

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**CIVIL APPEAL NO. 10 OF 2021**

*(Arising from the Ruling of the District Court of Tarime at Tarime in Civil Case No. 7 of 2020)*

**BETWEEN**

**ANDREW ONGONG'A NDIEGE OMOLO ..... APPELLANT**

**VERSUS**

**PHILIMON AROKO AGOLA ..... RESPONDENT**

**JUDGMENT**

**A. A. MBAGWA, J.**

This is an appeal against the ruling of Tarime District Court in Civil Case No. 7 of 2020 in which the court struck out the suit by upholding the preliminary objection raised by the respondent that the court has no jurisdiction to adjudicate the case.

Before embarking into the merits of the appeal, I find it pertinent to give a brief background of the matter which goes as follow; The appellant herein filed the suit against the respondent for malicious prosecution. He contended that the respondent did provide false information to the police which led him to be implicated in criminal cases no. 52 of 2018, 176 of 2019 and 178 of

2019. He therefore prayed for general damages to the tune of Tshs. 100,000,000/= and exemplary damages to the tune of Tshs. 5,000,000/=.

When he filed the written statement of defence, the respondent raised the preliminary objections on the point of law that;

1. The court has no jurisdiction over the matter.
2. The plaintiff has sued wrong party.

After hearing of the preliminary objection, the trial court sustained the 1<sup>st</sup> preliminary objection that it had no pecuniary jurisdiction to try the matter hence struck it out.

The trial court decision was not of the appellant desire. As such, he lodged the appeal at hand to challenge it. He raised one ground which states as follow;

1. That, the trial Court erred in law and in fact to strike out the suit on the ground that the court had no pecuniary jurisdiction to entertain the suit based on malicious prosecution.

When the appeal was placed before me for hearing, the appellant was represented by Dutu Chebwe, the learned advocate whilst the respondent had the service of Thomas Makongo, the learned advocate.

Submitting in supporting the appeal, Mr. Chebwe argued that special damages can only establish jurisdiction of the court if specifically pleaded. He proceeded that in absence of special damages, normally the court considers other factors to determine jurisdiction, such as the nature of the suit or parties to the case. He added that, looking at paragraphs 3,4,5 up to 14 of plaint, the nature of the suit was based on tortious liability to wit; malicious prosecution. Mr. Chebwe proceeded that, section 13 of the Civil Procedure Code requires the suit to be instituted in the lower court and given that the Primary Court has no jurisdiction to entertain a suit based on common law tort, then the lowest court becomes the District Court.

Referring to the case of **Selemani Ramadhani vs Ally Juma**, 1984 TLR 59, Mr. Chebwe argued that malicious prosecution is a common law suit hence the Primary Court was incompetent to try it. He contended that the Primary Court jurisdiction in civil matters is limited to contractual obligations and customary tort. He added that, even if they had pleaded for specific damages, the lowest court to entertain the case was the District Court. He concluded by praying the Court to allow the appeal by setting aside the decision of the District Court and order the case to be tried de novo. He further prayed for costs.

In response, Mr. Makongo submitted that it is not true that special damages were not pleaded. He proceeded that, the plaint contained two prayers, general damage i.e., 100,000,000/= and exemplary damages i.e., 5,000,000/=. He further added that, the prayers are part of the pleadings hence since the appellant indicated special damages to be 5,000,000/=: the matter ought to go to Primary Court. In conclusion, Mr. Makongo prayed the decision of the District Court to stand. He also prayed that the costs should not be granted because it was the fault of the court and not his client.

In rejoinder, Mr. Chebwe submitted that exemplary damages are not special damages. He elaborated further that, exemplary damages are an award given to a victim when the conduct of an individual is willful malicious, violent, oppressive or fraudulent.

Having heard submissions from both parties and carefully gone through the petition and record of the appeal, the question for determination is whether the appeal is meritorious.

It is the appellant's counsel's contention that special damages can only establish jurisdiction of the court if specifically pleaded and that in absence of special damages, the court should consider other factors to determine

jurisdiction. In the case at hand, the counsel was of the view that the nature of complaint i.e., tortious liability to wit; malicious prosecution, should determine the jurisdiction of the court. Referring to section 13 of Civil Procedure Code, the appellant's counsel argued that a suit should be instituted in the lowest court hence taking into account that the Primary Court has no jurisdiction to entertain a suit based on common law tort, then the lowest court becomes the District Court.

Section 13 of the Civil Procedure Code states that;

*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.*

Thus, from the above provision, it is obvious that even the appellant's claim should have been instituted in the court of the lowest grade which is the Primary Court. However, referring to the case of **Selemani Ramadhani** (supra) this Court, Lugakingira, J, held that malicious prosecution is common law tort for which the Primary Court is incompetent to try it. Therefore, in

the circumstances of the instant case, the court of lowest grade is the District Court or the Court of the Resident Magistrate for the duo are deemed to have the same grade.

Although the respondent's counsel argued that the exemplary damages pleaded by the appellant is the same as the special damages, which is not true, it is worth noting that even if there were specific damages pleaded, still the matter would not be instituted in the Primary Court because it is not competent to try malicious prosecution which is common law tort.

From the foregoing above, I find the appeal has merits and consequently, I allow it. The ruling and order of Tarime District Court in Civil Case No. 7 of 2020 are quashed and set aside. As such, I order that the case file be remitted to the District Court of Tarime to proceed before another magistrate. Each party should bear its own costs

It is so ordered.

Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "A. A. Mbagwa".

**A. A. Mbagwa**

**JUDGE**

**21/10/2022**