

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

AT DAR ES SALAAM

CIVIL CASE NO. 34 OF 2016

SHOSE SINARE.....PLAINTIFF

VERSUS

STANBIC BANK TANZANIA LIMITED.....1ST DEFENDANT

ICBC STANDARD BANK PLC

(Formerly known as Standard Bank Plc)2ND DEFENDANT

RULING

Date of last order: 04/10/2022

Date of Ruling: 08/12/2022

E.E. KAKOLAKI, J.

This ruling is seeking to address the preliminary objections raised by the defendants in the present suit. Briefly, the plaintiff who is the former employee of the 1st defendant conducting its business here in Tanzania, which is the sister company to the 2nd defendant a non-resident company filed a civil case before this Court against both defendants praying for the orders that, first, *a self-report made by the 2nd defendant and presented to the UK serious Fraud Office (the SFO) suggesting that the plaintiff committed bribery was based on material misrepresentation*, secondly, a declaratory order that, *the 2nd defendant procured a Deferred Prosecution Agreement*

(the DPA) before the Crown Court at Southwark in the UK, through misrepresentation and/or withholding information and/or suppressing material facts, thirdly, a declaratory order that, the defendant condemned the plaintiff of a serious criminal offence in a self-report illegally and unlawfully in total breach of her natural rights, the right to be heard, fourthly, a declaratory order that, the defendants caused the plaintiff to be condemned illegally and unlawfully by being mentioned adversely in the DPA and fifthly, an order for payment of sum of US\$ 30 million as compensation for ruining her banking career. When saved with the plaint both defendants came up with preliminary objections. The first defendant raised one (1) point of objection while the second defendant had three (3) points of objections in which the one of them that was staged as 3rd limb to the first ground of objection was one and same to the sole ground raised by the first defendant. It appeared that, earlier on this Court had determined only one preliminary objection which was neither raised nor addressed by the parties and resolved to strike out the case. Dissatisfied the Plaintiff successful appealed to the Court of Appeal against the ruling of this Court, as a result the matter was returned back with an order that the raised preliminary objections be determined in accordance with the law.

On 20th July, 2022, when the matter was placed before this Court for continuation, with leave of the Court the plaintiff amended her plaint in which the defendants filed their amended WSD to that effect. It is in record that, the first defendant had earlier on raised a single preliminary objection to the effect that, this court lacks jurisdiction to entertain the matter for being a labour matter. The 2nd Defendants as hinted above had three grounds to the effect that, **one**, the court has no jurisdiction to determine the suit, the ground which was separated into three (3) limbs. The said limbs are, (a) the suit instituted against the 2nd defendant is in contravention of sections 17 and 18 of the CPC, as the 2nd defendant does not reside, carry on business or personal work for gain in Tanzania, leave of the Court to sue her was not sought and she did not acquiesced to such institution of the suit and if there is any cause of action which is denied the same arose in UK and not Tanzania, (b) The plaint does not explicitly and specifically state the pecuniary value of the suit nor ascertain value of the subject for the purposes of assessment of Court fee and determination of pecuniary jurisdiction, in contravention of Order VII Rule 1(f) of the CPC and (c) in the alternative the Court lacks jurisdiction to entertain the suit for being employment dispute or Labour matter. **Second**, the plaint does not disclose the cause of action

against the 2nd defendant or either of the defendants, **third**, the matter by the plaintiff solely rests on and stem from information and matters which were the subject of legal proceedings involving the 2nd defendant in the English Crown Court, and which were the subject of criminal investigations and criminal proceedings against the plaintiff in the United Republic of Tanzania and thus, are statutory barred from action in any civil proceedings. However, in his arguments, the 2nd defendant decided to drop this last point of objection.

As a matter of practice, this court had to determine the preliminary objections first before going into the substance of the case. When the matter was called on for hearing, Mr. Sinare Zahran and Mr. Jeremia Mtobesya appeared for plaintiff while the 1st defendant hired the services of Mr. Juvenalis Ngowi and the 2nd Defendant was represented by Mr. Deusdedith M. Duncan, all learned advocates respectively. By consensus the preliminary objections were disposed by way of written submission. I should however be clear from the outset that, as alluded to above the 1st defendant's point of objection is similar to the 3rd limb of the 2nd defendant's first point of objection as both are questioning the jurisdiction of this Court to entertain the suit allegedly premised on a labour matter. I am therefore intending to

address both defendants' ground of objection in this ruling when determining the 3rd limb to the 2nd defendant's first point of objection.

