IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 37 OF 2022

CRSG TANZANIA TRADING COMPANY LIMITED.....PLAINTIFF

VERSUS

ULLAYA SHOMARI MOHAMED T/A
USHOMO ENTERPRISE.....1ST DEFENDANT
ULAYA SHOMARI.....2ND DEFENDANT
GEORGE JAPHET KIBOKO.....3RD DEFENDANT

RULING

Date of last Order 20th April, 2022

Date of Ruling 12th May, 2023

E. E. KAKOLAKI, J.

This ruling seeks to address the preliminary objections raised by the 1st, 2nd and 3rd defendants herein inviting this Court to strike out plaintiff's suit relying on two grounds going thus:

1. That, the suit is incompetent before the Court as it has been filed contrary to Rule 3 and part (a) and (g) of the schedule made thereto of the Interpretation of Laws (Use of English Language in Courts) (Circumstances and conditions) Rules 2022, G.N. 66 of 2022.

2. That, the Plaintiff having been awarded compensation in Economic Criminal Case No. 3 of 2019, **Republic Versus George Japhet @ Kiboko and Another** cannot in law maintain this action for compensation in respect of the same subject matter.

In response the plaintiff strenuously resisted the raised objections. Basing on the practice of this Court it was decided that, the objections raised be disposed of first as the aim of a preliminary objection is to save time of the court and parties by not going into the merits of an application because there is a point of law that will dispose of the matter summarily. See the cases of **Bank of Tanzania Vs. Dervan P. Valambia**, Civil Application No. 15 of 2002 (CAT-unreported) and **Shahida Abdul Hassanali Kasam Vs. Mahed Mohamed Gulamali Kanji,** Civil Application No. 42 of 1999 (unreported).

Briefly before this Court in Civil Case No. 37 of 2022, the plaintiff a company registered under Companies Act, [Cap. 212 R.E 2002], trading in supply of bitumen among other objectives, filed a suit against the defendants jointly and severally for breach of contract of cargo transportation. She decided to file her suit in Kiswahili language titled **''HATI YA MADAI''** in which when served to the defendants, the trio responded by filing their Written Statement of Defence in English language, while raising the two preliminary

objections cited above, in which this ruling seeks to address. When invited to address the Court on the said raised objections parties chose to proceed by way of written submission and used English language in both submissions despite of the fact that proceedings were recorded in Kiswahili, hence for the purposes of convenience to both parties who submitted in English language in composing this ruling, Court has chosen to use the same language too.

As alluded to above, hearing took the form of written submissions and both parties were represented as Mr. Albert Nkuhi, learned advocate for the plaintiff, fended the raised preliminary objections while Mr. Andrew Miraa, learned advocate for the defendants, prosecuting them. In this ruling I am prepared to address and determine both grounds one after another.

Submitting in support of the first ground Mr. Miraa contended that, the suit termed **''HATI YA MADAI''** filed by the plaintiff is incompetent before this Court for contravening the provisions of Rule 3 and part (a) and (g) to the schedule of the Interpretation of Laws (Use of English language in Courts) (Circumstances and conditions) Rules 2022, GN. No. 66 of 2022, herein referred to as the *'Rules of 2022'*. He said the law requires matters to be brought in Court using English language where either parties or their

representatives are not Swahili speakers and/or when the law governing the matter subject of litigation, practice and procedure are not available in Kiswahili language. According to him the circumstances surrounding this matter are to the extent that, the plaintiff is the Chinese company managed by Chinese nationals whose language is not Kiswahili and the laws governing the subject matter, practice and procedure are Law of Contract Act and Civil Procedure Act, which up to now are not in Kiswahili language. He took the view that, since the plaint **"HATI YA MADAI"** has been filed in this Court in contravention of the law cited above, the same ought to be struck out with costs as per the decision of this Court in **Zaid Jumanne Zaid Versus Pili Rajabu Abdallah**, Land Appeal No. 09 of 2022, (HC-unreported) and so prayed.

Mr. Nkuhi in response prefaced his submission by inviting this Court to dismiss with costs the raised preliminary objections by the defendants for being misconceived. On the submission by Mr. Miraa on the first ground of objection he argued that, the law as it stands now and properly construed makes it legally tenable the pleadings filed by the plaintiff in Kiswahili for being the language of the courts, tribunals and other bodies as per the provisions of section 84A(1) of the Interpretation of Laws Act, [Cap. 1 R.E

2019] (herein referred to as Cap. 1) as amended by Act No. 1 of Written Laws (Miscellaneous Amendment) Act, 2021. According to him section 84A(1) of Cap. 1, having commenced with a non obstante clause *'Notwithstanding any other written law'* the provision has overriding effect over all other provisions on the language of the courts including application of Rule 3 and part (a) and (g) to the schedule to the Rules of 2022. To fortify his stance the learned counsel cited to the Court Indian case of **Union of India Vs. G.M Kokil**, 1984 (Supp) SCC 196; AIR 1984 SC 1022, which stated that, when the clause begins with **'notwithstanding anything contained in this Act'**, it aims at giving overriding effect of the section in case of conflict over other provisions or Act mentioned therein.

