

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA SUB-REGISTRY)
AT ARUSHA**

CIVIL CASE NO. 23 OF 2022

CRDB BANK PLC PLAINTIFF

VERSUS

**MWANANCHI INSURANCE COMPANY LIMITED 1ST DEFENDANT
EDNA ELIAS NYANG'ORO 2ND DEFENDANT
ELIAS MASIJA NYANG'ORO 3RD DEFENDANT
EPHRAEM CHRISTOPHER MANASE MREMA 4TH DEFENDANT**

RULING

19th April & 25th April 2023

KAMUZORA, J.

By way of an interpleader suit, the Plaintiff instituted this suit against the Defendants jointly and severally seeking for the following orders:

- i) Declaration as to who is the rightful recipient as between the first, second, third and fourth Defendants of payment amounting to TZS 277,000,000/= being the amount deposited in fixed deposit account with the Plaintiff plus interest of 12% from 7th January 2013 to 7th January, 2014;
- ii) Declaration that the Plaintiff is not indebted to the first Defendant in the sum of TZS 277,000,000/=

- iii) Deductions and costs of the suit; and
- iv) Any other reliefs this Court deems just to grant.

According to the plaint, the Plaintiff claimed that it had banker-customer relationship with the 1st Defendant whereby, on 7th January, 2013, the 1st Defendant opened a fixed deposit account and deposited therein TZS 250,000,000/= fixed for a period of one year commencing from 7th January 2013 expiring on 7th January, 2014. It was agreed that the sum deposited was at the interest rate of 12%, which upon expiry of the one-year period, the 1st Defendant would withdraw a total of TZS 277,000,000/= being the principal sum and the interest accumulated.

Before the expiry of one year, the 4th Defendant sued the 2nd and 3rd Defendants, and later joined the 1st Defendant as a necessary party, accusing the 2nd and 3rd Defendants for mismanaging the affairs of the 1st Defendant in the manner that was prejudicial to him. That was through Commercial Cause No. 20 of 2013. The Court ordered investigation to be carried out and the NBAA appointed inspector to undertake the investigation. The 4th Defendant herein was as well allowed to pursue a civil suit against the 2nd and 3rd Defendants. He instituted Commercial Case No. 135 of 2015 in the Commercial Court Division of the High Court. The Court (Sehel, J. as she then was), found the 2nd and 3rd Defendants to have mismanaged the affairs of the 1st Defendant. The 2nd and 3rd

Defendants herein were ordered to pay the 1st Defendant the sum of TZS 427,260,850/= being the loss occasioned by indemnifying and settling insurance claims without adhering to the industry practices. The 2nd and 3rd Defendants were ordered further to pay general damages to the tune of TZS 20,000,000/=.

The plaint further reveals that on diverse dates, the 2nd and 3rd Defendants on the one part and the 4th Defendant on the other visited the Plaintiff's Meru Branch in Arusha claiming to have interest in the fixed deposited account, therefore demanding to be paid the principal sum and the accrued interest. The Defendants were advised to submit the Board of Directors' resolution and the original fixed deposit receipt that would prompt the Plaintiff to allow the withdrawal of the fixed amount but they did not comply.

On 23rd October, 2019, the 1st Defendant instituted Civil Case No. 37 of 2017 against the Plaintiff and the 4th Defendant claiming payment of TZS 26,588,399,740.92/= being the loss incurred for breach of confidentiality contract, negligence and mishandling of the fixed deposit account occasioning loss to the 1st, 2nd and 3rd Defendants. However, this Court (Philip, J.) struck out the suit with costs on 28th January, 2022, following preliminary objections raised by counsel for both Defendants which challenged competence of the case. The Plaintiff having no interest

in the fixed deposit amount, was left in dilemma as to who among the Defendants the fixed deposited amount should be relinquished. The Plaintiff has thus preferred this case by way of interpleader suit seeking declaratory order of this Court as to whom the fixed deposit amount should be paid among the Defendants.

In their joint written statement of defence, the 2nd and 3rd Defendants apart from disputing all contents in the plaint alleged that it was the 2nd and 3rd Defendants who opened the fixed deposit account through the 1st Defendant and deposited TZS 250,000,000/= in 2013. They further contended that the 2nd and 3rd Defendants were the rightful recipients of the TZS 277,000,000/= as per their contract with the Plaintiff upon maturity of the fixed deposited sum. It was their further contention that upon lapse of the one-year period agreed, they kept reminding the Plaintiff to release the deposited amount into their account but in vain.