It is a settled principle of law that, a preliminary objection being a demurrer in nature raised on assumption that all facts pleaded by the other party are correct, the same must be a pure point of law disposing of the matter. As a preliminary objection is clearly implied from the pleadings, it simply cannot be raised where facts are to be ascertained by evidence. See **Mukisa Biscuit Manufacturing Company Limited Vs. West End Distributors Limited**, [1969] EA 696, where the Court held that:

*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 what is the exercise of judicial discretion.*

In the same case law at page 700 it was stated thus: -

*So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by **clear implication out of the pleadings**, and which, if argued as a preliminary objection, **may dispose of the suit**. Examples are an objection to the jurisdiction of the court, or a plea of (time) limitation, or a submission that the parties are bound by*

the contract giving to the suit to refer the dispute to arbitration.

Similar stance was taken by the Court of Appeal in the case of **The Soitambu Village Vs. Tanzania Breweries Ltd and Another**, Civil Appeal No. 105 of 2011 (CAT-Unreported) where the Court echoed thus:

"...where the court is to investigate facts, such an issue cannot be raised as a preliminary objection on a point of law... It will treat as a preliminary objection only those points that, are pure law, unstained by facts or evidence"

It follows therefore that, the aim of a preliminary objection as stated in a number of authorities is to save time of the court and parties by not going into the merits of the matter because there is a point of law that will dispose of the matter summarily.

With the understanding of above principles in mind, the issue for determination by this Court is whether the point of preliminary objections raised by the defendants have merits.

I am proposing to start with the point of jurisdiction of this Court to adjudicate the matter at hand in which both the 2nd defendant in her 3rd limb to first point of objection the point and the 1st defendant in his sole ground of objection, allege that it is a labour matter hence this Court is barred from entertaining it. Now the issue under discussion and determination is whether

this suit is an employment or labour matter, in which the plaintiff strenuously resists the contention.

In support of this point of objection, Mr. Juvenalis Ngowi for the 1st defendant submitted that, the matter arose out of and in connection with the plaintiff's employment with the **1st defendant** hence going by the law, the suit ought to be instituted in the proper institution vested with jurisdiction to hear and entertain disputes related to employment and not in this registry as a normal Civil Court. According to him, the averments in paragraph 23, 24, 25 and 26 of the plaint, expressly connect plaintiff's employment at that particular time with her present claims as she alleges in those paragraphs that, the defendants did not comply with disciplinary procedures as provided by labour laws and regulations. He referred the Court to section 51 of the Labour Institution Act No. 7 of 2004 (the LIA) and section 94 (1)(d) of the Employment and Labour Relations Act, of 2004 (the ELRA) as giving exclusive jurisdiction and powers to the labour courts amongst others powers to deal with complaints other than those which were decided by arbitration. He contended under section 7 (1) of the CPC, this court's jurisdiction is limited to hearing and determination of all civil suits except those suits for which their cognizance is either expressly or implied barred like the present

one, which is to be dealt with under ELRA as the cause of action allegedly arose in the course of plaintiff's employment with the 1st defendant. To fortify his stance that the matter is to be dealt with the High Court Labour Division, the Court was referred to the case of **Dar es Salaam City Council Vs. Rafael Ruvakubusa**, Revision Application No. 149 of 2008 (HC-Labour Division), when this Court had an opportunity to discuss on the jurisdiction of CMA and Labour Court to entertain an action of tort of defamation between employer and employee and held that, the same could be dealt with by the Commission for Mediation and Arbitration after which the matter could be referred to the High Court Labour Division upon mediation proving failure. Further to that section 88 of the ELRA was cited providing for any matters of employment or labour issue falling under common law, tortious liability and vicarious liability to be entertained by the Commission basing on its pecuniary jurisdiction. It was his submission that, since this suit is based on tortious claims, arising and connected with the employment relationship or matters between the plaintiff and 1st defendant as averred in the plaint, then this Court is not clothed with the jurisdiction to entertain it, instead it is the Labour Court which is established in every zone where the High Court is situated, thus prayed the Court to dismiss this case with costs.

