

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)**

AT MWANZA

CIVIL CASE NO. 19 OF 2021

BETWEEN

**THE REGISTERED TRUSTEES OF THE EVANGELISTIC ASSEMBLIES OF GOD
TANZANIA PLAINTIFF**

AND

REV. ASUMWISYE MWAFONGO MWAISABILA.....1st DEFENDANT

REV. BOAZ KAZEBA.....2nd DEFENDANT

REV. ROBERT NGAI.....3rd DEFENDANT

REV. JACOB THOMAS CHACHA.....4th DEFENDANT

RULING

12th & 27th May, 2022

ITEMBA, J.

At the instance of the counsel for the defendants, a couple of preliminary objections have been raised, challenging the competence of suit preferred against the defendants. These objections were raised pursuant to a notice of objection in which the defendants contend as follows:

- (i) Owing to paragraph 27 (the jurisdiction clause) and the reading of the entire plaint, the court is not vested with jurisdiction to entertain this matter.*
- (ii) That, the suit contravenes the provisions of Article 19 (2) of the Constitution of the United Republic of Tanzania,*

1977 as amended from time to time which outs the jurisdiction of the court to entertain the matter.

- (iii) The plaint is defective and therefore incompetent for being improperly verified without disclosing particulars as to what facts are based on deponents own knowledge and what are on belief and whose source of belief.*
- (iv) In the alternative to the above, this suit is res subjudice to misc. cause No. 21 of 2020 which is pending the appeal pross and Civil Appeal No. 17 of 2020.*

Disposal of the preliminary point of objection took the form of written submissions, preferred by the parties consistent with a schedule which was drawn by the Court.

Submitting in support of the PO, the Counsel for the respondents began by giving a plan of his submission. He proposed to argue the grounds in sequence as they appear in the notice.

With respect to ground one, the counsel for the respondents argued that, this Court is not vested with jurisdiction to entertain the matter inline with provisions under ***Order vii Rule 1 (f) and (i) of the Civil Procedure Code***, Cap. 33 R.E 2019. He states that the plaint does not indicate whether the court has pecuniary jurisdiction over the matter, no statement to that effect showing that the value of the subject matter is within the court's jurisdiction. He holds the view that since these facts are

missing the plaintiff has to be treated in accordance with requirements provided under, **Section 13 of the Civil Procedure** (Supra), he supported his arguments by citing the decisions in **Nkupa Tanzania Company Ltd vs NMB Bank Public Company & Another**, Civil Case No. 179 of 2019 HC Dar es salaam (Unreported) and **Mwanachi Communication Limited & 2 Others vs Joshua K. Kajula & Others**, Civil Appeal No. 126/01 of 2016 (Unreported) in which it was stated that specific claims must be clearly stated and pleaded as special damages.

On the second ground of preliminary objection, the learned counsel for the defendants submitted that the claims by the plaintiff contravenes Article 19 (2) of The Constitution of the United Republic of Tanzania (supra) as it intends to restrain the defendants from conducting religious rallies and congregations. He insists that paragraph 16 of the plaintiff touches the rights and freedom of the defendants to their faith and practice he also alleges that the plaintiff has failed to exhaust the available mechanisms in resolving disputes in the organisation. He supported his arguments by referring to the decision **of Rev. Peter Makalla & 8 Others vs Rev. Jacob Mameo Ole Paulo & 4 Others** Civil Case No. 195/2019.

On the third ground he contends that the verification clause by the plaintiff is defective as the deponent disposes that there are some matters

known to him personally and some based on the belief. He is of the view that provisions under order VI Rule 15 (2) of the Civil Procedure (Supra) requires such pleadings to be verified by specifying what facts are based on one's own knowledge and what are on information or belief. He cited the decision of ***ZTE Corporation vs Benson Informatics Limited t/a Smart Commercial Case No. 188 of 2017***, High Court (Unreported) to cement his averments.

In respect of the fourth ground the learned counsel for the respondents contends that, the matter is *res sub-judice* to Misc. cause No. 21 of 2020 and Civil Appeal No. 17 of 2020. He furthered his arguments that both the above-mentioned cases are still pending before the court and bares a similar cause of action. He is of the view that this anomaly contravenes provisions under ***Section 8 of the Civil Procedure***. In the end the respondents' counsel urged the court to allow the preliminary objection and struck out the suit with costs.

