

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

AT DAR ES SALAAM

CIVIL CASE NO. 184 OF 2020

ETG INPUTS.....PLAINTIFF

VERSUS

DOMINIC LOGISTICS (T) LTD.....DEFENDANT

RULING

22nd February 2022 & 04th March 2022

E.E. KAKOLAKI J.

The plaintiff herein is suing the defendant claiming for Tshs. 77,900,000/= being a price for bags of fertilizer she acquired from the plaintiff to ferry to the plaintiff's warehouse at Mbozi. On 1st of December, 2019 the parties entered into a contract for provision of transportation services for the defendant to ferry bags of fertilizer to different designation specified by the plaintiff. It transpired that on 13/12/2019, the plaintiff trucks loaded bags of fertilizer worth 97,000,000 designated to be off loaded at the plaintiff's warehouse located at Mbozi but for unknown reasons the trucks offloaded the cargo to the defendant's warehouse and thereafter got sold. Parties agreed to settle the matter, however the Defendant paid 20,000,000 only

while leaving the outstanding balance of Tshs. 77,900,000/= . Consequently, the plaintiff filed the present suit against defendant, prying for the following reliefs:

- (i) Payment of Tsh. 77,900,000/= being the principal amount,
- (ii) Profit loss at 14,972,528.22 as stated under paragraph 11
- (iii) Profit loss of 18% of Tsh. 14,022,000 (Principal amount) from 1st November 2020 until final payment,
- (iv) General damages at a tune of Tsh. 40,000,000/=
- (v) Interest at (i) and (iv) at a commercial rate of 32 percent from the date of instituting the suit till judgment,
- (vi) Interest on the decretal sum at 12 percent from the date of judgment till final payment;
- (vii) Costs abide results of this suit,
- (viii) Any other orders this honourable Court may deem fit to grant.

When served with the plaint the Defendant filed his WSD denying liability.

On 29th July 2021 this court suo motu raised the issue of jurisdiction and called upon the parties to address it on the said point. By consensus of both parties, the matter was agreed to be disposed by way of written submission.

Both parties were represented, whereas the plaintiff hired legal services of

Mr. Symphorian R. Kitare, learned counsel while the respondent enjoyed the services of Mr. Mussa Kionya, learned advocate.

Submitting on the point of jurisdiction as raised Mr. Kitare argued that, there is no law which provides the lowest and the highest value of the subject matter to be entertained by this court though section 7 of the CPC, [Cap. 33 R.E 2019] provides for pecuniary jurisdiction of this court. He said, the section exempts this Court to entertain suits whose value is either expressly or impliedly barred. And added that, according to his research the law which provides for suits whose value are impliedly barred by this court, is section 40 (2) (b) of Magistrate Courts Act, [Cap. 11 R.E 2019], in which the High Court is impliedly barred to entertain suits whose subject matter are capable of being estimated at money value but not exceeding Tsh. 200,000,000 as the same are entertained by the District Court and Resident Magistrate Courts.

According to him, this suit does not fall under the jurisdiction of the above referred categories of cases as it is a commercial matter as defined under Rule 2 of the High Court Registries Rules, GN. No. 162 of 2000, since the claim against defendant arises out of business, hence the money claimed is

for the payment of a total price for bags of fertilizer the defendant acquired from the plaintiff to ferry to the plaintiff's warehouse but failed to do so.

While referring to section 40 of the MCA, Mr. Kitare argued that, since the District Court and Resident Magistrate Court deals with matters of commercial nature which their value does not exceed Tsh. 70,000,000/= this Court which is superior to them is impliedly allowed to entertain suits whose value exceed Tsh. 70,000,000. To cement his stance, he referred the Court to the case of **NICO Insurance (T) Ltd Vs. L-Line Cooperation**, Commercial Appeal No. 1 of 2008, (HCT-Unreported). With such submission he maintained that, this Court has pecuniary jurisdiction to entertain this matter as the same is commercial matter.

