

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

CIVIL CASE NO. 55 OF 2021

GBP TANZANIA LIMITED PLAINTIFF

VERSUS

ASSAA SIMBA HAROONDEFENDANT

RULING

Last order: 15/2/2022
Date of ruling 2/3/2022

MASABO, J:-

This is a ruling in respect of a preliminary objection raised by the defendants challenging the jurisdiction of this court. According to the plaintiff, the suit before this court ascends from breach of a contract executed by the parties on 4th July, 2017. In this contract, the plaintiff advanced the defendant a loan at a tune of Tshs 624,894,898/=. In consideration thereof, the plaintiff was to manage and operate a petrol filling station located at Minazi Mikinda No. KG/FRY/7 ferry street until he has full recovered the loan and the costs of the investment incurred during the operation of the business.

Sometimes later, the 1st defendant requested to regain management of the filling station on condition that he shall pay a sum of 200,000,000/= which was then still outstanding a proposal which was basically agreed upon by the plaintiff who proceeded to prepare an agreement to formalize things. To his dismay, the defendant declined to sign the agreement and, on 1st March 2021, he invaded the filling station, forceful took over its management and business and denied the plaintiff any access, hence this suit in which the plaintiff seeks to recover the outstanding sum of Tshs 200,000,000/=, general damages at a tune of Tshs 300,000,000/- and interests.

Upon being served the defendants raised a preliminary objection premised on two points: **one**, this court has no jurisdiction and **two**, the plaintiff has no cause of action against the 2nd defendant. Hearing of the preliminary objection proceeded in writing. Both parties were represented. Mr. Bilal Juma advocated for the Plaintiff whereas Mr. Reuben A. Simwanza appeared for the defendants.

In his submission, Mr. Simwanza silently abandoned the 2nd limb of the preliminary objection and proceeded to submit on the first limb. Opening his submission, Mr. Simwanza cited **Mukisa Biscuits Manufacturing**

Company Limited vs West End Distributors Limited [1969] E.A 696 where it was held that a preliminary objection must be on a pure point of law which is argued on assumption that all facts pleaded by the other side are correct. He proceeded that the question of jurisdiction is not only a pure point of law but a crucial issue as it goes to the root of the case. Before the commencement of trial, a court presiding over a matter must first ascertain whether it is possessed with the jurisdiction. Buttressing his point, he cited **Tanzania Revenue Authority vs KOTRA Company Limited**, Civil Appeal No. 12 of 2009, CAT (unreported) where it was held that it is risky and unsafe for a court to proceed with the trial of a case on assumption that it has jurisdiction to adjudicate upon the case.

He then argued that it is a settled principle that substantive claims and not general damages that determine the pecuniary jurisdiction of the court. But, in this case, the plaintiff has only pleaded general damages. Thus, it is not possible to determine the pecuniary jurisdiction. He cited the case of **Tanzania- China Friendship Textile Co. Ltd versus Our Lady of Usambara Sisters** [2006] TLR 70 in support. He further argued that the plaint does not comply with Order VII Rule 1 of the Civil Procedure Code [Cap 33 R.E. 2019] which requires that every plaint

must state the value of the subject matter for purposes of ascertaining jurisdiction and court fees.

In the alternative he argued that, the suit is a land matter as it originates from denial of access and removal from the management of a petrol station and for that matter, it ought to be instituted in land courts as it is established under the Land Disputes Courts Act (Cap 216, R.E. 2019).

In the alternative, Mr. Simwanza referred this court to section 3 and 6 of the Civil Procedure Code and section 40(2) (a) of the Magistrates' Court Act, [Cap 11 RE 2019] and argued that, the apex pecuniary jurisdiction of the District Court and Resident Magistrates Court is Tshs 300,000,000/-. As the plaint is silent on the specific damages this court must determine if the value exceeds the amount above hence within the pecuniary jurisdiction of this court. Closing his submissions, he cited the case of **Mwananchi Communication Ltd & Two Others versus Joshua K. Kajula & Two Others**, Civil Appeal No. 126/01 of 2016(Unreported) and prayed that, the suit be struck out for incompetence.

Mr. Bilal Juma sternly resisted. He argued that paragraph 4 of the plaint shows that the specific damages claimed is Tshs 200,000,000/-. Thus, the argument that the plaint is silent on specific damage is a misrepresentation. He further firmly resisted the defendant's argument that the suit involves a landed property and that it ought to be instituted in land courts. He argued that the suit emanates from a breach of contract which has nothing to do with land. Further it was argued that, section 40(3)(b) of Magistrate Courts Act [Cap 11 RE 2019] sets the maximum pecuniary jurisdiction of district courts in Commercial cases at Tshs 70,000,000/= . Based on this provision he argued that, as the pecuniary value of the instant suit being Tshs 200,000,000/= there is no dispute that it is within the jurisdiction of this court.

In fortification, he cited the case of **Celestine Mathew Dominic TIA Fish Supplies v Commercial Bank of Africa (Tanzania) LTD**, Commercial Case No. 03 of 2018, **Packaging and Stationers Manufacturing Limited v Dr. Steven Mworira & Another** (Commercial Case No 52 of 2012 (Unreported) where it was held that in light of article 108(2) of the Constitution of the United Republic of Tanzania and section 2(1) of the Judicature and Application of Laws Act, the High Court has original jurisdiction over all matters that are

outside jurisdiction of courts subordinate to it. He argued that, in light of Order IV Rule 1(4) CPC it is not mandatory for a commercial case to be instituted in commercial division of the High Court.

