

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 74 OF 2022

*(Appeal from the Judgment and Decree of Resident Magistrate Court of Dar es Salaam
at Kisutu, in Civil Case No 85 of 2018, before Hon. Shaidi, PRM, dated 17th May, 2022)*

AFRICAN BANKING CORPORATION

TANZANIA LIMITED.....APPELLANT

VERSUS

JOEFF GROUP (TANZANIA) LTD.....RESPONDENT

JUDGMENT

Date of last Order: 25/10/2022

Date of judgment: 02/12/2022

E.E. KAKOLAKI, J.

This appeal originates from Civil Case No. 85 of 2018 before the Resident Magistrate Court of Dar es Salaam at Kisutu, in which the respondent sued the appellant claiming for the payment of the sum of Tshs. 30,587,778.28, loss of business amounting to Tshs. 4,819,743,750/= arising from appellant's laxity in the course of discharging its duty, general damages, interest on the decretal amount and costs. The background story behind this matter as can be discerned from the record is simple to tell. The respondent

herein, a company dully incorporated under Tanzania laws, dealing with cargo transportation services in the year 2012 opened two accounts with the appellant, account No.1108635518 for local currency (Tanzanian shillings) and account No. 1108635529 for USD currency. It appears in 2010 the Respondent entered into agreement with STRABAG INTERNATIONAL for the transportation of construction materials and equipment to various destinations in the country, in which amongst the services rendered on 20/01/2014 raised a tax invoice No. 101 to STRABAG INTERNATIONAL worth Tsh.30,587,778.28, payments of which were to be effected through her account maintained by the appellant. In December 2015 when the respondent was reconciling her payment/account noted that the above cited invoice was not paid. On inquiry to STRABAG INTERNATIONAL it was made evident her that, the claimed payments were affected to the respondent's account as transfer was on 10th March, 2014 executed in her account, by CRDB Bank Plc acting under STRABAG INTERNATIONAL's instruction through account No. 1352605512 in the name of JOEF GROUP. Upon further inquiry by the respondent to both TRA and BRELLA, it was discovered that, the alleged JOEFF GROUP does not exist in their records, and that its incorporation number is a dubious one. Out of appellant's negligent act and

lack of diligence the Respondent claimed on 20/09/2016 had her service agreement with STRABAG INTERNATIONAL terminated on assertion of involvement in fraud, hence loss of business in which its income attained at Tsh.4,819,743,750 particulars of which were given in paragraphs 11, 11.1, 11.2, 11.3, 11.4 and 11.5. In view of the above the respondent herein claimed for payment of a sum of Tshs. 30,587,778.28, loss of business amounting to Tshs. 4,819,743,750/- arising from appellant's act of laxity in discharging her duty, interest thereof, general damages as shall be assessed by the Court and cost of the suit, the claims which were challenged by the appellant/defendant who filed her WSD to that effect. Further to the filed WSD the appellant lodged a notice of preliminary objection challenging among other things, the pecuniary jurisdiction of the trial Court to entertain the matter, the objection which was dismissed by Hon. Mtega, PRM on the 21/05/2019 on the ground that, the claim due to the cause of action was Tshs. 30,587,778.28 as principal sum which was within the ambit of the trial court as the maximum pecuniary jurisdiction was Tshs. 300 million.

After full trial, the court entered judgment in favour of the respondent, in which the appellant was ordered to pay the respondent Tanzanian Shillings

one billion and five hundred million as loss suffered and one hundred and fifty million as general damage plus costs of the suit.

Unhappy with the said decision the appellant filed this appeal armed with eleven (11) grounds of grievances, which for the reasons to be apparent soon, I will not reproduce them all. At the hearing of this appeal both appellant and respondent appeared represented by Mr. Jonathan Luinga and Mr. Philemon Mutakyamirwa both learned advocates respectively. By consensus hearing proceeded by way of written submissions.