As alluded to above the 2nd defendant also raised a similar point of jurisdiction in the 3rd limb of her first ground of objection. It is worth noting that, in effect Mr. Duncan's submission on that point was more or less the same to that of the 1st defendant. He however added by referring the Court to the averments in paragraphs 5, 22 and 23, of the amended plaint and submitted that, the same show that, the plaintiff's claims are based on the complaints that, in the course of her employment with the 1st defendant she was subjected to interrogation without answering any disciplinary charges, hence the said complaints can well be adjudicated in the employment courts as per the ELRA and the LIA and not in the sphere of this Court.

In reply to the 1st defendants' preliminary point of objection, Mr. Mtobesya who prepared plaintiff's submissions contended that, there is nothing in paragraphs 23, 24 and 25 of the plaints as cited by the 1st defendant suggesting that, the defendants did not comply with disciplinary procedures as provided by labour laws and regulations. He was emphatic that, there is no single paragraph in the plaint where the plaintiff is challenging fairness of termination of her employment contract with the 1st defendant nor is she claiming for terminal benefits arising therefrom, as according to paragraph

26 of the plaint, plaintiff resigned on her own volition from the contract of employment, hence the same had nothing to do with the instant matter.

Mr. Mtobesya further referred the Court to paragraph 4 of the plaint which according to him, establishes the cause of action and submitted that, the second defendant who was never an employer of the plaintiff made a self - report to SFO in which he made the accusations that, the plaintiff was involved in committing bribery in the transaction of raising USD 600 Million for the government of the United Republic of Tanzania, and through that unfounded report is when the second defendant was able to procure a Deferred Prosecution Agreement (the DPA) before the Crown Court at Southwark in the United Kingdom. He was of the view that, since the plaintiff's case is based on allegations made against her in the self-report to the Serious Crimes Office of England by the 2nd defendant, then it has nothing to do with the employment relationship between the plaintiff and the 1st defendant. In further view of Mr. Mtobesya, the first defendant is sued in this case as a necessary part in terms of the provisions of Order I Rule 3 of the CPC. Concerning the cases referred by the 1st defendant in this point, he said the same do not in any manner fit in. Responding to the 2nd defendant submission in this point, similar and same submission was made

by Mr. Sinare learned advocate for the plaintiff. In essence, he maintained that, the cause of action arose from the internal investigation initiated by the 2nd defendant, conducted jointly by the defendants and reported to SFO by the second defendant without affording the plaintiff with an opportunity to reply to the said serious criminal accusations against her. In his view, this matter cannot at any rate be a labour dispute hence the 2nd defendant submission is totally misplaced and this ground should be dismissed.

In brief rejoinder, Mr. Duncan for the second defendant reiterated what he had stated in the submission in chief and maintained that this matter is a labour matter.

I have dispassionately considered the rival submissions of the parties in this point. As a matter of principle jurisdiction of Courts in Tanzania is a creature of statute and thus so basic to be established at the earliest possible time as it goes to the very root of the authority of the court to adjudicate upon cases of different nature. As a matter of practice, courts must be certain and assured of their jurisdiction at the commencement of the trials. It is very risky and unsafe for the court to proceed with hearing of the matter on the assumption that it is clothed with jurisdiction to adjudicate a particular case/matter, even when parties so consent as the law is very clear that,

parties cannot agree to confer jurisdiction to the Court. See the cases of **Fanuel Mantiri Ng'unda Vs. Herman M. Ng'unda**, Civil Appeal No. 8 of 1995 (CAT-unreported) and **Commissioner General of Tanzania Revenue Authority Vs. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (CAT Unreported). It is imperative to not at this juncture that, jurisdiction can be either territorial, pecuniary or appellate jurisdiction depending on the subject matter. See the case of **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 and the case of **Commissioner General of Tanzania Revenue Authority** (supra). Now back to the issue at hand on whether this matter falls under labour dispute or not so as to be tried by the Labour Court, it is true and I embrace Mr. Ngowi's submission that as per section 94 (1) of ELRA, Labour Court has jurisdiction over defamation matters and all tortious actions arising out of employment disputes, and that the same section regulates employer employee relationship. I only differ with him on the assertion that, this matter is labour dispute or matter for emanating from complaint related to termination of plaintiff's employment. The reasons I am so holding are not far-fetched, since as rightly submitted by Mr. Mtobesya, and conspicuously depicted in paragraphs 4, 24 and 25 of the amended plaint, the cause of

action arose from the report made by the second defendant who was never an employer of the plaintiff to SFO which gave birth to DPA in favour of the 2nd defendant while mentioning her to have been involved in bribery transaction without her involvement during investigation. Further to that, even when looking at the reliefs sought by the plaintiff none of them is seeking for declaration or compensation arising out of termination or breach of employment contract. As the matter is purely based on tortious act of the 2nd defendant, I find there is nothing leading to irresistible conclusion that this is a labour matter hence falling under the jurisdiction of Labour Court. I therefore find this point to be barren of merit and overruled the same.