To manifest their effort in claiming the fund, through the 1st Defendant, they instituted Civil Case No. 37 of 2019 in this Court claiming among others release of the fixed amount in their sister company Mwananchi Microcredit Limited but the case was struck out on technical reasons. Generally, the 2nd and 3rd Defendants accounted that although the funds were deposited in the fixed account of the 1st Defendant, the same was jointly owned by the 2nd and 3rd Defendants.

On their part, the 1st and 4th Defendants filed their joint written statement of defence together with a notice of preliminary objections couched in the following terms:

a) That, this Honourable Court is not clothed with requisite jurisdiction to entertain this matter in terms of section 18 of the Civil Procedure Code, Cap. 33 [R.E 2019] and by clear implication arising from paragraphs 2 and 3 of the plaint;

b) That the suit is bad in law for being res-subjudice the decision of this Court in Civil Case No. 37 of 2019 pending before the Court of Appeal of Tanzania;

IN ALTERNATIVE BUT WITHOUT PREJUDICE to the above objections, the current suit is res-judicata viz (sic) the decision of this Court in Civil Case No. 37 of 2019

c) That, by clear implication out of the pleadings the suit is bad and thus unmaintainable on the ground of the plaint clearly impleading the owner of the sum of money subject of this suit;

IN ALTERNATIVE BUT WITHOUT PREJUDICE to the above objection, that the suit is unmaintainable for interpleader suit cannot arise out of contractual relation.

At the hearing of the preliminary objections the Plaintiff was represented by Mr. John Mushi, learned advocate, the 1st and 4th Defendants were represented by Mr. Richard Valerian Massawe, learned advocate while the 2nd and 3rd Defendants were represented by Mr. Boniface Joseph, also learned advocate. Hearing of the preliminary

objections was through written submissions but, the 2nd and 3rd Defendants did not submit on the preliminary objections.

Submitting in support of the last two preliminary objections counsel for the 1st and 4th Defendants contended that paragraph 6 of the plaint, the Plaintiff pleaded the 1st Defendant as the owner of the money subject of this suit. He intimated that banker customer relationship is contractual, referring a book by **J. Milnes** titled ***"Law and Practice of Banking"*** Vol. 1 at page 50. He accounted that once there is a valid contract between parties, duties and obligations arising from that contract do not cease until discharged as per the terms of the contract, adding that parties are bound by the terms of the agreement. He asserted that intention of the parties herein is manifested at paragraph 6 of the plaint, therefore enforcement of the terms of the contract between the Plaintiff and the 1st Defendant cannot be achieved through interpleader suit. Mr. Massawe accounted that he does not find any confusion on the true owner of the funds since the Plaintiff has explicitly pleaded that the money belongs to the 1st Defendant, but the 1st Defendant has not attempted to claim the release of the said funds, instead, it was the 2nd and 3rd Defendants who attempted to claim the money through the 1st Defendant by filing Civil Case No. 37 of 2019, which was however, struck out. He referred the Court to the famous case of **Solomon Vs. Solomon**, which was as well

relied on by the Court in disposing the preliminary objections in Civil Case No. 37 of 2019.

Counsel for the 1st and 4th Defendants invited the Court to adopt the definition of what is an interpleader suit as defined in **the Black's Law Dictionary** which suit applies when the Plaintiff claims not to know the person entitled to the property or money. He cautioned that if this Court entertains the suit, there is a danger of declaring a third party as the owner of the money defeating the long-time established principle of sanctity of contract, rendering the Plaintiff in a danger to repay twice as the contractual obligations entered into by the 1st Defendant remain undischarged. He insisted that since it was the 1st Defendant who was pleaded and taking into account the principle that preliminary objections assume all facts pleaded by the other side to be true, the 1st Defendant is the true owner of the money subject to the suit.