As allude to above, appellant had eleven (11) grounds of appeal, but for the purpose of this appeal I chose to address only the first ground of appeal, which in my view if well addressed will dispose of the appeal. The same goes thus, *the learned trial magistrate erred in law in entertaining the matter in which the trial court had no jurisdiction.*

In support of this ground, it was Mr. Luinga's submission that, in her plaint the respondent pleaded Tsh. 4,819,743,750.00 as damages for loss of business in which same amount was also claimed as relief at paragraph 12 (b) of the plaint. He added that at page 73 of the proceedings the respondent specifically prayed for Tsh.30,587,778.28 and specific damages of Tsh.4,809,743,750. The learned counsel argued, during cross examination

as reflected at page 78 of the proceedings, the respondent confirmed that the four (4) billion claimed is specific damages. It was Mr. Luvunga's submission that, the amount pleaded by the respondent exceed the pecuniary jurisdiction vested to the trial court as provided for under section 40 (2) of the MCA [Cap 11 R.E 2019] now R.E 2022, which limits such jurisdiction to not more than TZS 200,000,000 for monetary claims.

In his further submission he contended that, it is prohibited under the law for courts to entertain a matter in which it does not possess pecuniary jurisdiction. He referred the court to section 6 of the Civil Procedure Code, [Cap. 33 R.E 2019] which clearly prohibits Courts to proceed with adjudication of cases exceeding pecuniary limits bestowed on them by the law. He argued that, at page 14 paragraph 5, of the proceedings the said preliminary objection was raised in the trial court but the Court erroneously assumed jurisdiction and proceeded to adjudicate the matter without holding jurisdiction to so do. To fortify his contention he referred the Court to the case of **Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda and two Others** (1995) TLR 155, and proceeded to implore the Court to allow the appeal by quashing the proceedings and set aside the judgment and orders thereto.

In response, it was Mr. Mutakyamirwa's submission that, in paragraph 3 of the plaint, the claimed sum of 30,587,778.28 relates to the principal sum, and the sum of TZS. 4,819,743,750.00 refers to loss of business only. He added that, the principal claim was separate from the claim of specific damages. He argued that, section 40(2) (a) and (b) of the MCA read together with section 41 (1) of the Magistrates Courts Act, the maximum jurisdiction of Resident Magistrates court is Tzs. 300,000,000/= for movable properties, and Tzs. 200,000,000 for immovable properties. And that, the respondent claimed a principal sum of Tsh. 30,587,778.28 and Tzs.4,819,743.750/= as specific damage, which to him do not determine pecuniary jurisdiction of the trial court, for the reasons that, special damages have to be pleaded and specifically proved, and therefore subject to assessment by the trial court.

Mr. Mutakyamirwa contended further that, the suit was a commercial case, within the meaning of section 2 (iii) (iv), (v) of the MCA vide the Written Laws Miscellaneous Amendment Act No 2, Act No. 4 of 2004 which added subsection 3 to section 40, thus the trial court had the requisite jurisdiction to adjudicate the matter as deliberated in its ruling of 21/05/2019 by Hon. Mtega PRM at page 17 of the proceedings. He contended that, section 6 of the CPC is totally inapplicable under this situation and the cited case of

Fanuel Mantiri Ngunda (supra) is irrelevant and has been referred to out of context. He relied on the case of **Bestom Company Ltd Vs. Jacob Matalitinya t/a IT FARM**, Civil Case No. 160 of 2012 (Unreported) where the court interpreted the provision of subsection 3 of section 40 of MCA and found that the suit was within the pecuniary jurisdiction of the subordinate court. He finally prayed the court to find this ground without substance.

