruvakubusa**, Revision No. 149 of 2008, HCT Labour Division at DSM (unreported). He therefore invited this Court to dismiss the suit with costs for want of jurisdiction.

On the second limb of objection, Mr. Ngowi submitted that this matter is *res judicata*. His submission was based on the reason that the suit is substantially the same to Labour Dispute No. CMA/DSM/ILA/273/19/125 and

Revision Application No. 142 of 2020 as pleaded in paragraph 4(iv) and (vii) of the plaint. It was his further contention that the plaintiff admits in the pleading that the basis of the suit before this Court is based on the facts of the Labour Dispute cited in paragraph 4 of the Plaint. In that regard, the learned counsel argued this matter is *res judicata* and thus, this Court lacks jurisdiction to try the same under section 9 of the CPC. He also contended that the prayers sought in this suit are related to damages suffered for unlawful termination and that the same were determined by the CMA and the Labour Court. Making reference to the case of **Felician Credo Simwela vs Quamara Massod Battery and Another**, Civil Appeal No. 10 of 2020, HCT (unreported), he argued that the reliefs sought ought to have been prayed in the employment/labour dispute.

On the third limb of objection, the learned counsel submitted that the suit is time barred under section 3(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 (the LLA) read together with item 6, Part I of the 1st Schedule thereto. He pointed out that paragraph 5 of the plaint shows that the plaintiff is suing for damages based on defamation case and thus, required to be instituted within three years of the occurrence of the cause of action. Mr. Ngowi moved this Court to take judicial notice of the finding of the CMA's award that the plaintiff was terminated from employment on 12th March, 2019. It was his further submission that the suit ought to have been filed not

more than 12th March, 2022. He therefore argued that the suit is time barred for being instituted on 23rd May, 2022 and invited this Court to dismiss the same. He was of the firm view that the issue of limitation goes to the root of the case as held in the case of **Joffrey Jambil vs Dar es Salaam and Sewarage Authority and Others**, Misc. Labour Application No. 115 of 2020, HCT Labour Division at DSM (unreported).

Having examined the plaint and considered the submission by the learned counsel for the defendant, it is clear that this Court is called upon to determine the merit of the preliminary objections.

I propose to first determine the second and third limbs of objection. For reasons which will be apparent later, I am of the view that the objections can be tackled altogether. It is trite law underlined in the case of **Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd**, [1969] EA 696 that, a preliminary objection should consist of a point of law which has been pleaded and that it cannot be raised if the fact is required to be ascertained in the course of deciding the same. In his judgment, Sir Charles Newbold, P, stated: -

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is 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."

Similar stance was stated by the Court of Appeal in the case **Karata Ernest and Others vs. The Attorney General**, Civil Revision No. 10 of 2010 (unreported). The relevant part is reproduced hereunder:-

"At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only consists of a point of law which has been pleaded or which arise by clear implication out of the pleadings."

As alluded to earlier, the second and third limbs of objection are to the effect that this suit is *res-judicata* and time barred, respectively. In that regard, there is no doubt that both objections raise issue of law. However, it is my considered view that evidence is required for this Court to make determination on both objections. This is when it is considered that in his submission in support of the said objection, Mr. Ngowi urged this Court to take judicial notice in respect of the award of the CMA and judgment of the High Court, Labour Division. For instance, the plaint does not disclose when the plaintiff was terminated from employment. He therefore asked this Court to consider that the said date which is relevant to determine whether the suit is time barred appears in the foresaid award and judgment. It is provided for under section 59(3) of the Evidence Act, this Court is enjoined to refuse to take judicial notice of any fact unless the book or document is produced. Therefore, being guided by the position stated in **Karata Ernest** (supra), the second and third limbs of objection cannot be determined at this stage.

Reverting to the first limb of objection that this Court lacks jurisdiction to entertain the matter, my starting point is to restate the position of law reiterated in the case of **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (unreported), that jurisdiction is a creature of the statute. Article 108 (1) and (2) of the Constitution of the United Republic of Tanzania, 1977 (as amended) the jurisdiction of the High Court is subject to the provisions of other written laws. It is also provided for under section 7 of the CPC that courts have no jurisdiction to try suit of which their cognizance is expressly or impliedly barred.

It was Mr. Ngowi's argument that this matter ought to have been filed in the CMA or High Court, Labour Division. I then traversed the plaintiff's plaint on record. The essence of the appellant's claim is reflected in the paragraph 3 of the plaint which is reproduced hereunder:-

*"That the cause of action is the claim **for defamation** the particulars of which are that the Plaintiff was the employee of the defendant upon which **he was terminated slanderous and written defamation with a view of disqualifying the Plaintiff herein from his work life.**"(Emphasize supplied).*

My reading of the above paragraph is that the plaintiff's claim is premised on labour matter falling under tort of defamation. This fact is further reflected in paragraph 5 of the plaint in which the plaintiff averred that:-

*"...the Plaintiff comes before this honourable court for defamations case and suing for damages on the facts that, **the frivolous and unfounded** criminal allegation and **unfair termination** has caused irreparable damages as follows..."*

On the foregoing facts in the plaint, the issue is whether this Court has mandate to determine labour matter falling under tort of defamation. I am guided by section 94(1) of the ELRA which is the basis of the first limb of objection. It provides: -

*94.-(1) Subject to the Constitution of the United Republic of Tanzania,1977, **the Labour Court shall have exclusive jurisdiction over** the application, interpretation and implementation of the provisions of this Act and over any employment or **labour matter falling under common law, tortious liability, vicarious liability or breach of contract** and to decide-*

(a) appeals from the decisions of the Registrar made under Part IV;

(b) reviews and revisions of –

(i) arbitrator's awards made under this Part;

(ii) decisions of the Essential Services Committee made under Part VII;

(c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;

(d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;

(e) any dispute reserved for decision by the Labour Court under this Act; and

(f) applications including-

(i) a declaratory order in respect of any provision of this Act; or

(ii) an injunction. (Emphasize supplied)

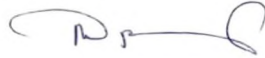
Flowing from the above cited provisions, I am at one with Mr. Ngowi that the jurisdiction over labour matter falling under tortious liability, vicarious liability or breach of contract is bestowed on the Labour Court or CMA. I am also persuaded by the decision of this Court in **Dar es Salaam City Council** (supra) in which Her Ladyship Rweymamu, J, (as she then was) had this to say on the above cited provision of the ELRA:-

"That amendment seems to confer jurisdiction to the Commission in defamation disputes arising in the context of employment. What then should be the procedure to be followed when a labour dispute involving or including a claim found on defamation is referred to the Commission? Since all employment-based disputes have to pass through mediation door, the same should apply to defamation cases employer and employees but when mediation fails, the matter should be referred to the Labour Court."

Based on the above position of law and authority, I hold that this Court has no jurisdiction to hear and determine this matter. It ought to have been lodged in the CMA or Labour Court. In that regard, the first limb of objection is hereby sustained.

For the reasons stated above, this case is hereby struck out with costs for want of jurisdiction.

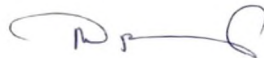
DATED at DAR ES SALAAM this 7th day of October, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 7th day of October, 2022 in the presence of Mr. Sweetbert Elgidius, learned advocate for the defendant and in the absence of the plaintiff. B/C Ms. Bahati present.

Right of appeal explained.



S.E. Kisanya
JUDGE
07/10/2022