

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CIVIL CASE NO. 150 OF 2022

ANGELINA JOHN MUTAHIWA 1ST PLAINTIFF

HEMED MSABAHA KANONI 2ND PLAINTIFF

VERSUS

HAJI AMBAR KHAMIS 1ST DEFENDANT

MARTHA RAPHAEL CHIOMBA 2ND DEFENDANT

AMEIR MSHINDANI ALI 3RD DEFENDANT

SUSANNE PETER MASELE 4TH DEFENDANT

BEATI A. MPITABAKANA 5TH DEFENDANT

MARTIN B. MUNG'ONG'O 6TH DEFENDANT

RAMADHAN MANYEKO 7TH DEFENDANT

JOSEPH ROMAN SELASINI 8TH DEFENDANT

HASSAN RUHWANYA 9TH DEFENDANT

REGISTERED TRUSTEES OF THE NATIONAL

CONVENTION FOR CONSTRUCTION AND

REFORM MAGEUZI (NCCR-MAGEUZI) 10TH DEFENDANT

RULING

6th March & 12th May, 2023

KISANYA, J.:

On the 5th September, 2022, the above named plaintiffs filed a civil suit claiming for the judgment and decree against the defendants as follows:

- a) *Declaratory order that the meeting of the National Executive Committee of NCCR-Mageuzi organized by the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, and 9th defendants and held on 21st May, 2022 at Salvation Army conference Hall is unlawful, illegal and void, anything transacted therein and resolved thereafter are of no effect.*
- b) *Declaratory order that the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, and 9th defendants or their agents associates have no power and mandate to organize, prepare and convene meetings of the Secretariat, Central Committee, National Executive Committee and National Congress of the National Convention for Construction and Reform Mageuzi (NCCR-Mageuzi).*
- c) *Declaratory order that the meetings to organize prepare and convene meetings of the National Executive Committee in 8th September, 2022 and National Convention for Construction and Reform Mageuzi (NCCR-Mageuzi) on 10th September, 2022 to be held on any other date is unlawful, illegal and void.*
- d) *Permanent injunction against the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, and 9th defendants or their agents and associates from organizing, preparing and convening meetings of the Secretariat, Central Committee, National Executive Committee and National Congress of the National Convention for Construction and Reform Mageuzi (NCCR-Mageuzi).*
- e) *Costs of the case.*

f) Any other reliefs which the court shall deem fit to grant.

Responding to the plaint, the 1st to 8th defendants filed a joint written statement of defence, while the 9th and 10th defendants filed a written statement of defence each. In addition, the 1st to 9th defendants lodged a notice of preliminary objections. The notice of preliminary objection by the 1st to the 9th defendants reads:

- a) The Plaintiff have no cause of action against 1st to 9th Defendants in terms of section 21(1) of the Political Parties Act Cap. 258, R.E. 2019, section 8(1)(b) of the Trustees Incorporation Act, Cap. 318, R.E. 2002.*
- b) The suit is premature for failure of exhausting internal remedies in line with section 8D(1) of the Political Parties Act, Cap. 258, R.E. 2019 and Article 22(3)(j) of the Constitution of NCCR-Mageuzi, 8th Edition of 2020.*

Furthermore, the 9th defendant filed a notice of preliminary of objection raising one point of law as follows:

- (a) The suit is incompetent in law in that it has not been instituted in lowest court with jurisdiction to hear and determine in terms of section 13 of the Civil Procedure Code, Cap. 33, R.E. 2019*

At the hearing of the preliminary objections, the plaintiffs were represented by Mr. Juma Nassoro, Mr. Daimu Halfan, Mr. Hudson Mchau and Ms Loveness Denis, all learned advocates. On the other hand, Mr. Novatus Muhangwa appeared for the 1st

to the 8th and 10th defendants, while the 9th defendant appeared in person and unrepresented.

