

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CIVIL CASE No. 08 OF 2022

1. MOSES H. MBARUKU

2. NYARIKA H. NYARIKA..... PLAINTIFFS

VS

ABBY AND COMPANY LTD DEFENDANT

RULING

22/8/2022 & 30/9/2022

ROBERT, J:-

This is a ruling on the preliminary objection raised by the Defendant on points of law against the suit filed by the Plaintiff to the effect that:

- 1. This Honourable Court has no jurisdiction since general damages do not confer jurisdiction of the Court;*
- 2. This Honourable Court has no jurisdiction contrary to section 13 of the Civil Procedure Code, (Cap. R.E.2019)*
- 3. This Court has no jurisdiction to entertain labour matters*
- 4. The Plaintiff has no cause of action against the Defendant.*

The Plaintiffs named above filed an action in this Court praying for judgment to be entered against the Defendant and for:

- (i) the Defendant to be compelled to produce before the Court the books of records, bank slips, audited financial accounts, bank*

statements of the company in their custody from 27th January, 2014 to date;

- (ii) General damages TZS 450,000,000.00*
- (iii) Special damages arising from the loss of income following the Defendant failure to pay monthly salaries since 2014 up to date;*
- (iv) Interests from the date of Judgment until payment in full*
- (v) Costs of the suit*
- (vi) Interests at Court rate.*

The Plaintiffs alleged in their plaint that they were employed by the Defendant as directors, they are also shareholders holding 5 shares each. Their claim against the Defendant is to the effect that, (a) the affairs of the company are conducted in a manner oppressive, prejudicial and unfair to the first and second plaintiffs interests as directors and shareholders; (b) the Defendant Company failed to pay the two plaintiffs monthly salaries since then to date; (c) the defendant failed to submit financial accounts of the company since 27th January, 2014 up to date; and (d) the defendant failed to hold shareholders meeting since 2014 up to date.

As a matter of practice, this Court invited the parties to address the Court on the points of preliminary objection raised with the defendant before proceeding with the hearing on merit subject to the determination of the preliminary objection.

When the matter came up for hearing, the Plaintiffs were both present in person without legal representation whereas the defendant

enjoyed the legal service of Mr Kevin Mutatina, learned counsel. At the request of parties the Court allowed parties to proceed with the hearing by filing written submissions.

Highlighting on the points of objection, the learned counsel for the defendant opted to join the 1st, 2nd and 4th points of preliminary objection and argued them together. He submitted that, the plaintiff's plaint lacks a statement of the value of the subject matter of the suit which would help the Court to determine its jurisdiction on the matter as required under Order VII Rule 1(i) of the Civil Procedure Code, Cap. 33 (R.E.2019). He clarified that the plaintiffs' plaint does not disclose the value of specific damages claimed but discloses general damages only which do not confer jurisdiction of the Court. To buttress his argument, referred the Court to the decisions in the cases of **Shyam Thanki & Others Vs New Palace Hotel** [1971] 1 EA 199 pg 202, **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters** TLR 2006 and **Nkupa T. Co Ltd Vs NMB LTD & Another** Civil case No. 179 of 2019 TZHC.

Coming to the 3rd point of preliminary objection, the learned counsel submitted that this court has no jurisdiction to hear and determine labour matters. He argued that, according to section 2, 86, 88, 91 and 94 of the Employment and Labour Relations Act (herein referred to as ELRA) read together with section 14 and 50 of the Labour Institutions Act (herein

referred to as LIA), it is the Commission for Mediation and Arbitration which is legally established to deal with labour disputes and in this matter the plaintiffs' claim is for unpaid salary since 2014 which is a labour dispute and therefore this court has no jurisdiction to determine the same. Hence, he prayed for the case to be dismissed.

Responding to the defendant's submissions, the plaintiffs started with the 3rd point of preliminary objection and submitted that the High Court jurisdiction is not capable of being ousted as the High Court has unlimited jurisdiction under Article 108 (2) of the United Republic of Tanzania Constitution, 1977 as amended from time to time and section 2 (1) of the Judicature and Application of Laws Act (Cap 358 R.E 2002). He also cited the case of **Scova Engineering S.P.A and IR Tec S.P.A Vs Mtibwa Sugar Ltd & 3others**, Civil case No. 133 of 2017 in support of his argument.

Responding to the 1st point of preliminary objection, the Plaintiffs submitted that the Plaintiffs' claim is based on their denied shares from 2014 to date. Since the company information was withheld by their fellow director it was difficult for them to establish their special damages.

They submitted further that, their claims are not based on employment, overtime, salary increment or promotion and clarified that paragraph 7 of the plaint was intended to show the court the injustice and

oppression done by the defendant. They urged the Court to disregard what appears as the claim for salary in paragraph 7(b) of the plaint.

In a brief rejoinder, the defendant submitted that, s.13 of the Civil Procedure Code makes it mandatory for civil litigations to be instituted in the court of the lowest grade competent to try it. He maintained that this Court has no jurisdiction to entertain the Plaintiffs' claims of salaries and prayed for the case to be dismissed.

Having heard the rival submissions of both parties, I will pose here and make a determination on the points of preliminary objection argued by the parties.

Starting with the 1st, 2nd and 4th points of preliminary objection, the defendant alleged that the plaint does not disclose the value of specific damages claimed in the suit which would help the Court to determine its jurisdiction on the matter as required under Order VII Rule 1(i) of the Civil Procedure Code, Cap. 33 (R.E.2019).

Order VII Rules 1(i) of the Civil Procedure Code, Cap. 20 (R.E 2019) provides that: -

*"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.”[emphasis added]*

In the case of **Mwananchi Communications Limited & 2 Others vs Joshua K. Kajula & 2 Others**, Civil Appeal No. 126/01 of 2016, CAT, Unreported, the Court emphasized the importance of complying with the cited provision by holding that: -

*"In line with Order VII Rule 1 of the CPC, that **every plaint has to state the value of the subject matter** for two purposes, jurisdiction and court fees. At the same time ensure compliance with section 13 of the CPC that requires a suit to be filed in a Court with the lowest grade."*

In the present case, the Plaintiffs claimed special damages arising from the loss of income following the Defendant's failure to pay monthly salaries since 2014. However, the Plaintiffs did not specify the value or amount of special damages claimed. The only claim with an indication of the value claimed is general damages where the Plaintiffs claim a total of TZS 450,000,000/=.

As the plaint is silent on the value of special damages which is the determinant of the pecuniary jurisdiction of the trial court, it means therefore that the plaintiffs have no reason as to why their plaint was filed at this court.


Relying on the holding of an early case of **Mwananchi Communications Limited** (Supra) where the court has this to say;

"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 on the High Court where the suit was filed. The absence of such specification meant the suit should have been tried in the lower courts,"

Guided by the cited decision, this Court is in agreement with the defendant that the Plaintiffs failure to plead the value of the subject matter in the plaint means this Court is not clothed with the requisite jurisdiction to try this matter. That said, I uphold the preliminary objection raised by the defendant and strike out this suit with costs. In the circumstances, I find no pressing need to deliberate on the remaining points of preliminary objection.

It is so ordered.




K.N. ROBERT
JUDGE
30/9/2022