Next for determination is the first limb on the point of jurisdiction as raised by the second defendant, on territorial jurisdiction of this Court to adjudicate the matter at hand. It was Mr. Duncan's submission relying on sections 17 and 18 of the CPC that, this court has no jurisdiction to entertain this suit as the 2nd defendant does not reside, carry on business or personally work for gain in Tanzania, and that, leave was not sought to institute this suit as the 2nd defendant has not acquiesced to it, and that there is no cause of action against the 2nd defendant arising from the fact pleaded by the plaintiff, since if there is any (which is denied) the same must have arose in UK and not

Tanzania. While making reference to the case of **Multichoice Africa Limited Vs. TV Burudani Limited**, Commercial Case No. 153 of 2002 (unreported) Mr. Duncan submitted that, the 2nd defendant is a limited liability company incorporated under English law and its place of incorporation is London, England, its board meetings are held in England, and she has neither a principal office nor subordinate office in Tanzania, therefore does not meet the criteria for being sued in this Court as provided under section 18 of CPC. It was Mr. Duncan's submission that, in paragraph 27 of the Plaint, the plaintiff alleged the 2nd defendant carries its business all over the world but did not explain as to whether by so contending she meant to include Tanzania. He had it that, if she so intended, then she failed to provide any evidence to substantiate such allegations that the 2nd defendant carries business in Tanzania, thus this court is not vested with jurisdiction to entertain this matter.

On the other side he argued that, leave of this court was not obtained for instituting the suit against the 2nd defendant and the second defendant did not acquiesce in the institution of this case. As to the point of cause of action as provided in section 18(c) of the CPC, Mr. Duncan argued, the cause of action arose in UK and not in Dar es Salaam Tanzania. He said, paragraph

20 and 22 of the amended plaint though denied, the plaintiff contends that, the 2nd defendant had no justification to make a report to the SFO in UK which assisted her to secure DPA by misrepresentation which was approved by the Crown Court at Southwark in the UK, then in any event the report was made in UK and not in Tanzania to entitle the plaintiff sue her in this Court.

Responding to this point, it was Mr. Sinare's submission that, the 2nd defendant quoted the provisions of section 17 of the CPC without any further explanation, as to him, the plaintiff's claims fall squarely on that provision hence this Court has jurisdiction to entertain the matter. In his view, as per section 17 of the CPC where a wrong is done to a plaintiff who lives in the jurisdiction of one court and the defendant resides in the other jurisdiction, the plaintiff may institute a suit in either of the courts. To fortify his stance, Mr. Sinare cited to the Court **Mulla, Code of Civil Procedure**, at page 389, where the High Court of Bombay in the Case of **State Maharashtra Vs. Sarvodaya Industries**, AIR 1975 Bom 19, while interpreting the provision of section 19 of Indian Code of Civil Procedure which is in pari materia with section 17 of CPC, extended the meaning of the term "*wrong doing*" to include not only the place where the wrong was done but also the place

where its consequences occurred. He was therefore of the view that plaintiff can file her suit where the wrong was sustained. He said in this case, the plaintiff lives in Tanzania and she came to know the allegations against her in the report made to SFO that resulted into DPA in favour of the 2nd defendant while in Tanzania, thus to him, the 2nd defendant's wrong doings effects against her were felt here in Tanzania in which therefore the cause of action partly arose in Tanzania, thus under section 17 of the CPC, this court is conferred with jurisdiction to entertain this suit against the second defendant.

In conclusion, he referred the court to paragraph 10 of the amended plaint where the plaintiff averred that, the defendants conducted internal investigation in which the second defendant reduced her self-prepared report to SFO, hence the provisions of section 18 (c) of the CPC is applicable under the circumstances. He also referred this Court to the case of **Englehert CTP (Switzerland) SA Vs. Maxam Limited**, Commercial Case No. 122 of 2018 (HC-unreported) for consideration, where this Court held since the contract was to be executed in two sides Tanzania inclusive then this Court possessed the requisite jurisdiction to entertain the matter.