Submitting on the first limb of objection, Mr. Muhangwa submitted that section 21(1) of the Political Parties Act, Cap. 258, R.E. 2019 (the PPA) requires every political party to have a board of trustees which is registered under the Trustees Incorporation Act, Cap. 318, R.E. 2002 (the TIA). He went on to submit that, after incorporation, the said board of trustees has power to sue and be sued in its name. Making reference to paragraphs 5 and 6 of the plaint, the learned counsel contended that the plaintiffs' complaints are against the meetings of a political party namely, National Convention for Construction and Reform Mageuzi (NCCR-Mageuzi). In that regard, he was of the view that the 1st to the 8th defendant were wrongly sued. He thus, prayed that their names to be struck out from the plaint.

The 9th defendant was in agreement with the submission made by Mr. Muhangwa, on the first limb of objection. He submitted that the facts deposed in the plaint does not implicate him in this matter.

As for the second limb of the objection, Mr. Muhangwa argued that, the constitution of NCCR-Mageuzi was enacted basing on section 8D (1) of the PPA and the Schedule thereto. Referring to clause 23(3) of the Constitution of NCCR-Mageuzi, he submitted that the final decision on disciplinary measures against the leaders and members is vested on the General Meeting. Contending that the plaintiffs pleaded to

have been expelled by the National Executive Committee (NEC) of NCCR-Mageuzi, he submitted that the suit is incompetent as the plaintiffs have not exhausted the remedy of referring the matter to the General Meeting. To buttress his stance, he cited the case of **Halima James Mdee and 2 Others vs Hon. Job Yustino Ndugai, the Speaker and 2 Others**, Misc. Civil Application No. 27 of 2017 (unreported).

On the second set of preliminary objection, the 9th defendant submitted that this Court has no jurisdiction to entertain the matter. Citing the provision of section 13 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), the 9th defendant argued that any suit should be instituted in the court of lowest grade. To buttress his argument, he referred the Court to the case of **Tanzania- China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters** (2006) TLR 70. The 9th defendant went on arguing that, the relief sought in the plaint can be granted by the lower courts. He fortified his argument by citing the case of **Hon. Zitto Zuberi Kabwe vs The Board of Trustees Chama cha Demokrasia na Maendeleo and Another**, Civil Case No. 1 of 2015 (unreported), in which this Court held that the reliefs akin with the case at hand ought to have been filed in the lower courts. On that account, the 9th defendant submitted that the suit was wrongly filed in this Court. He thus, moved the Court to strike out the suit.

The plaintiffs' counsel vehemently disputed all points of preliminary objections for being devoid of merit. According to Mr. Halfan, all objections were based on opinion and not law. It was his further contention that all objections do not qualify to be termed as the preliminary objections.

With regard to objection that the plaintiffs do not have cause of action against the 1st to 9th defendants, Mr. Halfan argued that section 21 of the PPA and section 8(1)(b) of the TIA relied upon by the plaintiffs' counsel does not provide for cause of action. The learned counsel submitted further that the 1st to 9th defendants were sued as the wrong doers. He pointed out that the 9th defendant was impleaded in paragraphs 11, 12(b) and 13 of the plaint as one of the persons who contravened the constitution of NCCR Mageuzi.

It was also his submission that, evidence is required to prove, whether the 1st to 9th defendants are wrong doers; and that, misjoinder of the parties, if any does defeat the case. Mr. Nassoro added that the 1st to 9th defendants were impleaded due to their actions in respect of the impugned meetings. In that regard, he submitted that the 1st to 9th defendants were entitled to the right to be heard on the allegation laid against them.

Coming to the second limb of objection, on failure to exhaust the remedy within the party, Mr. Halfan argued that the right to appeal to the General Meeting arises when the decision is made by a proper organ. He contended that there is no internal

remedy against the decision made by the persons outside the forum established by the party as in the case at hand. He was of the view that section 8D of the PPA is not relevant to the objection raised by the defendants. On his part, Mr. Nassoro submitted the CPC does not provide for requirement of exhausting the remedy available within the party before instituting the suit. He submitted that the vital issue is whether the plaintiffs have established a cause of action and that the duty of the court is to determine the controversy between the parties.

