

IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL APPEAL NO. 37 OF 2022

KENYA AIRPORT PARKING SERVICES LTD APPELLANT

VERSUS

AFRIMAX TECHNOLOGIES LTD RESPONDENT

(Appeal from the judgment and decree of the Resident Magistrate's Court of Dar-es-Salaam at Kisutu)

(R. G. Tarimo, PRM)

Dated 3rd day of February 2022

In

(Civil Case No. 11 of 2018)

JUDGMENT

Date: 24/11 & 01/12/2022

NKWABI, J.:

The respondent's motor vehicle was attached by the appellant on an allegation that the respondent was using parking service and was not willing to pay parking levies. The respondent has an office at Raha towers in Dar-es-Salaam, so its officer had to park the motor vehicle at the parking lot at the premises of the office. The controversy emerged in the September, 2017.

The respondent complained to the City Director without success. She resorted to the case where after hearing both parties, the trial court decided in favour of the plaintiff on the plaint and dismissed the counter-claim for

the reason that it was not proved. In total, the appellant was ordered to pay the respondent T.shs 20,900,000/= to the respondent. She was unhappy with the decree as such she appealed to this Court.

The appeal was heard by way of written submissions, Mr. Adili Kiiza, learned advocate, filed the submission for the appellant while for the respondent, Mr. Makubi K. Makubi drew and filed the submission.

I start with the preliminary objection raised by Mr. Kiiza to the effect that the trial court had no jurisdiction to hear and determine the case because the specific damages were far lower and the case ought to be filed in the primary court citing **Ms. Tanzania-China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters**, [2006] T.L.R. 70 where the Court of Appeal of Tanzania interpreted section 13 of the Code:

"(1) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court.

(2) Although there is no specific provision of law stating expressly that the High Court had no pecuniary jurisdiction to entertain claims not exceeding 10,000,000/= according

to the principle contained in section 13 of the Civil Procedure Code that every suit must be instituted in the court of the lowest grade competent to try it.”

As a counter-argument, Mr. Makubi submitted that the limit of pecuniary jurisdiction binds the lower court which is barred to exceed the limit but the higher court is empowered to determine matters of which even, in this case, below thirty million. He cited **Mohamed Said Mpaki v. Equity for Tanzania Limited**, Commercial Appeal No. 3 of 2021 HC (Unreported) which relied on **The National Bank of Commerce Ltd v. National Chicks Corporation Ltd & 4 Others**, Civil Appeal No. 129 of 2015 (CAT) where it was stated that:

"There should be placed a mechanism which will ensure that litigants are appropriately advised to lodge in other registries matters not specifically assigned to a particular Division so as to ensure that the purpose for which the Divisions are established is not paralyzed. In the event a case not of a division's specialization is instituted in any of the divisions, the parties should not be thrown out as was the case herein

under the pretext of lack of jurisdiction. Instead, the parties should either be advised to withdraw and file the same in another court competent to try it otherwise, such a case should be heard to its conclusion."

I think that the Court of Appeal has clearly stated its stance that a case should be filed in a court of lowest grade with jurisdiction. The circumstances that were in the case of **National Chicks Limited** are distinguishable with the circumstances in this case as the former was between divisions hence the cited case of **Mpaki** is misplaced.

In this case, the respondent tried to jam the damages under one paragraph (a) in order to hide the true nature of the damages in order to meet the threshold of the trial court. Had she not mixed the same the trial court would have easily found that it had no jurisdiction to entertain the matter. That is unacceptable. Paragraph 15 is all a lie. When one looks at paragraph 13 (d) one would see that general damages were claimed at T.shs 29,000,000/=. By simple arithmetic if one takes 29,000,000/= out of 30,150,000/=: specific damages claimed would be T.shs 1,150,000/=. Clearly, the suit ought to be


filed in the primary court and not the District Court as for as pecuniary jurisdiction is concerned.

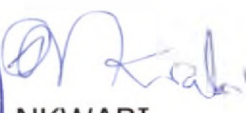
Since the trial court had no pecuniary jurisdiction to entertain the suit, the proceedings, judgment and decree are mere nullity. I proceed to quash the proceedings and the judgment of the trial court. I also set aside its decree and orders. I am of the view that the counter-claim fails as its basis was filed in a court which had no jurisdiction.

That said and done, I partly allow the appeal with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 1st day of December, 2022.




J. F. NKWABI
JUDGE