In rejoinder Mr. Duncan, had nothing material to add apart from reiterating his submission in chief. He however added that, the case of **Sardovaya Industries** (supra) relied on by the plaintiff is distinguishable to the facts of this case, as in that case the contract was to be performed at Akora District where the loss was suffered while in this Court there was no contract between the plaintiff and 2nd defendant. As regard to the case of **Englehert CTP (Switzerland) SA** (supra) he also argued again was distinguishable to the facts of this case, as in the former case goods were supposed to be delivered in Tanzania that is why Tanzanian court had jurisdiction to try it unlike in this case where self-report was made to SOF in the UK and the Court which had conduct of the matter was the Crown Court of Southwark sitting in the UK, hence this Court lacks jurisdiction, Mr. Duncan concluded. I have chewed and internalised the rival submissions by the parties herein and thoroughly perused the law as well as the amended plaint in a bid to establish the true version of the parties' fighting submission. Starting with the provision of sections 17 of the CPC, the same states that:

***17.** Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business, or personally*

works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

And section 18(a),(b) and (c) of the CPC reads:

18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-
(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or part, arises.

It should be noted from the above expositions that, a party can only institute a suit for compensation against one or another party where there are more than one **wrong done** to him, only if such wrong is done within the local limit of the case or in other local jurisdiction where the defendant resides, or carries on business, or personally works for gain. The sub issue here is

whether the alleged wrong in this matter was done within the local limit or where the 2nd defendant *resides, or carries on business, or personally works for gain or* within the local limit of this Court to cloth this Court with jurisdiction to try the matter. Mr. Duncan answers the issue in negative arguing that, the 2nd defendant does not reside nor carry business or personally work for gain within Tanzania while Mr. Sinare says she works all over the world and that, the term **wrong done** as per the case of **Sardovaya Industries** (supra) quoted in Mulla, extends to cover not only the place where the said wrong was committed but rather the place where its consequences were or are felt. Having considered the interpretation of the term '**wrong done**' as given in **Sardovaya Industries** (supra), the case though persuasive I find the same to be applicable in the circumstances of this case and therefore adopt it a good law. I am in agreement with Mr. Sinare therefore that, the term wrong done as used in section 17 of the CPC should not be given a narrow interpretation but rather a wider one to cover and include not only the place where the wrong was done but also the place where its consequences occurred or felt. Hence a finding that, the plaintiff may also sue at the place where damage of the wrong was sustained.

In this case Mr. Sinare contends that, though the plaintiff was here in Tanzania sustained or felt the consequences of the report with misrepresentation made by the 2nd defendant to SFO in the UK hence this Court has jurisdiction to entertain this matter, the contention which Mr. Duncan resists. It is my finding on this assertion that, since the issue as to whether the alleged consequences by the plaintiff were felt or not here in Tanzania is factual issue calling for evidence, the this limb of point of objection cannot be decided at this stage. Similarly as regard to the submission by Mr. Duncan that the plaintiff did not explain as to whether by carrying business all over the world the plaintiff meant to imply the 2nd respondent was also conducting her business in Tanzania too and that, if she so intended, then she failed to substantiate her allegations with evidence, I also find the same to be a premature contention as Order VI Rule 3 of CPC, prohibits presentation of evidence in the plaint by the plaintiff. In view of the above, I find the issue as to whether this court is vested with territorial jurisdiction or not, to entertain the matter is devoid of merit and the same is overruled too.

I now move to the second limb of the first point of objection where the 2nd defendant contends that, this court lacks pecuniary jurisdiction to entertain

the suit as the plaintiff is in infraction of the provisions of Order VII Rule 1(f) of the CPC. With such contention therefore the issue for determination is whether this Court has no pecuniary jurisdiction to entertain the matter? According to Mr. Duncan the plaintiff failed to specifically state the pecuniary value of the suit so as to avail this Court with sufficient materials upon which to determine whether it is crowned with pecuniary jurisdiction to entertain the suit as per the provisions of section 13 of the CPC, which provides that a suit must be instituted in the Court of the lowest grade competent to try it.