In rebuttal, the the learned counsel for the plaintiff submitted in respect of the first ground of preliminary objection that, the matter before this court is challenging an illegal election that was held by the defendants on 25th and 26th January, 2021 at Bugarika in Mwanza Region. He avers that the plaintiff prays for declaratory orders against the defendants and this court is vested with jurisdiction to try all suits of civil nature as

provided under **Section 7 (1) of the Civil Procedure Code**, and the defendants have failed to show which law expressly or impliedly bar this court from entertain this matter. He supported his averments by citing the decision in the case of **Asha Soud Salim vs Tanzania Housing Bank** (1983) TLR 270. Where the Court stated that in the absence of express or implied bar the high Court has jurisdiction to grant declaratory orders. He further stated that Section 7 (2) of the Civil Procedure prohibits objections on suits which declaratory orders has been sought hence the preliminary objection by the defendants is bad in law. On the cases cited by the defendants in respect of the first ground he is of the view that they are distinguishable.

Submitting on the second ground, the learned counsel for the plaintiff contends that the claims against the defendants does not intend to interfere with the defendants right of worshipping as alleged but rather it intends to invite this court to stop their actions which contravenes the plaintiff's Constitution. He insists that the defendants cannot claim their rights under the said article without observing the duties imposed to them under **Article 30 (1) of The Constitution of the United Republic of Tanzania** (Supra), which requires the defendants to ensure that they do not interfere with the rights of other people when excising their rights. Again, he distinguished the case of **Rev. Peter** which was cited by the

defendants. On internal mechanisms to resolve the dispute he is of the view that since the archbishop is one of the members of the Registered Trustees of EAGT who is a plaintiff in this matter in accordance to Article X (b) (i), of the Plaintiff's Constitution therefore he does not have powers to resolve the dispute between them. He supported his contention by citing the decision in the case of ***The Registered Trustees of the Evangelistic Assemblies of God Tanzania (E.A.G.T) vs Peter Madaha (Vice Bishop) Evangelistic Assemblies of God Church West Zone & 2 others***, Civil Appeal No.17 of 2020, High Court at Tabora.

On the third ground, he contends that there is no where the plaintiff has verified that certain information is known to him and some are beliefs. What he has stated is that he has knowledge on the contents in all paragraphs in a plaint and believes the same to be true according to the knowledge he has on such information. On the case cited by the defendants he states that the verification clause was defective hence it is different from circumstances of this matter.

In regard to fourth ground, he submits that the suit is not *res subjudice* in terms of ***Section 8 of the Civil Procedure Code***. He contends that Misc. application No. 21 of 2020 does not exist in any court between the parties, but rather the said application was struck out and it

was not between the parties and the cause of action was also different. The cause of action in the said application was unlawful meeting while in the instant matter the suit is seeking for declaration order. Based on the above arguments he prays the court to overrule the objections with costs.

In his rejoinder the learned counsel for the defendants submitted on the first ground that, jurisdictional issue is statutory and only statute can confer the same to the court. On **Section 7 (1) of the Civil Procedure**, cited by the plaintiff he is of the view that it can not be read in isolation it has to be read along with other provisions including **Section 13 and Order VII Rule 1 of the Civil Procedure Code**. On the case cited by the plaintiff he avers that the plaint has no facts to substantiate where this court traces jurisdiction as required by law.

In respect of the second ground he contends that the plaintiff ought to have taken the matter to the constitutional court if he thinks his rights have been infringed and not before this court. On the issue of internal dispute resolution, he submits that the plaintiff and Archbishop are different organs under the plaintiffs' constitution and the archbishop is the member of the plaintiff still his functions in resolution of the dispute as provided under the constitution are deferent. He further submits that no any paragraph in the plaint which shows that the dispute by the parties had been referred to the archbishop in his capacity.

On the third ground he retaliates that failure to verify by specifying which paragraphs are on one's knowledge and which are based on beliefs is fatal in terms **of Order VI Rule 15 of the CPC**. On the decision in **ZTE Corporation case** he noted that the case sets the good principle which in the absence of any contravention should be upheld.

In respect of the fourth ground which is about *res subjudice*, he insists that the parties herein are involved in the said Misc. application and the matter now is at appeal stage. He retaliated his prayers.