He then referred us to **Timothy J. Flavell v Pumziko Safari Lodge Limited**, Commercial Case No. 95 of 2018 as cited with approval the case of **Michael Ngaleku Shirima v African Banking Corporation Tanzania Limited**, Commercial Case No. 54 of 2016 where it was held that from the definition of trade and commerce there can be no doubt that the acquisition of loans, mortgaging and securing of a loan and or selling of shares are all of the trade or commerce in nature. He submitted further that in these cases, it was held that commercial case is defined broadly to include a civil case involving a matter considered be commercial significant and include any claim or application arising out of the transaction of trade or commerce such as formation of a business or commercial organization, contractual relationship of a business or commercial organization, liability of a business or commercial organization or official of the business activities and the liability of the business or commercial person arising out of that persons' business or commercial services. He then added that, the provision of Rule 3 (c) of the High Court (Commercial Division) Procedural Rules, 2012 shows

that, this matter is a commercial case hence within the jurisdiction of this court. This marked the end of submissions.

I have considered all the submission. Upon one limb of the preliminary objection being abandoned, the only point awaiting consideration and determination is whether this court is clothed with the necessary pecuniary jurisdiction. Starting with the point that the suit is a land matter, hence, ought to have been filed in land courts, I will respectfully, not allow myself to be detained by this point as it is a lucid misdirection on the defendant's party. Much as it is true that land matters are adjudicated in land courts established under Cap 216 R.E. 2019, the instant suit does not qualify as a land matter as the parties contend over breach of contract as opposed to ownership of the petrol station which would have made the suit a land matter subject to the provisions of Cap 216.

Regarding the contention that the value of the subject matter is not disclosed, the defendant has contended that it is not possible to determine pecuniary jurisdiction as the specific damages from which the pecuniary jurisdiction is determined are missing. Before I proceed further, conceptually, specific damages and general damages are

understood are defined differently. Specific damages are understood to mean the actual damages which although does not necessary result of the injury complained of, they follow it as its natural and proximity consequence. As states in **Chahin & Sons v. Epope Printing Press [1963] 1 GLR 163 – SC**, special Damages are liquidated, verifiable and provable sums; e.g., loss of income, loss of rent, loss of wages, replacement costs, loss of marriage, loss of material hospitality, loss of employment, loss of a business dealing etc. General damages on the other hand refer to such damages which are not quantifiable. It is such damages which a court may give when the judge cannot point out any measure by which they are to be assessed (see **Livingstone v Rawyards Coal Co.** (1880)5 App' Cas. 25 as cited by this court in **Frank Madege vs The Attorney General**, Civil Case No. 187of 1993).

The defendant has argued that, in her plaint the plaintiff has not specifically pleaded special damages thus it is not possible to assess the pecuniary jurisdiction. Much as I entirely agree with him that the position as regards pecuniary jurisdiction is well settled in our jurisdiction that, it is the substantive claim and not general damages which determine the pecuniary jurisdiction of the court (**M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara**

Sisters [supra) and Mikoani **traders Ltd v Engineering and Distributors Ltd**, Commercial Case No 49 of 2006), looking at the pleadings, I find no iota of merit on his contention that the plaint is silent as to the specific damages. As correctly argued by the plaintiff's counsel, specific damages are precisely stated under paragraph 4 of the plaint where the plaintiff pleaded that his claims against the defendant are for payment of Tshs 200,000,000 being an outstanding sum of the loan advanced to the 1st defendant.

Turning to the alternative point that the pecuniary matter is below the jurisdiction of this court, having found above that the suit emanates from a contractual relationship, I will be guided by the provision of section 13 of the Civil Procedure Code [Cap 33 RE 2019] and section 40 of the Magistrate Court Act [Cap 11 R.E 2019] which provides for pecuniary jurisdiction of courts. Section 13 of the Civil Procedure Code states that:-

"Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purpose of this section, a court of resident magistrate and a district court shall be deemed to be courts of the same grade...."

According to section 40(2)(a) and (b) of the Magistrate Court Act, the pecuniary bar of the jurisdiction of district courts, and impliedly, courts of the resident magistrate, is Tshs 300,000,000/= for matters involving immovable assets and Tshs 200,000,000/ on other matters. When these two provisions are read together, they suggest that, the instant suit could have been filed in a district court or the court of the resident magistrate. The plaintiff's counsel has firmly submitted that these provisions should not be read in isolation. Rather, they should be read conjointly with section 40(3) of the Magistrate Court's Act which qualify the provision of section 40(2) of the MCA. The said provision state thus;

(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.;

A question emerging from the plaintiff's argument and the provisions above is whether the instant suit is a commercial suit hence within the scope of section 40(3). The definition of commercial matters provided for under rule 3 of the High Court (Commercial Division Procedure) Rules, GN No. 250 of 2012 is of specific relevance. It states thus:

"Commercial case" means a civil case involving a matter considered by the Court to be of commercial significance, including any claim or application arising out of a transaction of trade or commerce but not limited to:-

(a) N/A;

(b) the management of a business or commercial organization;

(c) the contractual relationship of a business or commercial organization with other bodies or person outside the business or commercial organization;

(d) N/A;.....

In light of the above provision and the decision of this court in the two commercial cases cited by the plaintiff's counsel to which I fully subscribe, I entertain no doubt that the instant suit having originated from a breach of a contract involving lending money and management of a petrol fuel station, certainly, falls under Rule 3 (b) and (c), hence a commercial case and within the jurisdiction of this court. In any case,

this court has inherent jurisdiction as correctly stated in **Celestine Mathew Dominic TIA Fish Supplies v Commercial Bank of Africa (Tanzania) LTD**, (supra) and **Packaging and Stationers Manufacturing Limited v Dr. Steven Mworira & Another** (supra).

Under the premise, the preliminary objection is overruled with costs.

DATED at DAR ES SALAAM this 2nd March 2022.

X 

Signed by: J.L.MASABO

J.L. MASABO

JUDGE