Mr. Duncan argued that, the provisions of Order VII Rule 1 (f) of the CPC, provides that, the plaintiff shall state facts that the court has jurisdiction in which the purpose is to establish court's pecuniary jurisdiction and assist the trial court to determine the court fees. He said it is the duty of the plaintiff to provide the factual and evidential materials demonstrating that, the court has jurisdiction to hear and determine the matter. On that stance he referred the Court to its decision in the case of **Ahmed Chilambo & Roberts Contractors (T) Limited**, Civil Case No. 44 of 2005 (HC-unreported).

The learned counsel went on submitting that, it is the substantive claim and not general damages that determines the pecuniary jurisdiction of the court

and in fortifying his stance reference was made to cases of **M/S Tanzania-China Friendship Textile Co. Ltd Vs. Our Lady of Usambara Sisters** [2006] TLR 70, **Khamis Muhidini Musa Vs. Mohamed Thani Matter**, Civil Appeal No 237 of 2020 CA (unreported), to mention few.

He then contended that, in this matter the plaintiff has not provided this court with facts and materials showing value of the subject matter of the suit, the omission which is in contravention of the principles established by the case law requiring plaintiff to plead specific pecuniary damage for the purposes of establishment of trial court's pecuniary jurisdiction and court fees. Mr. Duncan referred the Court to paragraph 26 of the amended plaint and two sub paragraphs 17.1, and 17.2, (particulars of loss) where plaintiff stated that she suffered loss of employment earnings to the tune of USD \$6 million and loss of business opportunity amounting to US\$ 24 million, and in paragraph 27 of the amended plaint where the plaintiff stated that, the claim sought is for declaratory orders and the sum of US \$ 30 million, well over TZS 100 million and therefore well within the jurisdiction of this court. He argued that, the plaintiff did not supply other material facts to assist the court in assessing its pecuniary jurisdiction as apart from stating that, the plaintiff claims was USD \$ 30 million, she did not indicated and specify how

she arrived at the assessment of this value of her claim nor shown the nature of claimed damages hence the same is treated as general damage which is law cannot be used to determine pecuniary jurisdiction of the Court. He added, even in particular of loss, the plaintiff did not provide any ground for her claim of US\$ 6 and US\$ 24 million respectively, but rather made a generalized claim based on hypothetical sum. According to him the law requires a plaintiff to specify the value of the claim for the purpose of establishing pecuniary jurisdiction of the court in which the plaintiff failed to do, hence a blatant infraction of the mandatory provision of Order VII Rule 1(f) of the CPC.

Responding to Mr. Duncan's submission, it was Mr. Sinare's averment that, principally he has no problem with the interpretation made in respect of the provisions of section 13 and Order VII Rule 1 (f) of the CPC save for the 2nd defendant's submission on what is contained in the plaint with regard to the said mandatory requirement of the law. Concerning the 2nd respondent's submission that, the plaint does not provide factual materials demonstrating that this Court has pecuniary jurisdiction to entertain the suit he said, the same is misconceived and has no legal basis. He argued that, the provisions of Order VI Rule 3 of the CPC [Cap. 33 R.E 2019], prohibits stating evidence

in pleadings, upon which facts are to be proved. He contended that, the 2nd defendant wrongly decided to treat the US \$ 30 million stated in the jurisdiction paragraph as general damages, as the plaintiff in paragraph 25 of the plaint provided categorically that, because of the report and DPA in which she is accused to have committed bribery acts, her carrier in banking industry was ruined once and for all, thus she was claiming for sum of USD 30 Million as compensation for the losses suffered. He submitted further that, in paragraph 26 of the amended plaint, she particularized the losses suffered as loss of employment earnings at the tune of USD 6 million, and loss of business opportunity at the tune of USD 24 million. In his view the said USD 30 million pleaded by the plaintiff can never be termed as general damages. He supported his stance with the cases of **Jonathan Kalaze Vs. Tanzania Breweries Limited**, Civil Appeal No. 360 of 2019 (CAT unreported) and **Active Packaging (T) Limited Vs. TIB Development Bank**, Commercial case No. 08 of 2019 (HC-unreported), which both provide that, compensation for loss of business and loss of profit are specific damages in nature. It was his submission therefore that, basing on the authority in the case of **Jonathan Kalaze** (supra), the plaintiff has sufficiently pleaded

specific damages, as the issue of proof of the same will be brought out during the trial and not at this stage.