Rejoining his submission in chief Mr. Luvinga argued that, the issue of jurisdiction is of great importance as parties cannot confer jurisdiction where one does not exist. Mr. Luvinga attacked the submission by Mr. Mutakyamirwa that, the jurisdiction of Resident Magistrates Court is Tshs. 200,000,000 for immovable and Tshs. 300,000,000 for movable, terming it as misleading statement since the law under section 40 (2) (a) and (b) of the MCA provides maximum jurisdiction of Tshs. 300,000,000/= for immovable properties and Tshs. 200,000,000 for movable. Concerning the submission that, the claimed amount was below the stated pecuniary jurisdiction, and that the sum claimed as specific damage does not determine the pecuniary jurisdiction of the trial court for the reasons that special damages have to be pleaded and proved and subjected to assessment by the court, Mr. Luvinga responded that he holds a different view. In his view,

the sum of Tshs. 30,587,778.28 and Tshs. 4,819,743.750 as specific damages are the sums that constitutes the substantive claim which were well known at the time of filling the plaint, that is why the sum of Tsh.4,819,743,750 was specifically pleaded in paragraph 11.3 of the plaint and sought as reliefs in paragraph 12 (b) of the plaint. He was thus of the submission that, the total amount claimed by the respondent was over and beyond the jurisdiction of the trial court. Mr Luvinga further submitted that, the submission that the matter is commercial is immaterial at this time as the amount pleaded was over and above the jurisdiction of both District and Resident Magistrates Courts. He placed reliance on the case of **Tanzania China Friendship Textile Co Limited Vs. Our Lady of the Usambara Sisters** [2006] TLR 70, which provides that, it is the substantive claim and not general damages that determines the pecuniary jurisdiction of the court. In winding up Mr. Luvinga argued, the respondent admitted that, Tsh.30,587,778.28/= and Tshs. 4,819,743,750 was pleaded as specific damages and not general damages, while arguing at the same time that a claim for loss of business is not specific damages, which to him amounted to misinterpretation as in Tanzania, claim for loss of business is a claim for specific damages and it should not only be pleaded but also specifically

proved. He relied in the case of **MS Fish Corp Limited Vs. Ilala Municipal Council**; Commercial Case No. 16 of 2012 (HC-unreported)

I have keenly examined and considered the fighting submissions by the parties in light of this ground of appeal and accorded it deserving with the weight. I have also inquisitively perused the lower court records with view of understanding the nature of parties' dispute for the proper determination of the question of jurisdiction. The pending issue for determination by this Court therefore is whether the learned trial magistrate entertained the matter in which the trial court had no jurisdiction.

It is common knowledge that, the question of jurisdiction of the Court being a creature of statute is so fundamental and has to be established at the earliest possible time before the commencement of any trial before the court of law or tribunal. Expounding on this legal position in 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 Court of Appeal had this to say:

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.

As a matter of practice, courts must be certain and assured of their jurisdiction before proceeding with trial of the matter for avoiding a risky of determining the matter on assumptions that possess the requisite jurisdiction. This stance was taken by the court in the case of **Fanuel Mantiri Ng'unda** (supra) where the Court stated:

*"The jurisdiction of any court is basic, it goes to the very authority of the court to adjudicate upon cases of different nature... the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. **It is risky and unsafe for the court to proceed on assumption that the court has jurisdiction to adjudicate upon case.**"*(Emphasis supplied)

In this case, Mr. Luinga alleges that, the trial court had no jurisdiction because the amount pleaded is over and above the pecuniary jurisdiction of the Resident Magistrate Court, while Mr. Mutakyamirwa is of the view that, the amount of 4,819,743,750 claimed though was specific damages and the

same does not establish jurisdiction of court as it must be pleaded and proved.

