

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CIVIL CASE NO. 10 OF 2022

JONATHAN OMARY KIVUGOPLAINTIFF

VERSUS

PRO SHARE CAPITAL LIMITEDDEFENDANT

RULING

Date of last order: 15th November, 2022

Date of ruling: 30th November, 2022

NGUNYALE, J.

The plaintiff has instituted a suit against the defendant for payment of Tsh. 145,000,000/= for spoiled products, Tsh. 50,000,000/= for general damages, costs of the suit and any other reliefs. The defendant when filing her defence, accompanied it with a notice of preliminary objection to the effect that;

- i. This honourable court had no pecuniary jurisdiction to entertain this matter.*
- ii. The plaintiff had no cause of action against the defendant.*

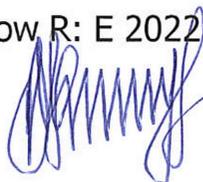
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As it has been the practice of the courts, when preliminary objection is raised it has to be disposed first ahead of the main suit, the court ordered hearing of preliminary objection.

When the matter was placed for hearing, the plaintiff was represented by Joseph Samwel learned advocate while the defendant appeared through Maulid Ally, the Company Secretary. By consensus disposal of the objection was in written form.

The defendant submitted that in the plaint the plaintiff claim is Tsh. 145,000,000/= for the spoiled product which is below the pecuniary jurisdiction of this court. He argued that the Magistrate Courts Act [Cap 11 R: E 2002, now R: E 2019 (CMA) provide specific limit for the District Court and Resident Magistrate Court referring to section 40(2) of the MCA which provide pecuniary limit of the District Court to be Tsh. 150,000,000/=. He cited the case of **Tanzania China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters** [2006] TLR 70 where it was stated that it is specific damage and not general damage which determine the pecuniary jurisdiction of the court.

He also implored the court to refer to section 2 and 3 of the Judicature and Application of Laws Act. He added that order VII rule 1(1) of the Civil Procedure Code [cap 33 R: E 2002, now R: E 2022] (CPC) which provides



for the value of the subject matter to be stated for purpose of determining court jurisdiction. Rounding his submission on this point he argued that the suit ought to commence in the subordinate court and not the High court.

On the second objection he submitted the defendant was not part to the loan with Daut Watson Sanga and therefore it was not right to sue them. Alternatively, he submitted the said Daud Sanga was supposed to be joined.

Responding to the above Mr. Joseph submitted that Article 108(2) of the Constitution of the United Republic of Tanzania provides general powers of the High Court to deal with any matter, that is to say its jurisdiction is unlimited., referring to section 2(1) of the JALA. On the basis of such submission, he prayed the first objection to be overruled.

On the second objection about cause of action, he started his submission with the definition of cause of action as expounded in the case of **Musanga Ngandwa vs Chief Japhet Wanzagi & 8 Others** [2006] TLR 351. He added that the fact that the defendant acknowledge that David Sanga ought to be joined, then it ceased to be the objection on point of law.



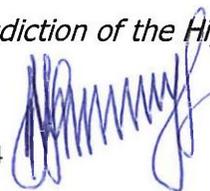
I have carefully considered the submission of both parties and found myself in a position to determine the objections. Starting with the first objection the starting point is section 13 of the Civil Procedure Code [Cap 33 R: E 2022] (CPC) which provides that

'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.'

From the above it presupposed that every suit must be filed in the court of lowest grade, but the same does not oust the jurisdiction of the High Court. Recently, in the case of **Mwananchi Communication Limited & 2 Others vs Joshua K. Kajula & 2 Others**, Civil Appeal No. 126/1 of 2016, CAT at Dar es Salaam (Unreported) the court was confronted with a similar scenario. In this case the respondents sued the appellants in the High Court, in the plaint, there was no any specific damage being claimed rather general damage to the tune of Tsh. 150,000,000/= the appellant raised objection that the High Court had no pecuniary jurisdiction which was overruled by the court, on appeal the court held that;

'The most important matter for our consideration at this juncture under the current circumstances as deduced from the decisions of this Court referred above is that, in determining the jurisdiction of the High Court what should



be considered is the specific claims and not the general damages claimed in considering the pecuniary jurisdiction of the High Court.'

