

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF KIGOMA**

AT KIGOMA

LAND CASE NO.08 OF 2022

ZUHURA FREDRICK KALO PLAINTIFF

VERSUS

ATHUMAN RUBINDO (Administrator of estate of

late Hussein Kihema) 1st DEFENDANT

KAMWANYA LUVUMA 2nd DEFENDANT

MBEZI AUCTION MART & COMPANY LIMITED 3rd DEFENDANT

KIGOMA/UJIJI MUNICIPAL 4th DEFENDANT

ATTORNEY GENERAL 5th DEFENDANT

Date of Last Order: 21.04.2023

Date of Ruling: 25.04.2023

RULING

MAGOIGA, J.

This ruling arises from a very interesting legal issue for consideration as to whether the High Court has pecuniary jurisdiction to entertain a suit whose substantive claim is Tshs.15 million in the light of section 13 of the Civil Procedure Code, [Cap 33 R.E.2019] as amended by the Written Law (Miscellaneous Amendment) (No.2) Act No 4 of 2016.

To understand the gist of this point, the facts, albeit, in brief of this suit, are imperative. The plaintiff instituted the instant landed suit jointly and severally against the defendants for several orders not subject of this ruling. The suit went on all stages in accordance with the procedures and was set on for hearing inter parties on 19.04.2021. On that day, the court suo moto guided by the provisions of Order I Rule 10 (2) of the Civil Procedure Code, [Cap 33 R.E. 2019] invited the learned advocates for parties (Mr. Daniel Runyemela and Mr. Sadick Aliki) to address the court whether by the plaint and its prayers discloses any cause of action against the 4th and 5th

defendants necessitating to be joined in this suit. Both learned advocates were at one that the 4th and 5th defendants were wrongly joined in this suit and prayed that their names be struck out. In the circumstances, this court proceeded to struck out the names of the 4th and 5th defendants.

Consequently, the suit went on for hearing and the plaintiff and her supportive witnesses testified and eventually closed her case. The matter was adjourned to the next day for defence hearing.

When the suit was called on for defence hearing, Mr. Aliko, learned advocate for the 1st and 3rd defendant when invited to bring forth the 1st defence witness, informed the court that he has a legal concern which is that by striking out the names of the 4th and 5th defendants, automatically this court lacks pecuniary jurisdiction to try this landed suit because the estimated value of the disputed plot is Tshs.15,000,000/=, an amount which is within the pecuniary jurisdiction of the District Land and Housing Tribunal.

Guided by the provisions of section 13 of the Civil Procedure Code, the learned advocate submitted that under the circumstances, this court be pleased to strike out this suit and direct the plaintiff to institute a fresh suit in the competent court as provided for under section 33(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019].

According to Mr. Aliko, much as the pecuniary jurisdiction of the District Land and Housing Tribunal is 300 million, then, a matter with the claim of Tshs.15 million cannot be instituted in the High Court, which is not the Court of the lowest grade for purposes of dealing with the landed suit.

When probed by the Court as to the import of the amendment made in section 13 of the CPC, Mr. Aliko was quick to point out that, the proviso in section 13 of the CPC, in

his strong view, do not confer any jurisdiction to the High Court to a matter that has low pecuniary jurisdiction that can be determined by the lower court or Tribunal. It was his further submission that, where there is specific provisions providing for jurisdiction of the court as in the instant suit, the proviso cannot come into application. According to Mr. Aliko, the proviso was meant to confer the High Court with general jurisdiction and not specific jurisdiction, insisted Mr. Aliko.

On the foregoing, Mr. Aliko invited this court to strike out this suit and give proper directives with no order as to costs.

On the other hand, Mr. Daniel Rumenyera, learned advocate for the plaintiff had quite diametrical different view regard to the jurisdiction of the High Court as provided for under the provisions of section 13 of the CPC as amended. Guided by section 2 of Judicature and Application of Laws Act, [Cap 358 R.E 2019] it was the submission of Mr. Runyemera that, the High Court have full jurisdiction in civil and criminal matters. According to Mr. Rumenyera, under the Magistrates' Courts Act, [Cap 11 R.E.2019] limitation of jurisdiction is limited to the court Resident Magistrates' Court and District Court, as well as Primary Court. The learned advocate insisted that, under section 7 of [Cap 358 R.E.2019] gives judges the powers even of the magistrates.

On the foregoing, it was further submission of Mr. Rumenyera that, section 33 of [Cap 216 R.E.2019] limits the jurisdiction of the District Land and Housing Tribunal but not the High Court which has unlimited jurisdiction and that no provision of the law that limits the jurisdiction of the High Court when dealing with any case notwithstanding the amount involved.