In order to resolve their conflict, I am enjoined to look at the plaint and the applicable laws. The law makes it mandatory under Order VII Rule 1 (i) of the CPC that, a plaint shall contain statement of value for the purposes of determination court's jurisdiction and establishment of court fees. Similarly under section 40(2) (a) and (b) of the MCA, the law is very clear and unambiguous as to the pecuniary jurisdiction of the District Court and the Resident Magistrates Court by providing for Tshs. 200,000,000/- for movable property and Tshs. 300,000,000/- for recovery of immovable property. For clarity the provision of section 40 (2)(a) and (b) of the MCA is quoted here under:

40 (2) A District Court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited-

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings; and
(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred. (Emphasis added)

Now looking at the respondent's plaint, in line with the provisions of Order VII Rule 1 (i) of the CPC, which makes it mandatory for every plaint to state the value of the subject matter for the purpose of jurisdiction and court fees, the plaintiff in Paragraph 12 stating the jurisdiction of the Court to entertain the suit did not specify the amount providing for pecuniary jurisdiction of the Court, hence this Court is forced to look at the reliefs sought therein. In relief paragraph the respondent prayed the court for the following orders;

- (a) Immediately payment of Tsh. 30,587,778.28
- (b) Payment of Tsh. 4,819,743,750, to the plaintiff being loss stated in paragraph 11.1,11.2,11.3,11.4,11.5

Now the issue is whether the stated amount in relief paragraph (a) and (b) of the plaint falls within the meaning of specific damages. Undoubtedly the response to such quest is "yes". I so find as a glance of an eye at the contents of paragraph 11 referred above especially paragraph 11.3,

where the respondent pleaded and particularised the claimed loss of business, an inference is irresistibly drawn that, the same was referring to nothing else than specific damages which need specific proof as stated in a number of cases. Paragraph 11.3 of the plaint reads:

11.3. That prior to the termination STRABAG had approved the plaintiff to carry the following specific works.

- (i) *Transportation of 37,000 tons of crushed aggregates from Mombo to Ushirombo, $(37,000 \times 6.25 = 231,250$ USD into TZS. 513,143,750, 100,000 tons from Runzewe to Rusumo, at USD 9 per delivered ton $(100,000 \times 9 = 900,000$ USD into Tzs. 1,997,100,000 as a result plaintiff lost Tzs. 2,510,243,750/=*
- (ii) *Transportation of 14,400 tons of cement from Isaka to Runzewe $(14400/30 = 480 \times 2,500,000 = 1,200,000,000)$ as a result the plaintiff lost Tzs. 1,200,000,000/=*
- (iii) *Transportation of equipment's and machinery from Mombo to ushirombo at USD 500,000 into TZS=1,109500,000.*

As a result, the plaintiff lost (TZS.4,819,743,750) ...

From the above excerpt of the plaint the amount pleaded as loss of business by the respondent is Tshs. 4,819,743,750, in which according to Mr. Mutakyamirwa though claimed as specific damages submitted the same does not establish jurisdiction of the court. With due respect to Mr. Mutakyamirwa, I distance myself from his proposition on the reason that, loss of business

as pleaded therein is specific damages for being a substantive claim as it is substantive claim and not general damages which determines jurisdiction as general damages are awardable at the court's discretion as it was well stated by this Court in the cases of **Active Packaging (T) Limited Vs. TIB Development Bank**, Commercial Case No.08 of 2019 (HC-unreported) and the Court of Appeal in the case of **Mwananchi Communications Limited and 2 Others Vs. Joshua K. Kajula and 2 Others**, Civil Appeal No. 126/01 of 2016 (CAT-unreported). In **Active Packaging (T) Limited** (supra) this Court observed thus:

*"Under item (iv) the plaintiff has claimed for Tzs.200,000,000/= being compensation for loss of business and profit as a result of breach of agreement. **This being claim under specific damages**, apart from the requirement that it has to be specifically pleaded, it has to be strictly proved. There is a long list of authority on that including the two referred by the defendant that of Bolag and Zuberi Augustino (supra), which I fully subscribe to."*

See also the case of **Msolele General Agencies vs African Inland Church**, (1994) TLR 92 and **Tanzania - China Friendship Textile Co. Ltd. Vs. Our Lady of the Usambara Sisters** [2006] TLR 70