Elaborating the first two preliminary objections, Mr. Massawe asserted that according to paragraph 13 of the plaint, the Court declared that the 1st Defendant did not institute Civil Case No. 37 of 2019, hence it is appropriate to say that the owner of the funds never went to claim the same. He accounted that Civil Case No. 37 of 2019 had similar cause of action and similar subject matter like the present suit. That, since there is notice of appeal and application for leave to appeal to the Court of Appeal

against the decision in that case, this Court lacks jurisdiction to entertain the suit because determination of the issue is vested to the Court of Appeal where the appeal is pending. To bolster his contention on the jurisdiction of the Court in entertaining the suit he relied on the Court of Appeal decision in **Tanzania Electricity Supply Company Ltd Vs. Dowans Tanzania Ltd and Another**, Civil Application No. 142 of 2012 (unreported), which underscored that once notice of appeal is lodged, the High Court ceases to have jurisdiction to entertain the matter. He also relied on section 7(1) and 63 of the CPC. That, if the Court of Appeal is to seat and determine who is the owner of the funds, and if this Court entertains the suit, there is a danger of creating conflicting decisions. Relying on section 63 of the CPC he argued that the provision bars institution of a suit where there is another matter by parties litigating rights over same property. To reinforce his argument, reliance was placed on the case of **Exim Bank Limited Vs. El Nasr Export & Import Co. Ltd**, Civil Case No. 129 of 2019 (unreported). Reference was also made in section 8 of the CPC which states that the case becomes res-subjudice when all parties are litigating on the same title while there is another suit pending in the same or another court. He referred the case of **Karori Chogoro Vs. Waitihache Merengo**, Civil Appeal No. 64 of 2016

(unreported). He concluded by submitting that the confusion stated by the Plaintiff will be cleared by the Court of Appeal in the intended appeal.

In rebuttal, counsel for the Plaintiff contesting the preliminary objections prefaced his submission by defining what an interpleader suit is. He relied on section 63 read together with Order XXXIII of the CPC and the Court of Appeal case of **Praygod Mbaga Vs. Government of Kenya and Another**, Civil Appeal No. 9 2011 (unreported), which gave a detailed definition of what is an interpleader suit. Applying the definition in the case at hand, Mr. Mushi stated that the property in dispute is TZS 277,000,000/=. That, the 2nd and 3rd Defendants on one part claim ownership of the fixed deposit and the 4th Defendant on another part claim to have interest over the same subject matter. He added that as pleaded under paragraph 17 of the plaint, the Plaintiff claims no interest in the subject matter save for the costs and the plaintiff is willing to release the amount to any party if ordered by the Court. That, according to the plaint, there is no pending suit on the fixed deposited amount and there is no proof of collusion between the Plaintiff and any of the Defendants.

It was Mr. Mushi's conclusion that all pre-requisites in the said provision and decision are manifest in the suit under determination qualifying it as an interpleader suit. Mr. Mushi admitted that the fixed

deposit account was opened by the 1st Defendant on 7th January, 2013 and it became due on 7th January, 2014. That, after its maturity the 2nd and 3rd Defendants on the one part and the 4th Defendant on the other have frequently approached the Plaintiff's Meru branch at Arusha claiming to have interest in the fixed deposit amount. Further, the Defendants admitted existence of court cases and their interest in the fixed deposit. That, interpleader suit was the best option for the Plaintiff to ascertain the proper party to receive the fixed deposited amount. He insisted that this suit will resolve the controversy over the recipient of the funds once and for all.

On the contention that interpleader suit was inappropriate as there was contractual relationship between the Plaintiff and the 1st Defendant herein the counsel for the Plaintiff submitted that the respondent misconceived such fact. For him, the case law relied on and the provisions of the law above cited, does not bar institution of interpleader suits even where there exists contractual relationship. Pondering the rationale for his argument, he asserted that the 1st and 4th Defendants denied the fact that the 2nd and 3rd Defendants are directors of the 1st Defendant by attaching BRELA official search report. That, equally, the 2nd and 3rd Defendants in their joint written statement of defence attached another official search report showing that they are directors of the 1st Defendant alongside the

4th Defendant. That, such state of affairs calls upon this Court to determine the rightful recipient of the deposited fixed amount amongst the Defendants herein.

Submitting on the preliminary objections that this case is res-judice, Mr. Mushi admitted that the 1st Defendant instituted Civil Case No. 37 of 2019 against the Plaintiff and the 4th Defendants only. That, the suit was struck out with costs on technical reasons wherefore, the 2nd and 3rd Defendants filed notice of appeal and application for leave to appeal to the Court of Appeal. However, that the application for leave was struck out for being incompetent, therefore currently there is no pending appeal before the Court of Appeal sufficing to declare the suit res-judice. He insisted that this cannot be a fit case to invoke such doctrine. He pointed out some of the key conditions for the doctrine to apply relying on section 8 of the CPC and the case of **Wengert Windrose Safaris (Tanzania) Limited Vs. The Minister for Natural Resources and Tourism and Another**, Misc. Commercial Cause No. 89 of 2016 (unreported). He was of the view that there was no proof featured either in the WSD or in the submission in support of the preliminary objection indicating existence of the said notice of appeal and application for leave to appeal against the decision of this Court in Civil Case No. 37 of 2019. Alternatively, Mr. Mushi contended that in the event the preliminary objections are sustained,

recourse cannot be dismissing the suit as contended by Defendant's counsel, rather the remedy is to stay the proceedings of this suit pending determination of the said appeal in the Court of Appeal. His stance was backed up by the case of **Wengert Windrose Safaris** (supra). He concluded by urging this Court to dismiss the preliminary objections with costs for being devoid of merits.