According to Mr. Rumenyera, section 13 was amended by Written Laws (Miscellaneous Amendment (No.2) Act, No. 4 of 2016 by adding the proviso, now conferring the High

Court unlimited jurisdiction on all matters as opposed to other courts. Further arguments by Mr. Runyemera were that, the sections cited by Mr. Aliko were enacted before the inclusion of the proviso and the amendment was intended to strengthen the jurisdiction of the High Court despite the amount involved.

Other arguments were that, going back to DLHT will involve costs and time to a case which is in defence and none of the parties will be prejudiced. Taking the course suggested by Mr. Aliko will amount to justice delayed is justice denied.

On the foregoing, Mr. Rumenyera humbly invited this court to find and hold that the High Court has general jurisdiction conferred by the law and proceed to hear defence case as no prejudice will be occasioned to the parties.

The 2nd defendant being a layman had nothing to submit on this legal point.

In rejoinder, Mr. Aliko argued in rebuttal that the sections cited under JALA are general sections as such not applicable. Mr. Aliko reiterated that section 13 limits specific jurisdiction of the High Court but is open only to general jurisdiction which do not apply to the situation we have here. As to the issue of costs and time, it was his brief reply that justice hurried is justice buried, and urged this court not to burry justice at the expense of time and costs because time and costs have never conferred jurisdiction to any court.

On the foregoing, the learned advocate for the 1st and 3rd defendants reiterated his earlier prayers.

However, none of the advocates cited any authority by the High Court or Court of Appeal on the interpretation of the proviso to the provisions of section 13 of the CPC.

The said section was amended to read for easy of reference as follows:




"Section 13. Every suit shall be instituted in the court of the lowest grade to try it and, for the purposes of this section, a court of resident magistrate court 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."

The task of this court now is to determine the point raised and argued. Before going into the merits or otherwise of the point, I truly commend the learned advocates for parties for their brilliant arguments and thought provocation concern.

Having carefully followed the serious rivaling arguments by learned advocates for parties in this landed dispute, in my own considered opinion the issues for determination are two; one is, whether the High Court is ousted with jurisdiction to entertain a civil suit whose pecuniary amount is below the limit of the Resident Magistrates' Court and District Court, (and specifically for this landed suit ,the District Land and Housing Tribunal for Kigoma) which courts are of the same grade. Two, what is the import of the amendment of section 13 of the CPC as done by Act, No.4 of 2016.

These issues can be determined jointly that, what was the import of the amendment that was enhanced in section 13 of the CPC and what it intended to cure in the CPC. However, it should be noted that; **first**, it is trite law in our jurisdiction that, once an issue of jurisdiction is raised it is fundamental for its determination because it affects proceedings and the resultant decision. **Two**, the jurisdiction of the High Court is constitutionally provided for under article 108 (1). The said article for easy of reference provides as follows:



“Article 108 (1) There shall be a High Court of the United Republic (to be referred in short as (“the High Court”) the jurisdiction of which shall be as specified in this Constitution or in any other law.”

(2) if this constitution or any law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court shall have jurisdiction to deal with any matter which according to legal traditions obtaining in Tanzania, is ordinarily dealt with the High Court; save that, the provisions of this sub article shall apply without prejudice of the Court of Appeal of Tanzania as provided for in this constitution or any other law. (Emphasis mine).

Now back to the issue, it goes without saying that, from the above article of the constitution, no doubt, the jurisdiction of the High Court is expressly derived from the **constitution itself and any written law.** For this case, the amendment of section 13 of the CPC done by Act, No. 4 of 2016, no doubt, is the **‘any written law.’**

Nevertheless, the phrase **‘general jurisdiction’** is not defined in the Civil Procedure Code. However, Black’s Law Dictionary defined the phrase **‘general jurisdiction’** to mean (1) a court’s authority to hear a wide range of cases, civil or criminal that arise within its geographical area; (2) a court’s authority to all claims against a defendant, at the place of the defendant’s domicile or place of service, without any showing that a connection exists between the claims with the forum state.

From the above stance, in my further research, I found that the Written Law (Miscellaneous Amendment) (No.2) Act, No. 4 of 2016 was aimed to enhance the

jurisdiction of the High Court on all matters be it civil or criminal. In other words, I can certainly say now, that, the wording of the proviso was intended to protect the general powers of the High Court to entertain any matter regardless of the jurisdiction under which such matter falls. I derive such statement from the object of the amendment from the parliament Hansard. The parliamentary Hansard when the bill was tabled had this to say to this amendment:

"Sehemu ya IV imapendekeza kufanya marekebisho kwenye sheria ya Mwenendo wa Mashauri ya Madai, Sura ya 33, ambapo kifungu cha 13 kinarekebishwa kwa lengo la kutambua mamlaka ya Mahakama Kuu na kuhakikisha kuwa mamlaka za Mahakama Kuu haziingiliwi kwa namna yeyote kwa mujibu wa kifungu hiki." (Emphasis mine).