Countering the objection by the 9th defendant, Mr. Halfan submitted that section 13 of the CPC and the case of **Tanzania- China Friendship Textile Co. Ltd** (supra) are relevant to pecuniary jurisdiction. He further submitted that in the cases of **Tanzania- China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters** (2006) TLR 70 and **Hon. Zitto Kabwe** (supra) were decided before coming into force of the proviso of section 13 of the CPC. It was his firm argument that, this Court has powers to entertain any matter provided there is no law which bars it from determining the same.

Elaborating further, Mr. Halfan submitted that Article 108 (2) of the Constitution of the United Republic of Tanzania, 1977 (as amended) and section 2(1) and (3) of the JALA provide for general powers of this Court. He also relied on the cases of **M/S Noremco Construction (Noremco) vs Dar es Salaam Water and Sewarage Authority**, Commercial Case No. 47 of 2009, **Hance Charles Macha**

vs Alliance Insurance Corporation, Civil Case No. 9 of 2021, HCT at Moshi, **Nobert Mbowe t/a Gasoil Consulting Group vs Issack Mwamasika and 2 Others**, Civil Case No. 204 of 2019, **Manjit Singh Sandru and 2 Others vs Robir R. Robir**, Civil Appeal No. 121 of 2014, **Bashiru Badru Mbeo vs Sincro Site Watch Limited**, Civil Case No. 171 of 2018 (all unreported).

He further submitted that that the reliefs sought in the plaint are declaratory in nature. Making reference to section 7 of the CPC, the learned counsel argued that such relief is triable in this Court and that an objection cannot be made on the suit for declaratory order.

Rejoining, Mr. Muhangwa reiterated his submission in chief. He contended that, the 1st to the 9th defendants were impleaded in their respective positions in NCCR-Mageuzi and thus, wrongly joined in this case. He was of the view that the 1st to the 9th defendant will not be prejudiced if their names are struck out from the plaint.

On his part, the 9th defendant submitted that the reply on the issue of objection was based on Article 108 of the Constitution. He further elaborated that, the case of **Manjit Singh Sandru and 2 Others** (supra) cited by the plaintiffs' counsel supports the stance that suits should be instituted in the court of lowest grade. The 9th defendant further submitted that a suit founded on declaratory order may be filed in the court of lowest grade competent to try it. He therefore reiterated his prayer that

the suit be struck out. He added that the plaintiffs be advised to institute it in the Resident Magistrate's Court or District Courts.

I have carefully weighed the rival submissions made by the learned counsel and read the pleadings and the law. Before I proceed with determination of the objections, I wish to point out what entails preliminary objection as stated in the case of **Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd**, [1969] EA 696 in the following terms:

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion,"

The above position was cited with approval in the case of **Karata Ernest and Others v. Attorney General**, Civil Revision No. 10 of 2010 (unreported) in which the Court of Appeal went on stating that:

"Obvious examples include, objection to the jurisdiction of the court; a plea of limitation, when the court has been wrongly moved either by non-citation of the enabling provisions of the law, where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by patently incurably defective copy of the decree appealed from etc."

The list is not exhaustive. However, it is trite law that, a point of preliminary objection should consist of a point of law which has been pleaded or which arises from the pleading.

Having so stated, I find it appropriate to start with the 9th defendant's objection to the effect that, the suit is incompetent because this is not the court of the lowest grade competent to try it. Since the objection is related to jurisdiction, I am satisfied that it raises a pure point of law.

Pursuant to the settled law, courts are established by statutes and their jurisdiction is created by the law as held in the case of **Scova Engineering S.p.A and Another vs Mtibwa Sugar Estates Limited and Three Others, Civil Appeal No. 133 of 2017** (unreported).