I have considered the preliminary objections raised by counsel for the 1st and 4th Defendants, the rival submissions for and against the preliminary objections and the pleadings at large. The issue for determination is whether the raised preliminary objections are merited.

Determination of the preliminary objections will take into account the flow adopted by counsel for the parties while arguing the same. In the second set of the preliminary objections counsel for the 1st and 4th Defendants challenged the suit stating that it does not qualify as interpleader suit because the Plaintiff has impleaded the real owner of the fixed amount, in this case the 1st Defendant. Alternatively, they challenged the suit stating that since the dispute is one based on customer banker relationship, the same does not qualify as an interpleader suit.

Without mincing words, at the outset I fully subscribe to the submission by counsel for the Plaintiff that the counsel for the 1st and 4th Defendants has failed to comprehend what an interpleader suit is. For

better understanding issues of contention, it is resourceful at this juncture to pose a question, what an interpleader suit entails? The answer to this question was lucidly resolved by the Court of Appeal in the cited case of **Praygod Mbaga Vs. Government of Kenya, Criminal Investigation Department and Another** (supra) which relied on literal words by Mulla, The Code of Civil Procedure, 19th Edition Vol. 1, defining interpleader suit as follows:

*"An interpleader suit is one in which the real dispute is between the Defendants only and the Defendants interplead, that is to say plead each other instead of pleading against the Plaintiff as an ordinary suit. **In every interpleader suit there must be some debt or sum of money or other property in dispute between the Defendants only, and the Plaintiff must be a person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to such of the Defendants as may be declared by the court to be entitled to it.**"* (Emphasis added)

From the foregoing definition, it must be noted that the real dispute in interpleader suits must be between the Defendants only. The Plaintiff in such suits is a party who does not claim interest in the subject matter of the suit than charges or costs and such Plaintiff must be ready to deliver the property to the real owner upon being declared by the court. From the above definition, it is also noteworthy that there are no restrictions on

whether the dispute between the Defendants/parties involve contractual relations or not. Interpleader suit applies irrespective of the nature of the cause of action, the determinant factors being that the dispute is between the Defendants while the Plaintiff claim to have no interest in the subject matter of the suit than claiming charges or costs.

As pleaded under paragraph 3 of the plaint, the 2nd, 3rd and 4th Defendants represented themselves as directors of the 1st Defendant. According to paragraph 5 of the plaint, it was the 1st Defendant who opened the fixed deposit account on 7th January, 2013. At paragraphs 7, 8, 9 and 10 of the plaint the Plaintiff has shown a recap of cases filed by the 4th Defendant against his co-directors, the 2nd and 3rd Defendants on allegation of mismanagement of the 1st Defendant's affairs occasioning gross loss. The Court in Commercial Case No. 135 of 2015 found the 2nd and 3rd Defendants to have mismanaged the affairs of the 1st Defendant and ordered them to pay her TZS 427,260,850/=, and in addition they were ordered to pay general damages to the tune of TZS 20,000,000/=. That is one of the cases, yet there are others.

Paragraph 11 of the plaint shows categorically that on diverse dates, the 2nd and 3rd Defendants on one part and the 4th Defendant on the other approached the Plaintiff's Meru Branch in Arusha claiming to have interest in the fixed deposit. It did not end there, as pleaded under paragraph 12

of the plaint, the Plaintiff demanded from the Defendants to avail the bank with an extract of board of directors' resolution so that the funds would be released to the 1st Defendant but in vain.

In the midst, the 2nd and 3rd Defendants through the 1st Defendant instituted Civil Case No. 37 of 2019 against the Plaintiff and the 4th Defendant in this Court demanding among others the release of fixed deposit amount of TZS 277,000,000/=. The suit was struck out for being incompetent because the 1st Defendant herein was found to have no *locus standi* and that the suit contained personal cause of action of the 2nd and 3rd Defendants herein while the suit was filed in the name of the 1st Defendant and not those who claimed to deposit the fund.