Literally translation is that:

"Part VI proposes amendment to the Civil Procedure Code, Cap 33 whereby section 13 is proposed to be amended so that the thrust of the provisions of that section should not be interpreted to oust the jurisdiction of the High Court given under that section." (Emphasis mine)

Guided by the above object of amending the provisions of section 13 of the CPC, is my strong considered opinion that, by that proviso, now, the High Court has unlimited jurisdiction starting from zero to the sky irrespective of the amount claimed in all cases in our jurisdiction. In other words, the High Court has jurisdiction to try all cases of civil and criminal nature irrespective of the amount claimed starting from zero and the limit is the sky, save that the court in its discretion may direct a particular case to be heard by a subordinate court. Further, the amendment of section 13 of the CPC, thus, in my opinion, was aimed at enhancing the jurisdiction of the High Court and not to



limit it. See, the Criminal Procedure Act, [Cap 20 R.E.2022] in which in the First Schedule to the Act, provides for Court (in addition to the High Court) by which the offence is triable, shows subordinate court, meaning the High Court has jurisdiction to try all criminal cases alongside with subordinate courts save where is expressly prohibited.

Therefore, from foregoing, the arguments by Mr. Aliko, learned advocate for 1st and 3rd defendants that the High Court has no jurisdiction to entertain this suit on simple reason that the jurisdiction of the High Court is barred, with respect, is erroneous, misconceived and do not go with the object of amending the provisions of section 13 of the CPC. The general jurisdiction of the High Court is enhanced and indeed, the said section provides for courts in which suit may be instituted and not it shall be instituted connoting that even the use of the words shall is not meant to be mandatory, and therefore, where the suit was properly instituted in the High Court and it has gone to the extent of defence, I agree with Mr. Rumenyera that it is not good for the interest of justice to strike out suit on failure to file it in the lowest Tribunal. That will amount to justice delayed, hence, justice denied. Much as all parties will be heard, I see nothing in the circumstances of this suit, to agree with Mr. Aliko that justice hurried and is justice buried.

Before, I wind up, I would like to point out that, in the course of my research, I found that, there are plethora of decisions by my learned brothers and sisters judges in the High Court on this point, even after the amendment of section 13 of the CPC which struck out cases. These are: **Richard K.N.Rweyongeza Vs. Jitesh Jayantilal Ladwa, Misc. Civil Application No. 101 of 2020 HC DSM (Unreported), Jonathan Omary Kivugo vs. Pro Share Capital Limited, Civil Case No. 10 of**

2022, HC Mbeya (Unreported), Ivanna Felix Teri Vs. Barclays Bank Tanzania Limited and another, Civil Case No 24 of 2019, HC Arusha (Unreported), Nassor Mohamed Mtawazi Vs. Tanzania Remix Centre Ltd, Civil Case No. 111 of 2019 HC DSM (Unreported), Milleneum Logistics Vs. Africarries Limited, Civil Case No. 42 of 2022 HC DSM (unreported) just but few to mention.

I understand the principle of maintaining certainty and brotherhood judges' decisions which should not be departed from unless there are compelling reasons to do so. In this case, I have good reasons do depart from my learned sisters' and brothers' judges on the reasons stated above. Further that, the circumstances of this case are different because the case is at its stage of defence hearing. There is element of costs and delay which was not existing on the forementioned cases. The least to say is that, much this court has jurisdiction, I find no reasons to transfer this case to the lower court/Tribunal as prayed because that will be against the spirit of the amendment and intention of the parliament in amending the said section. Even if the case was at its elementary stages, I would go for transfer of the same to the lower court than striking the suit.

I have as well come across the decision of the Court of Appeal in the case of **Mwananchi Communication Limited and 2 Others Vs. Joshua K. Kajula and 2 Others, Civil Appeal No. 126/01 of 2016 DSM CAT (unreported)** decided in October, 2020 after the amendment but where no direction or discussion was made on the amendment of section 13 of the CPC, hence, distinguishable.



From the foregoing reasons, I hereby find that, this court is clothed with the jurisdiction to try this suit to its finality. The concern raised is, with respect to Mr. Alik, overruled.

Order accordingly.

Dated at Kigoma this 25th day of April, 2023.




S.M. MAGOIGA

JUDGE

25/04/2023