

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

AT DAR ES SALAAM

CIVIL CASE NO. 62 OF 2016

IRENE WAMBURA MAGANGA.....1ST PLAINTIFF

MASHAKA EDGA MFALA.....2ND PLAINTIFF

VERSUS

CHAPAKAZI NEWSPAPER1ST DEFENDANT

RWENTA PUBLICATIONS LIMITED2ND DEFENDANT

POA PRINTING WORKS.....3RD DEFENDANT

Date of the last Order: 01/11/2022

Date of the Ruling: 3/3/2023

RULING

MGONYA, J.

This is the ruling in respect of the preliminary objection raised by the 1st and 2nd Defendants on the jurisdiction of this court to determine the Plaintiff's claims of **Tshs. 3,000,000,000/= Billions** being the general damages on the alleged defamatory statement published on CHAPAKAZI NEWSPAPER herein by the 1st Defendant on 13th January 2016 and 27th to 2nd February 2016.

The hearing of the preliminary objection proceeded in writing. Both parties had representation. Mr. D. Kambo,

Advocate for the Plaintiffs and Mr. Victor Ntalula, Advocate appeared for the 1st and 2nd Defendants.

Mr. Ntalula submitting in support of the of the point of preliminary objection referred the case ***OF M/S TANZANIA CHINA FRIENDSHIP TEXTILE CO. LTD V. OUR LADY OF THE USAMBARA SISTERS [2006] TLR 70 AND MWANANCHI COMMUNICATIONS LIMITED AND TWO OTHERS V. JOSHUA K. KAJULA, CIVIL APPEAL NO. 126/01 OF 2016***, where the court held that specific damages determine the jurisdiction of the court. **Section 13 of the Civil Procedure Code [Cap. 33 R. E.2019]** which reads:

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

In support of his submission Mr. Ntalula referred to the case of ***PETER KEASI V. THE EDITOR, MAWIO NEWSPAPER AND ANOTHER, CIVIL CASE NO. 145 OF 2014 (UNREPORTED)***, the court described the essence of section 3 of the **Civil Procedure Code (Supra)** that it aimed at preventing overcrowding in the court of higher grade where the

suit may be filed in a court of lower grade and to avoid multifariousness of litigation.

Concluding his submissions, he invited this court to have a glance at **section 2(1) and (3) of the Judicature and Application of Laws Act, Cap. 358 [R. E. 2019]** which provides for unlimited jurisdiction of the High Court in all Civil and Criminal matters, however such jurisdiction shall be exercised in conformity with other written laws enforced in Tanzania. He prays this court to uphold the preliminary objection and dismiss the suit in its entirety with costs.

Mr. Kambo, sternly objected the Preliminary Objection submitting that the claim before this court is for general damages of 3 Billion and there was no claim for specific damages was made which would determine the pecuniary jurisdiction of this court. Mr. Kambo cited the case of **PETER JOSEPH KALIBIKA AND CRDB BANK PUBLIC COMPANY LIMITED V. PATRIC ALOYCE MLINGI, CIVIL APPEAL NO. 37 OF 2009**. He therefore, of the view that since there is no claim for specific damages, the issue of pecuniary jurisdiction does not arise. He therefore, urged this court to dismiss the preliminary objection.

Having considerably considered submissions from both parties, it is well established principle that the pecuniary

jurisdiction is determined by the specific damages which is to be pleaded in the plaint. This illustrated in ***M/S TANZANIA CHINA FRIENDSHIP TEXTILE CO. LTD V. OUR LADY OF THE USAMBARA SISTERS (SUPRA), MWANANCHI COMMUNICATIONS LIMITED AND TWO OTHERS V. JOSHUA K. KAJULA***, Civil Appeal No. 126/01 of 2016 and ***Clouds Entertainment Company Ltd and 2 Others Vs. Gallus Mpepo, Editor 6 Sani Newspaper and 3 Others, Civil Case No. 13 of 2006***. The provision of **Order VII rule 1 (i)** of the Civil Procedure Code a requiring the Plaintiff to demonstrate a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, as the case admits, is couched on mandatory terms.

It is crystal clear that jurisdiction of the court is vital as it goes to the root of the case and that the principles laid to determine the jurisdiction of courts are to be observed. At this point, let me trace the history of this matter. In my considered view is in that, the matter before the court the Plaintiffs are praying for reliefs from the alleged Defamatory statements by the Defendants herein. So it is the master of Tort in nature.

It is my firm objection that the amount which was to be pleaded in the plaint as specific damages, the same under the given circumstances and the nature of this matter **cannot be**

proved specifically by monetary value. In this kind of cases (for Defamation) the pleaded value is just suggestive such as (500,000/-, 1 Billion, 10 Billion etc.) just to give an example. It is someone's wish according prayer to the way he feels that he was offended. It cannot be quantified. Then still the court is the one to consider the gravity of the defamation (if any) and finally determine by using its own discretion in accordance of other values that need to be proved in a case of such nature.

It is from the above observation in order to see the ends of Justice one met, my wisdom brings me to the stand that, for the case such as this one on Defamation one not to plead the specific damage cannot be fetal, but rather he is obliged and need to prove the wrong (defamation) through the required legal tests as to whether one has been defamed or not. The reason behind being that the parameters of defamation cannot be specifically pleaded as they are unquantifiable.

Further, as this matter has been in court since its institution in 2016 up to this stage in 2023/where, both Plaintiffs have already testified, for the interest of Justice, it will be prudent that this matter is heard on merits. I get my strength in law where it is a positon that the High court's jurisdiction is unlimited.

It is for that reasons stated above, the advanced point of preliminary objection is here by overruled and let the suit proceed on merits.

Costs in due.

It is so ordered.



L. E. MGONYA

JUDGE

3/3/2023

ORIGINAL