Mr. Sinare further attacked the submission by Mr. Duncan that, the plaintiff did not indicate how she arrived at the assessment of the value of the claimed amount, terming the same to be misplaced, as Order VI Rule 3 of the CPC categorically and in mandatory terms, prohibit statements of evidence in pleadings by which the material facts stated in pleadings are to be proved. He was of the view that, even the cases relied on by Mr. Duncan to support his submission are distinguishable to the instant matter, as in those authorities the claims were for general damages while in the present matter are for specific damages. He concluded by submitting that, there is nowhere in the plaint where the plaintiff has claimed any general damages so as to infer it in the jurisdiction paragraph hence this point of objection be dismissed.

In his rejoinder, Mr. Duncan reiterated his submission in chief, and maintained that, the plaintiff did not plead specific pecuniary value or damages, and if she so wanted to mean and bring the claim for specific damages allegedly suffered, she would have pleaded and particularized them so as to conspicuously be seen how the 2nd defendant caused that loss, its

nature and quantum of the specific damages sought, but to the contrary she failed to do so by providing general damages. He therefore implored this Court to find merit in this limb of objection and dismiss the suit.

I have taken time to exhaustively examine the pleadings, consider the contending submission by the parties in light of this limb of objection and accord it with the deserving weight. It is true and I agree with both counsel for the parties that, under the provisions of Order VII Rule 1(f) of the CPC the law makes it mandatory that, the plaintiff shall state in the plaint facts showing that the Court has jurisdiction and I would add that, in so doing has also to comply to the letters with the requirement of sub rule (i) of Rule 1 of the CPC, enjoining him to include in the plaint the particulars of value of the subject matter of the suit for the purposes of determination of court's jurisdiction and fees. The said provisions of Order VII Rule 1(f) and (i) of the CPC read thus:

1. The plaint shall contain the following particulars-

- (f) **the facts showing that the court has jurisdiction;***
- (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 supplied)

It is also a settled law as stated in the cases of **Our Lady of the Usambara Sisters** (supra), **Jonathan Kalaze** (supra) and **Active Packaging (T) Limited** (supra) that, pecuniary jurisdiction of the court in civil matters is determined by substantive claims and not general damages. Undisputedly, for the trial court to determine the its pecuniary jurisdiction there has to be stated material facts showing that it possess the requisite jurisdiction as provided under Order VII Rule 1(f) and (i) of the CPC. No doubt the noble duty of supplying the said material facts in the plaint rests on the plaintiff's shoulder. See the case of **Ahmed Chilambo** (supra) where this Court stressed on that duty when interpreting the provisions of Order VII Rule 1(f) of the CPC and said:

"...The law did not want to impose the duty on the Court to determine whether it has jurisdiction or not. That duty is upon the plaintiff."

Since that duty is pressed on the plaintiff it is expected that the said facts showing jurisdiction of the court will be unambiguously and clearly stated so as to be conspicuously seen from the specific paragraph for that purpose, which for the purpose of the plaintiff's plaint in this matter is paragraph 27. The said paragraph 27 of the plaint goes thus:

*27. The cause of action arose in Dar es salaam City in the year 2013. As to jurisdiction, the first Defendant is registered and carries on business within the United Republic of Tanzania; and its head office is situated in Dar es salaam City, while the second Defendant is registered in United Kingdom, but carries out business all over the world. The Plaintiff resides in Dar es salaam City and is a citizen of Tanzania and during her employment with the first defendant worked in Dar es salaam City. **The claim sought is for declaratory orders and for the sum of USD 30 million, well over TZS 100 million and therefore well within the jurisdiction of this Honourable Court.** (Emphasis supplied)*