In response, Mr. Kiobya while resisting Mr. Kitare's propositions submitted that, looking at the nature of this case, it is based on services rather than business, thus to him the suit fits to be entertained by subordinate court. He said, for normal civil case, the High Court is vested with pecuniary jurisdiction to entertain matters whose subject matter in estimated monetary value is exceeding Tshs. 200,000,000/=, unlike in this case where the claimed value is Tshs. 77,900,000/=. He opined that, the executed contract between the plaintiff and the defendant do not fall under the purview of the commercial

transaction but rather based on transportation services not resulting from mercantile or trade arrangements for want of business of buying and selling. In his view, the contract entered between plaintiff and defendant cannot fall under the ambit of commercial matter as submitted by Mr. Kitare basing on Rule 2 of the High Court Registries Rules, GN No. 162 of 2000. According to the circumstances of this case, this court has no jurisdiction to entertain this suit, thus the suit deserves to be struck out, Mr. Kiobya stressed. In short rejoinder Mr. Kitare maintained that, this is a commercial matter since it concerns exchange of consignment from plaintiffs' possession to the defendant, but the fact that it was lost while in possession of the defendant the latter cannot escape the commercial liability.

I have keenly considered the rival submission by both parties. In addressing the matter of jurisdiction, parties' contention mainly based on the issue as to whether this matter is or not of a commercial significant, thus both learned counsels are of divergent/dissimilar views as to what is a commercial case.

The learned counsel for the plaintiff is of the view that, this is a commercial matter as provided for under Rule 2 of the High Court Registries Rules, GN. No. 162 of 2000, as the claim against defendant arises out of business, and the money claimed is for the payment of a total price for bags of fertilizer

the defendant acquired from the plaintiff to ferry to the plaintiff's warehouse but failed to do so, while defendant maintains that, it is not a commercial matter since the contract between parties is based on transportation services which was not resulting from mercantile or trade arrangements for not being a business of buying and selling.

In order to disentangle their dilemma, this court is called to answer the question as to what amounts to commercial case so as to warrant this court jurisdiction to entertain the same. Section 2 of Magistrate Courts Act, [Cap 11 R.E 2019], defines commercial case as:

"a civil case involving a matter considered to be of commercial significance including but not limited to-

- (i) the formation of a business or commercial organizations;*
- (ii) the governance of a business or commercial organization;*
- (iii) **the contractual relationship of business** or commercial organization with other bodies or persons outside it;*
- (iv) the liabilities of commercial or business persons arising out of that person commercial or business activities;***
- (v) the liabilities of a commercial or business person arising out of that person commercial or business activities*
- (vi) the restructuring or payment of commercial debts by or to business or commercial organization or person.*

- (vii) the winding up or bankruptcy of a commercial or business organisation or person*
- (viii) the enforcement of commercial arbitration award;*
- (ix) the enforcement of award of a regional court or tribunal of competent jurisdiction made in accordance with a treaty or mutual assistance arrangements to which the United Republic is a signatory and which forms part of the law of the United Republic;*
- (x) Admiralty proceedings;*
- (xi) Arbitration proceedings*

Apart from MCA similar definition is provided under Rule 2 of the High Court Registries Rules, GN. No. 162 of 2002 as cited by Mr. Kitare in his submission.

This court in the case of **Zanzibar Insurance Cooperation Limited Vs. Rudolf Temba**, Commercial Appeal No 1 of 2006, (HC-unreported) had an opportunity to define what constitutes a commercial case to mean:

The liability of a commercial or business organization or its officials arising out of its commercial or business activities.

In another case of **G.K. Hotels and Resort (Pty) Vs. Board of Trustee of the Local Authorities Pension Fund**, Commercial Case No. 1 of 2008 (HC-unreported) when dealing with similar scenario enunciated the test of a commercial case:

1. *It must be a civil case ...*
2. *That Civil Case must be of commercial significance, in other words that the case must have **connection with buying and selling of goods or services...***

In the light of the above cited provisions and authorities it is now clear and I can confidently conclude that, for the matter to be treated as a commercial one must **firstly**, be a civil case, **secondly**, involve commercial or business activities connected to buying and selling of goods or services and I would add **thirdly**, the transaction involved must be of considerable commercial significance. The importance of having the transaction of considerable commercial significance is not far-fetched as our daily lives are surrounded by small transaction of commercial nature such as oral contracts of transportation of goods from one place to another and supply of services such as food and water. To entertain every selling and buying transactions of goods or services as commercial cases without considering nature of claims involved in each case, in my opinion is tantamount to opening of pandora box whereby small transaction cases which would be treated as normal civil cases for arising from less valued and simple contracts to flood in the High Court, which court is meant to deal with complicated matters. This in my further opinion is to go against the spirit of section 13 of the Civil