Now, given the above state of affairs, it is apt to note that in the first place, there exists unresolved dispute amongst the directors of the 1st Plaintiff over management of the same. Second, the facts reveal that it was the 1st Defendant who entered into contractual relationship with the Plaintiff as pleaded under paragraph 5 of the plaint. As pointed out under paragraph 11 and 12 of plaint that the 2nd and 3rd Defendants on one part and the 4th Defendant on the other have been insisting that they have interest in the fixed deposit amount. It was therefore appropriate for the Plaintiff to institute this interpleader suit for the Court to resolve

as to who is the rightful recipient of the fixed deposit sum among the Defendants.

The contention by Mr. Massawe that the suit is unmaintainable as 1st Defendant was featured as the owner of the funds in my view, is misconceived. I hold this view taking into account the fact that, although it was the 1st Defendant who entered into contractual relationship with the Plaintiff, as above stated, the 2nd and 3rd Defendants claimed that the funds were their personal funds. That was also the reason behind instituting Civil Case No. 37 of 2019. This is also exhibited by the 2nd and 3rd Defendants' WSD, specifically paragraphs 4, 5, 6, 9 and 10, where they claimed that the fixed deposit amount is their personal funds, not the property of the 1st Defendant. The 4th Defendant on the other hand claims that the funds belong to the 1st Defendant, hence, in order to resolve the real owner entitled to the funds, the current suit may become inevitable.

Mr. Massawe contended that interpleader suit cannot arise where there is (banker-customer) contractual relationship as between the Plaintiff and the 1st Defendant herein. His argument was however, not backed up by any authority, be it a law or a case law. There being no law either in express terms or by implication that bars institution of an interpleader suit where there exists contractual relationship as Mr. Massawe purports to say, his argument cannot stand.

That said, it is my view that since there exists a dispute between the Defendants herein each claiming interest in the fixed deposit amount, and since the said amount is in possession of the Plaintiff who does not claim any interest save for the charges or costs and has expressed intention to release the funds to the rightful owner after being declared by the Court, the suit was properly filed as an interpleader suit. That applies irrespective of existence of the contractual relationship between the Plaintiff and the 1st Defendant. That brings me to the conclusion that the second set of preliminary objections are devoid of merits, they are hereby overruled.

I now revert to the first set of the preliminary objection which challenge the suit for being res-subjudice. The line of argument by the counsel for the 1st and 4th defendants is that there is a pending notice of appeal before the Court of Appeal whereas the 2nd and 3rd Defendants aim at challenging the decision of this Court in Civil Case No. 37 of 2019 which was struck out. On his part, counsel for the Plaintiff disputed that argument on account that the counsel for the 1st and 4th Defendant did not attach the said notice in either his submission or in the written statement of defence.

I take note that in his submission at page 6, counsel for the Plaintiff acknowledged that after Civil Case No. 37 of 2019 was struck out, counsel

for the 2nd and 3rd Defendants filed notice of appeal and application for leave to appeal to the Court of Appeal. The counsel for the Plaintiff also acknowledged that the application for leave was struck out by Malata, J which I also noted. He however insisted that there is no pending appeal in the Court of Appeal. I however, do not buy his conclusion because the counsel for the 2nd and 3rd Defendant admitted to have filed notice of appeal to the Court of Appeal when addressing this court during clarification session. He even informed this court that he intended to consult his clients if they still intend to pursue the appeal before the Court of Appeal.

That being the case, in so far as the parties admit that the notice of appeal was filed and still pending before the Court of Appeal, the argument that it was not attached to the written statement of defence or the submission, is baseless. I therefore go along with Mr. Massawe that there is a pending notice of appeal in the Court of Appeal intimating intention to appeal to the Court of Appeal. The question that lingers now is whether existence of notice of appeal constitutes existence of appeal in the Court of Appeal. The answer to that question was resolved by the Court of Appeal in the case of **Serenity on the Lake Limited Vs. Dorcus Martin Nyanda**, Civil Revision No. 1 of 2019 (unreported), where the Court quoted with approval its earlier decision in the case of

Tanzania Electric Supply Company Limited Vs. Dowans Holdings

S. A. (Costa Rica) and Dowans Tanzania Limited (Tanzania), Civil

Application No. 142 of 2012 (unreported) stating that:

*"It is settled law in our jurisprudence which is not disputed by counsel for the Applicant that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court commences proceedings in the Court. **We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.**"* (Emphasis added).