The learned counsel went on to mould his point that, section 84A(2) of Cap. 1, provides that, English language may be used where interest of justice so desires provided that, the proceedings and decisions thereon are interpreted in Kiswahili. He held the view that, use of English language under Rule 3 of the Rules of 2022 is coached in permissive terms as opposed to use of Kiswahili language in courts under section 84A(1) of Cap. 1, which is coached in mandatory terms, since the Rules of 2022 came in as a means of carrying out the provisions of section 84A(2),(3) and (4) of Cap. 1, in which the

schedule thereto enumerates a number of circumstances and conditions which may warrant use of English language in courts. Further to that he argued, the defendants have not rendered any details as to how they are prejudiced by the use of Kiswahili in this matter, since the language has been often used to address the Court even at the level of the Court of Appeal in which the presiding officers record the proceedings in English and further that, there are numerous decision of this Court and subordinate courts rendered in Kiswahili. He added, when this suit was filed the Court had discretion to either admit it or direct the party (plaintiff) to file the pleadings in English or vice versa but chose to admit the same. Since the language of the Court ought to be determined at the admission stage and the Court did admit the pleadings Mr. Nkuhi argued, the defendants prayer for Court to find the pleadings by the plaintiff incompetent after being admitted is unfounded. On the case of **Zaid Jumanne Zaid** (supra) cited and relied on by the defendant he countered that, the same is distinguishable to the instant matter as in that case pleadings were preferred in Kiswahili at the appellate level of the Court, unlike in the present matter where the pleadings were filed in Kiswahili right from the initial stage and admitted without objection. He therefore prayed the Court to dismiss the objection with costs.

In rejoinder Mr. Miraa attacked the submission by the plaintiff that, section 84A(1) of Cap. 1, overrides the provisions of Rule 3 of the Rules of 2022, terming it as a misconception aimed at misleading this Court. According to him the Rules of 2022 were made to modify what is already provided under section 84A(1) of Cap. 1, for providing circumstances under which English language may be used in courts of law, the position which was fortified by the decision of this Court in **Zaid Jumanne Zaid** (supra). As regard to whether the defendants were to show how they were prejudiced with the use of Kiswahili language in this matter, Mr. Miraa responded that, much as the law provides circumstances under which English language may be used and not Kiswahili language, the defendants were not duty bound to prove the extent of prejudice suffered. Otherwise he maintained his prayer earlier on made for striking out the suit for being incompetent.

I have dispassionately considered the fighting submissions by the parties as well as thoroughly perused the provisions of law under discussion. It is Mr. Nkuhi's submission that, the plaint preferred in Kiswahili language is competent before this Court as the language of courts, tribunals or other bodies as per section 84A(1) of Cap. 1, is Kiswahili while Mr. Miraa is of the contrary view in that, the circumstances surrounding this case in terms of

laws applicable to the subject matter (contract), practice and procedure are not in Kiswahili language as described in part (a) and (g) of the schedule to the Rules of 2022, the plaintiff ought to have filed the suit in English language failure of which renders the plaint **"HATI YA MADAI"** incompetent before the Court. Basing on the above rivalry arguments, the issue for determination by this Court is **whether the suit preferred in Kiswahili language as "HATI YA MADAI" is competent before this Court**. To disentangle parties from this legal quagmire, I find it imperative to cite in verbatim the provision of section 84A of Cap. 1 and Rule 3 and item (a) and (g) to the schedule of Rules of 2022. Section 84A of Cap. 1 as amended reads:

> *84A.-(1)* ***Notwithstanding any other written law, the language of courts, tribunals and other bodies*** *charged with the duties of dispensing justice* ***shall*** *be Kiswahili.*
> *(2) Without prejudice to subsection (1), courts, tribunals and other bodies charged with a duty of dispensing justice* ***may****, where the interests of justice so require, use English language in the proceedings and decisions.*
> *(3) Where English language is used in the proceedings and decisions, such proceedings and decisions shall be translated and authenticated in Kiswahili language.*

(4) Where proceedings or a decision is translated in Kiswahili language and there occurs a conflict or doubt as to the meaning of any word or expression, the language which the proceedings or decision was recorded shall take precedence.

(5) The Chief Justice may, in consultation with the Minister responsible for legal affairs, make rules for the better carrying out of the provisions of subsections (2), (3) and (4)."