Procedure Code, [Cap. 33 R.E 2019] intending to *prevention overcrowding in the court of higher grade where the suit may be filed in a court of lower grade* and *ensure that cases with huge amount are entertained by experienced courts* as it was stated by my brother Ndyasobera J, in the case of **Peter Keasi Versus The Editor; Mawio Newspaper and Another**, Civil Case No. 145 of 2014 (HC-unreported) when discussing the purposes of section 13 of the CPC, and had the following observation which I fully subscribe to:

*“The object and purpose of the said provision is I think three fold. First, **it is aimed at prevention overcrowding in the court of higher grade where the suit may be filed in a court of lower grade.** Second, to avoid multifariousness of litigation and third, **to ensure that the case involving huge amount must be heard by more experienced court.**”*

Having so found, the next issue for determination is whether the plaintiff's suit is a commercial case and therefore fall within the jurisdiction of this court. In responding to this issue there is no dispute that under section 40(3)(b) of the Magistrates Courts Act, [Cap. 11 R.E 2019] impliedly this court has jurisdiction to hear a commercial dispute whose value exceed Tshs. 70,000,000/= as the less value for the subject matter capable of being

estimated at monetary value is entertained by District Court or Resident Magistrates Court. Section 40(3)(b) of MCA reads:

*(3) Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited- (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.** (Emphasis supplied)*

The above notwithstanding, it is to be noted as alluded to above that, not every transaction or contract dispute shall constitute a commercial case, the regard being paid to the nature and size or volume of transaction as each case has to be determined basing on its own fact as deposed in the plaint.

In the present case, having considered the cause of action as deposed by the plaintiff in paragraph 3 of the plaint and the reliefs sought, I am of the profound view that, the facts therein do not fall under the ambit of the matter of commercial significance but rather one which would be treated under normal civil case. I so find as the plaintiff does not claim any breach of contract/agreement of transportation services between her and the defendant, apart from claiming the price of the lost goods. Paragraph 3 of the plaintiff's plaint is categorical on that where she stated thus:

3. That, the plaintiff claims against the defendant Tshs. 77,900,000/= being price for bags of fertilizer she acquired from the plaintiff to ferry to the plaintiff's warehouse at Mbozi.

Even if I am to agree with Mr. Kitare's preposition that, plaintiff's case is premised on the transaction involving buying of transportation services from defendant, I would still hold, the same was a simple commercial transaction and not one of commercial significant worth treatment as commercial case, but rather a normal civil case as alluded to herein above. Now applying the provision of section 40(2)(b) of MCA to the facts of this case in which the claim involved is Tshs. 77,900,000/= and therefore less than Tshs. 200 million, which is outside the jurisdiction of this Court to try, I hold the suit is incompetent before this court for want of pecuniary jurisdiction as it ought to have been entertained by the District Court or Resident Magistrates Court.

Now what course should be taken under the circumstances? Mr. Kiobya has invited this court to strike out the plaint. Having considered his invitation and for the interest of justice, I refrain from striking out the plaint as prayed by Mr. Kiobya, instead I hereby apply the provision of section 21(1)(a) and (2) of CPC, and proceed to order for transfer of this case to the Resident Magistrates Court for Dar es salaam at Kisutu, to proceed from the stage of

framing issues and hearing of the case as mediation has already been conducted. Further to that I direct that parties should not pay any filing fees.

No order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 04th day of March, 2022.



E. E. KAKOLAKI

JUDGE

04/03/2022.

This Ruling has been delivered at Dar es Salaam today on 04th day of March, 2022 in the presence of Mr. Respicius Mkandara, advocate for the Applicant and Ms. Asha Livanga, Court clerk and in the absence of the Respondent.



E. E. KAKOLAKI

JUDGE

04/03/2022