In this respect, see also the Court of Appeal decisions in the following cases: **Awiniel Mtui and Three Others Vs. Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo),** Civil Application No. 19 of 2014 (unreported) and **Aero Helicopter (T) Ltd. Vs. F. N. Jansen** [1990] T.L.R. 142.

In **Awiniel Mtui** (supra), the Court observed:

*".. once a notice of appeal has been duly lodged, **the High Court ceases to have jurisdiction over the matter.**"* (Emphasis added)

From the authoritative decisions of the Court of Appeal, it is trite law that once notice of appeal is lodged in the Court of Appeal, it commences appeal process in the Court of Appeal. Thus, upon lodging a

notice of appeal, the High court ceases to have jurisdiction in the matter. The question now is whether the subject matter in Civil Case No. 37 of 2019 is the same as the one in the present suit.

According to the pleadings, the amended plaint that was filed in Court on 8/11/2021, the parties in that suit were the 1st Defendant herein (as the Plaintiff) who sued the Plaintiff herein and the 4th Defendant herein (as the 1st and 2nd Defendants respectively). According to paragraph 6 of the amended plaint, the cause of action in that suit was payment of TZS 26,588,399,940.92/= being the loss incurred for breach of confidentiality contract, negligence and mishandling of the fixed deposit bank account occasioning loss to client. Paragraphs 7, 8 and 9 of the same plaint stated that the said amount accrued from the fixed deposit amount of TZS 250,000,000/= that was deposited in the Plaintiff's bank for a fixed period of one year, that ended on 7th January, 2014. It was further stated under paragraph 11 that the 2nd and 3rd Defendants herein made several attempts to have the funds released in the specified bank accounts but the Plaintiff refuted.

From the above set of facts, there is no gainsaying that the subject matter in Civil Case No. 37 of 2019 was the fixed deposit amount of TZS 250,000,000/= which is also the subject matter in the case at hand. Notwithstanding the fact that in Civil Case No. 37 of 2019 the 2nd and 3rd

Defendants herein through the 1st Defendant were claiming payment of TZS 26,588,399,940.92/=, but that amount as pleaded in paragraphs 22, 23, 24, 25, 26, 27, 28 and 29 of the amended plaint were the accrued interest, loss of profits and investment and the like losses which emanated from the fixed deposit of TZS 250,000,000/=. Therefore, it is correct for one to hold that the subject matter in that case and in the case at hand is directly and substantially the same since it is based on the fixed deposit amount of TZS 250,000,000/= that yielded TZS 277,000,000/= as of 7th January, 2014. Parties in Civil Case No. 37 of 2019 are the same parties litigating in the suit under consideration. Thus, parties herein and the subject matter in this suit are similar to those in Civil Case No. 37 of 2019 in every respect. The only difference is that the 2nd and 3rd Defendant herein were not listed as parties in Civil Case No. 37 of 2019 but were pleaded in the plaint as interested parties over the disputed amount.

Having acknowledged that there is a notice of appeal which initiates appeal in the Court of Appeal, and there being no application in the Court of Appeal to strike out the said notice, I entirely agree with counsel for the 1st and 4th Defendants that this Court lacks jurisdiction to entertain this suit. There was an invitation by Mr. Mushi that in case the suit is found res-subjudice, this Court should not dismiss the suit, rather it should

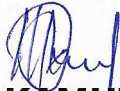
order stay of the proceedings pending determination of the appeal by the Court of Appeal.

Regrettably, I do not buy his idea based on the fact that once the appeal in the Court of Appeal is determined, it is likely to affect or even settle the dispute between the parties herein, therefore staying this suit will be of no purpose. For argument's sake, staying this suit may result to unnecessary influx of cases in this Court and, or, create backlogs while there is another pending case that may sufficiently determine the issues involved in the suit at hand. Therefore, I decline the invitation.

Fortified by the above reasoning and authorities canvassed, I sustain the preliminary objection which challenge the suit for being res-judice. Since there is a pending notice of appeal, this suit was incompetently filed before this court. For the foregoing reason, the suit is hereby struck out. But in considering the circumstance of this case and the plaintiff's intention to ensure the disputed amount goes to the right person as between the defendants, I make no order as to costs.

DATED at **ARUSHA** this 25th April, 2023.




D. C. KAMUZORA
JUDGE