Although circumstances of the above case are deferent with the present case but the principle pronounced is applicable because the decision was decided in 2020 after the amendment of section 13 of the CPC which introduced the proviso thereto. Also, the court discussed the important of that section and came to the conclusion it did.

In the present case, the plaintiff's claim is for Tsh 145,000,000/= for spoiled production while general damage is Tsh. 50,000,000/= this is deduced from paragraph 6, 8 and 9 of the plaint.

In his submission the defendant submitted that section 40 (2) of the CMA provided the pecuniary jurisdiction of the District Court up to Tsh. 150,000,000/=. This was misdirection on the law because the amount has been enhanced to 200,000,000/= vide Written Laws (Miscellaneous Amendments) Act No. 25 of 2002 now incorporated under section 40(2)(b) of the MCA R: E 2019.

The plaintiff response was that the High Court under article 108(2) of the Constitution has general jurisdiction. Article 108(2) of the Constitution reads:

'If the Constitution or any other law does not expressly provide that the specified matter shall be first heard by a court specified for that purpose

then the High Court shall have jurisdiction to hear every matter of such type.'

The above Article is subject to other laws which provides certain matter to be heard first in certain court. So long as there is in place section 40 (2) of the MCA which required the claim falling below two hundred thousand to be heard first in the District or Resident Magistrate Court, then Article 108(2) cannot be read blindly.

In this case in the plaint the specific damage claimed is Tsh. 145,000,000/= while general damage is Tsh. 50,000,000. So long as it is specific damage which is used to determine jurisdiction of the court, and the jurisdiction of the District or Resident Magistrate Court under section 40(2)(b) of the MCA being Tsh. 200,000,000/= then this court has no jurisdiction to entertain the suit which its specific claim if below 200,000,000/= as in this case.

I do not share the plaintiff's counsel view that there are two school of thought on whether it is specific or general damage which is used to determine jurisdiction of the court. The law is clear that it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court. See the case of **Tanzania Breweries Limited vs Anthony Nyingi**, Civil Appeal No. 110 of 2014 and

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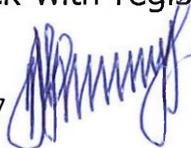
Mwananchi Mommunication Limited(supra). In the circumstance the first objection is sustained.

On the second objection about the cause of action, in the case of **Musanga Ngandwa vs Chief Japhet Wanzagi & 8 Others** [2006] TLR 351, the court had an opportunity to deal with what constitute a cause of action. It held that;

'A cause of action means every fact which would be necessary for the plaintiff to prove in order to support his title to a decree; in other words, a cause of action is the sum total of those allegations upon which the right to relief claimed is founded.'

In the present case the plaintiff has alleged in the plaint that the defendant seized the truck which was carrying his product which has resulted him to suffer damages. On those allegations it cannot be said no cause of action is disclosed as against the defendant. Not being content, the defendant submitted that he was not a party to the contract with one Watson Sanga.

It is the settled law that in determining a cause of action, only the plaint together with anything attached should be looked at. The plaintiff is under no obligation to anticipate any special defence which might be available to the defendant. The plaintiff under paragraph 3 and 8 of the plaint has alleged wrongful seizure of the truck with registration T179 DRL which

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carried his products which has resulted him to suffer both specific and special damages whether the allegations are sufficient to prove the claim or not is not the issue now and can only be known at the trial. To that end the second objection fails.

In the upshot, having sustained the first objection, this suit is struck out for want of jurisdiction with costs. It is so ordered.

DATED at MBEYA this 30th day of November, 2022.




D.P. Ngunyale
Judge