Having the above position in mind, the follow up question is whether the stated amount of Tshs. 4,819,743,750, falls within the boundaries of the pecuniary jurisdiction of the Resident Magistrates Court. Undoubtedly the answer is no. This is so as stated earlier on, the pecuniary jurisdiction of the Resident magistrate Court for movable properties like the present claim is the amount whose estimated value does not exceed Tshs. 200,000,000 while for immovable properties is value not exceeding Tshs. 300,000,000. By implication, the claimed amount of more than four (4) billion by the respondent as loss of business, being higher than Tshs. 200,000,000, was not under jurisdiction of the Resident Magistrate Court/trial court and I so find. On that account therefore the trial court acted in infraction of section 6 of the CPC requiring the Court not to exercise jurisdiction over the matter exceeding its pecuniary jurisdiction. For clarity section 6 of the CPC states thus:

6. Save in so far as is otherwise expressly provided, nothing here in contained shall operate to give any courts jurisdiction over suits the amount or value of the subject matter of which exceed the pecuniary limits (if any) of its ordinary jurisdiction.

I now move to consider Mr. Mutakyamirwa's assertion that the trial court has jurisdiction to entertain the matter as the same was commercial matter. In

my firm view this allegation is baseless since, even under section 40 (3) pecuniary jurisdiction of District Court and Resident Magistrate court in commercial matter does not exceed Tshs. 100,000,000 for immovable or Tshs. 70,000,000 for movable properties. For easy of reference the provision of section 40(3) of the CPC is quoted hereunder:

(3) Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited-
(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed one hundred million shillings; and
(b) in the proceedings where the subject matter is capable of being estimated at money value, to proceedings in which the value of the subject matter does not exceed seventy million shillings.

It follows therefore that, the above exposition does not bail out the respondent either as the amount of Tshs. 4,819,743,750, claimed in the plaint as specific damages is more than the stated amount in the above section. I therefore embrace Mr. Luvunga's submission that the amount pleaded amount of Tshs. 4,819,743,750, by the respondent was over and above the pecuniary jurisdiction of the Resident Magistrate Court.

Lastly is Mr. Mutakyamirwa's assertion that, the trial court had the requisite jurisdiction to adjudicate the matter as deliberated in ruling dated 21/05/2019 by Hon. Mtega PRM at page 17 of the proceedings. With due respect I distance myself from this assertion that it is the order of the trial court that crowned it with jurisdiction to entertain the matter. I so do as the position is very clear in the case of **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 where the erstwhile East African Court of Appeal held that, all courts in Tanzania are creatures of statute and parties cannot crown it with such jurisdiction and I would add the Court itself cannot not do so in violation of the clearly stated jurisdiction by the law. In **New Palace Hotel** (supra) at page 202 the Court held thus:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess." (Emphasis added)

(Emphasis added)

In view of the fore stated reasons and positions of the law, the issue is answered in affirmative that the learned trial magistrate was in erroneously held that the trial court had jurisdiction to entertain the suit, hence

proceeded to entertain the suit without requisite pecuniary jurisdiction. I therefore find merit in the appellants' grounds of appeal. Since the same is sufficient to dispose of the appeal, I see no need to determine the remaining grounds of appeal, for serving this court's time.

In view of the aforesaid, this appeal is allowed. I invoke the revisionary powers of this Court under section 44(1)(b) of the MCA and proceed to quash the proceedings of the Resident Magistrate Court of Dar es salaam at Kisutu in Civil Case No.85 of 2018 and set aside its judgment dated 17th May 2022 and all orders thereto.

Due to the nature of the case, I order each party to bear its own costs.

Ordered accordingly.

Dated at Dar es Salaam this 2nd December 2022.



E. E. KAKOLAKI

JUDGE

02/12/2022.

The Judgment has been delivered at Dar es Salaam today 02nd day of December, 2022 in the presence of the Mr. Peter Clavery, advocate holding brief Jonathan Lulinga, advocate for the appellant, Mr. Edward Lisso, advocate for the Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
02/12/2022.