Reading from the above paragraph of the plaint it is not difficult to identify and conclude that the plaintiff does not specifically state the nature or type of damage claimed or sought under USD 30 million for the purposes of enabling this Court establish whether possesses pecuniary jurisdiction to entertain the matter or not. In other words, she does state or specify whether the claimed amount is specific damages or not by specifically mentioning whether USD 30 million claimed if for compensation so as to be treated as specific damages. Mr. Sinare relying on the cases of **Jonathan Kalaze** (supra) and **Active Packaging (T) Limited** (supra) is convincingly arguing this Court to believe that, the specification of the pecuniary claimed

amount for the purposes of establishment of Court's jurisdiction and fees is found and clearly stated in paragraphs 25 and 26 of the Plaint where the particulars of loss alleged by the plaintiff are given. In other words he is understood by this Court to submit that, for this Court to establish its pecuniary jurisdiction has to read the averments of paragraph 27 together with paragraphs 25 and 26 of the plaint and draw an inference therefrom that the stated amount of USD 30 million was meant to be specific damages for the purposes of determination of Court's pecuniary jurisdiction and fees. With due respect to Mr. Sinare, I am not prepared to purchase that proposition on the reason that, if the law so intended that jurisdiction paragraph be read together with the paragraphs stating the cause of action or quantifying the loss suffered as he would want this court to believe and so act, it would not have specifically put mandatory provisions of Order VII Rule 1(f) and (i) that, facts showing that the Court has jurisdiction must be stated and further that, statement of value of the subject matter must be stated for the purpose of jurisdiction and court fees. In my respectful view it was the intention of the law maker that, for the purposes of establishment of court's jurisdiction and fees, the Court shall rely on the jurisdiction paragraph as to hold otherwise would be disregarding the mandatory

provisions of the law codified for that purposes. It is the law and I need not cite any authority that, where the law provides that a certain act or function must be performed then it must be complied with by the party(ies) to the letters.

In the present matter as alluded to above, the plaintiff who was duty bound to provide and specify the pecuniary damages or value for the purpose of jurisdiction of the court, in paragraph 27 did not so state whether the claimed USD 30 million is specific damages or compensation to enable this Court to appreciate, consider and determine its pecuniary jurisdiction and fees as per the mandatory provisions of Order VII Rule 1(f) and (i) of the CPC. In absence of such stated facts specifying the nature of the value of claimed damages (the subject matter) for the purposes of determination of Court's jurisdiction, I am inclined to agree with Mr. Duncan that, the averment of USD 30 million in paragraph 27 of the plaint by the plaintiff would not have been under any stretch of imagination be treated or considered otherwise than general damages which in law does not determine the jurisdiction of the Court as per the cases of **Jonathan Kalaze** (supra) and **Active Packaging (T) Limited** (supra) relied upon by the plaintiff. See also **Our Lady of Usambara Sisters** (supra), **Khamis Muhidini Musa** (supra) and

Mwananchi Communications Limited and 2 Others Vs. Joshua K. Kajula and 2 Others, Civil Appeal No. 126 of 2016 (CAT-unreported). Since the plaintiff herein failed to discharge his noble duty of highlighting the specific claim for the purposes of determination of jurisdiction for stating unspecified nature of claims construed to be general damages, this Court finds and answers in affirmative the raised issue in the second limb to the first point of objection by the second defendant in that, this Court has no jurisdiction to entertain this suit as under the circumstances the suit ought to be entertained by the subordinate Court under section 40(2)(b) of MCA. In the case of **Mwananchi Communications Limited** (supra) where this Court proceeded to entertain the suit in which the specific claims was not highlighted the Court of Appeal held that, it was not crowned with such jurisdiction to hear and determine the case. In so doing the Court observed thus:

"... the pleadings failed to highlight the specific claims and only has 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, that is, the District Court or Resident Magistrate's Court under section 40(2)(b) of the

MCA. For the foregoing reasons, it is clear that the High Court erroneously crowned itself with jurisdiction in entertaining and determining the suit that it did not possess."

As this Court lacks jurisdiction to entertain the matter at hand for want of pecuniary jurisdiction as held above, this limb of preliminary objection disposes of the matter and I see no reason to venture into determination of the rest of the points of objection.

In the premises and for the fore stated reasons, this Court sustains the second limb to the first point of objection by the 2nd defendant and proceed to strike out the suit as I hereby do. The plaintiff is at liberty to bring a fresh suit subject to law of limitation and in observance of the law.

I order each party to bear its own costs.

It is so ordered.

Dated at Dar es Salaam this 8th December, 2022.



E. E. KAKOLAKI

JUDGE

08/12/2022.

The Ruling has been delivered at Dar es Salaam today 08th day of December, 2022 in the presence of the Mr. Davis Kwembe advocate for the

plaintiff, Mr. Mohamed Zameen Nazarali, advocate for the 1st Defendant, Mr. Saul Santu, advocate for the 2nd Defendant and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
08/12/2022.