Now, this Court is established by Article 108 (1) of the Constitution of the United Republic of Tanzania, 1977 (as amended). As rightly stated by Mr. Halfan, the High Court has general jurisdiction to entertain civil and criminal cases. However, the general jurisdiction of this Court must be exercised in accordance with the other laws. Apart from Article 108(1) and (2) of the Constitution and section 2(1) and (2) of the JALA, the same stance is reflected in the case of **Tanzania Breweries Limited vs Anthony Nyingi**, Civil Appeal No. 110 of 2014 (unreported) where the Court of Appeal held that:

"It is therefore clear from these provisions of JALA and the Constitution, that the jurisdiction of the High Court is subject to the provisions of other written laws. So, it was wrong for the learned trial judge to have decided the question of jurisdiction by looking at Article 108(2) of the Constitution alone. In other words, Article 108 (2) of the Constitution should not have been read in isolation, without discussing whether or not such other written laws to the contrary exist."

As stated earlier, the objection by the 9th defendant is based on section 13 of the CPC. The said provision stipulates:

"13. Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate 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 above cited provision is couched in mandatory terms, thereby requiring every suit to be lodged in the court of the lowest grade competent to hear and determine the same. See also the case of **Hon. Zitto Zuberi Kabwe**, (supra) in which Hon. Mziray, J (as he then was) held:

"Section 13 strictly commands that every suit should be instituted in the Court of lowest grade competent to try it".

It is my further considered view that, although the foregoing requirement cannot be construed to oust the general powers of this Court, parties are duty bound to comply with the law. Otherwise, there would be no meaning of having the substantive provision of section 13 of the CPC. Furthermore, nothing to suggest that section 13 of CPC is limited to pecuniary jurisdiction only. It refers to every suit to which the court of lowest grade has mandate to try the same.

This gives rise to the question whether the courts subordinates to this Court are competent to try this matter. The settled position of law is to the effect that, jurisdiction of the court may be determined by looking at the reliefs sought. The law is further settled, and I need not cite any authority that, jurisdiction is determined by substantive claim. Therefore, the absence of specification implies that the suit should be tried in the lower courts. To cement this stance, I wish to refer to the case of **Mwananchi Communications Limited and 2 Others vs. Joshua K. Kajula**, Civil Appeal No. 126/01 of 2016 (unreported) in which the Court of Appeal underscored that:

"The absence of such specification meant the suit should have been tried in the lower courts, that is, the District or Resident Magistrate's courts under section 40(2)(b) of the MCA. For the foregoing reasons, it is clear that the High Court erroneously crowned itself with jurisdiction in entertaining and determining the suit that it did not possess."

It is a common ground that, the plaintiffs are praying for declaratory orders. Thus, there is no specific relief sought by the plaintiffs. Being guided by the above stated position of the Court of Appeal, the lower courts namely, the District Court or Resident Magistrate's Courts have mandate to try the matter. I fully subscribe to the decision of this Court in **Hon. Zitto Zuberi Kabwe**, (supra) where it was held as follows, after facing with an akin situation:

On carefully going through the plaint filed, it is clear that the nature of the dispute and the prayers sought will not qualify to be filed in the High Court...The remedy is to strike out the same."

I am alive to the provision of section 7 (2) of the CPC referred to this Court by Mr. Halfan. It bars the suit to be open to objection on the ground that a merely declaratory judgment or order is sought. However, the objection at hand is not based on the ground that the plaintiffs have prayed for declaratory judgment or order. It is premised on the ground that the matter ought to have been lodged in the court of lowest grade competent to try it. That being the case, the cited provision is not relevant to the issue under consideration.

I have further considered that section 6 of the AJA empowers a magistrate court (including, the district court or resident magistrate's court) to entertain matters to which jurisdiction is not exclusively conferred on the High Court. Since nothing to

suggest that this matter is exclusively tried in the High Court, the plaintiff ought to have complied with section 13 of the CPC, by lodging it in the subordinate court.

In view of what I have endeavoured to explain, I find merit in the objection raised by the 9th defendant and upheld the same. It is my opinion that the said issue on jurisdiction of the Court is sufficient to dispose of the matter. Thus, I find no need of using more energy to determine the remaining grounds of preliminary objection.

All said and done, this suit is hereby struck out for being incompetent before this Court. The plaintiffs may wish to institute it in a court with competent jurisdiction. Considering the nature of this case, I make no order as to costs.

DATED at DAR ES SALAAM this 12th day of May, 2023.



S.E. KISANYA
JUDGE
12/05/2023