In disposing of this matter, the profound question to be resolved is whether, this court is vested with jurisdiction to entertain this matter. It is the argument by the respondents in respect of the first ground of objection, that this court is not vested with pecuniary jurisdiction to entertain this case, while the plaintiff holds view that the suit is intending to seek declaratory orders against the defendants and **Section 7 (1) of the CPC**, gives this court jurisdiction to try all suits of civil nature unless it is expressly or impliedly barred.

It has to be born in mind that, the issue of jurisdiction is the creature of the statute. The court of appeal has laid down foundation that, determination of pecuniary jurisdiction of the court is based on substantive or specific damages. This profound wisdom was stated in the decision of **Tanzania- China Friendship Textile Co. Ltd Vs Our Lady**

of the Usambara Sisters [2006] TLR 70 at page 76. In which the Court of Appeal held that;

"In our view, it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court".

Looking at the plaint, the plaintiff among other prayers he prays for specific damages to the tune of 400,000,000/= . And it is obvious that the court which has pecuniary jurisdiction on such amount is the high court. In the famous case of **Mukisa biscuits Manufacturing Limited vs Wes End products Limited** [1989] EA 696, the court held that a preliminary objection, must be on pure point of law and it should not require proof. On the averments that the plaint does not have statement of facts showing that the court has pecuniary jurisdiction, I am of the firm view that this is curable under oxygen principle. I say so because there are claims of specific damages amounting to Tshs. 400,000,000/= in the same plaint. In that respect this ground fails.

On the second ground, the defendants' counsel argues that this case touches the rights and freedoms of the defendants, hence, failure to resolve the dispute through internal mechanism it was supposed to have been brought as a human right petition rather than a normal civil suit. It is true as rightly pointed out by the learned counsel for the defendants

that, religious trustees have no direct access to the ordinary courts, in order to successfully institute a suit in court of law, the parties must have exhausted the available remedies. This principle was stated in the decision of this court in the case of **Rev. Yered Charles Lesilwa and 2 others vs. Rev. Christool Isack Ngowi, Civil Application No. 54 of 2019, High Court of Tanzania at Dar es Salaam (Unreported)**, whereby it was held thus;

"... In my opinion, members of the registered religious trustees and their respective denomination cannot seek direct recourse to ordinary courts of law without first channelling their grievances, complaints, or disputes to their respective relevant supreme authority; in this respect the EAGT as seen constitution above".

After going through the EAGT Constitution, I agree with the arguments by the learned counsel for the plaintiff that the EAGT Constitution does not have clear mechanisms in resolving disputes. I also find support in the decision of the High Court in the case of **The Registered Trustees of the Evangelistic Assemblies of God Tanzania (E.A.G.T) vs Peter Madaha (vise bishop) Evangelistic Assemblies of God Church West Zone & 2 others**,(Supra), which was cited by the plaintiff, in this case the High Court was facing circumstances

as we have in this matter at hand, it was observed that the EAGT Constitution has no clear provisions on dispute resolution. On the contention that this matter would have been brought as a human right case I am of the view that under **Articles 13 (1) and (2) and also Article 107A of the Constitution of the United Republic of Tanzania 1977**, it guarantees the fundamental right to access the court, and the High Court has jurisdiction to deal with the matter. Therefore, this ground also fails.

On the third ground, the defendants' grievances are that the plaint is defective for being improperly verified without disclosing particulars as to what facts are based on deponents' own knowledge and what are beliefs. I had an opportunity to go through the said plaint again, I agree with the averments by the learned counsel for the plaintiff that what the plaintiff has stated is that, he has knowledge on the contents in all paragraphs in a plaint and believes the same to be true according to the knowledge he has on such information. On the case cited by the defendants it is distinguishable as the circumstances in this case at hand are totally different. It has been revealed that the position of the deponent herein he has the capacity to have knowledge of all the contents in the plaintiff's affidavit.

Lastly, is the contention by the defendants in respect of the fourth ground that the matter is *res sub judice* as Misc. cause No. 21 of 2020 and Civil Appeal No. 17 of 2020 are pending in court. Having gone through the records I agree with the learned counsel for the plaintiff that parties in Misc. Civil application No. 21 of 2020 are different to the instant matter, as to the Misc. civil appeal No. 17 of 2020, there is no proof attached by the defendants which shows that such case exists and whether it qualifies to be treated as *re sub judice*.

In view of the foregoing, I find the objection lacking in substance. Consequently, I overrule all the grounds for objection and order that the suit should proceed for hearing on merit.

It is so ordered.

DATED at **MWANZA** this 27th day of May, 2022.