Rule 3 and item (a) and (g) to the schedule of Rules 2022 provides:

3. *Subject to the provisions of subsection (2) of section 84A of the Act, pleadings, proceedings or decisions* ***may*** *be in English language where it relates to matters stipulated in the Schedule to these Rules.*

CIRCUMSTANCES AND CONDITIONS FOR THE USE OF ENGLISH LANGUAGE IN COURTS:

(a) either of the parties or their representatives to the proceedings are not Swahili speakers; (b) N.A

(g) the law governing the matter subject of litigation, and the practice and procedure thereto are not available in Kiswahili language; (Emphasis supplied)

It is gathered from the exposition of the law above cited which position is not disputed by both parties that, under the provision of section 84A(1) of Cap. 1 as amended by Act No. 1 of the Written Laws (Miscellaneous Amendment) Act, 2021, which came into operation on 9th July 2021 through GN. No. 4961 published on 30/06/2021, the language of courts, tribunals

and other bodies charged with the duties of dispensing justice ***shall*** be Kiswahili. I so view as the term used to confer function in that provision which is the use of Kiswahili language is **''shall''**. The word **''shall''** as rightly submitted by Mr. Nkuhi is coached in mandatory terms for using an imperative or commanding word. The law under section 53 (2) of the Interpretation of Laws Act, [Cap. 1 R.E 2022], provides that, when the word **'shall'** is used to confer function then the same must be performed. Section 53(2) of the Interpretation of Laws Act reads:

> *(2) Where in a written law the word **"shall"** is used in conferring a function, **such word shall be interpreted to mean that the function so conferred must be performed**.* (Emphasis supplied).

The above position of the law is obtained in numerous decision of this Court and Court of Appeal such as **Tabu Ramadhani Mattaka Vs. Fauziya Haruni Saidi Mgaya**, Probate and Administration Cause No. 15 Of 2017 (HC-unreported) and **Shabani Iddi Jololo and Three (3) Others V. R**, Criminal Appeal No. 200 of 2006 (CAT-unreported). In **Shabani Iddi Jololo and Three (3) Others** (supra) the Court of Appeal observed that:-

> *"In this context, section 53 (2) of the Interpretation of Laws Act Cap.1 [R.E. 2002] is important. It provides that wherein a*

*written law the word **"shall"** is used in conferring a function, such **word shall be interpreted to mean that the function so conferred must be performed**."*

The understanding of this Court which is in consensus with Mr. Nkuhi's proposition is that, as the law stands now the **language** of the ***courts, tribunals and other bodies*** charged with the duties of dispensing justice in the country is **Kiswahili**. In my firm view, it was the intention of the parliament that, English language be used only at the convenience of parties and where interest of justice so demands as demonstrated in the wording of section 84A(2) of Cap. 1, since the word used in that provision for usage of English language is **''may''** which is permissive in nature and further that, when English language is used the proceedings and decision thereon must be translated in Kiswahili language as stated in subsection (3) of section 84A of Cap. 1.

Regarding the application of the Rules of 2022 made by the Chief Justice, it is uncontroverted fact that, the same were made for the purposes of better carrying out the provisions of subsections (2),(3) and (4) of section 84A of Cap. 1 as stated in subsection (5) of the same section, for provision of circumstances and conditions for which English language can be used in courts. Mr. Miraa is of the proposition that, same came in to modify what is

already provided under section 84A(1) of Cap. 1, hence plaintiff's act of filing this suit in Kiswahili which its subject matter of litigation, practice and procedure are governed by the Law of Contract Act and Civil Procedure Code, and not available in Kiswahili language, contravenes item (a) and (g) of the Rules of 2022, as she is also a foreign company of Chinese origin and not a Swahili speaker. With due respect to the learned counsel, I do not subscribe to his proposition that, the Rules 2022 came in to modify the provisions of section 84A(1) of Cap. 1 on the language to be used by courts, tribunals and other bodies dispensing justice in the country for two good reasons. **One,** that, the same were meant to provide or state circumstances under which English language, which is not court's language in terms of section 84A(1) of Cap. 1, can be applied/used in courts, tribunals or other bodies dispensing justice in the country as optional and convenient language to the parties, aiming at serving interest of justice especially when one of the parties to the suit is not a Swahili speaker, by making sure he/he is accorded with full right of hearing as guaranteed under Article 13(6)(a) of the Constitution of the URT, 1977. The above finding is fortified in the coached mandatory terms set under the law in section 84A(3) of Cap. 1, in that, when English language

is used the proceedings and decision thereto made, must be translated into Kiswahili language which is the language of the Courts.

Second, the provision of section 84A(1) of Cap.1 cited above on the language of the courts, commences with a non obstante clause ***"Not withstanding any other written law"*** the clause which has overriding effect over all other provisions of the law for the time being in the country, in as far as application of Kiswahili as language of the Court is concerned, including Rule 3 and item (a) and (b) to the Rules 2022, hence the circumstances and conditions set therein for the use English language in courts as optional and not language of the courts, I find cannot supersede the condition and usage of Kiswahili as language of the courts, tribunals and other bodies dispensing justice in Tanzania as set out is section 84A(1) of Cap. 1. My firm view is cemented with the commentaries of the learned Indian author in the book of **Principles of Statutory Interpretation**, *Including General Clauses Act, 1987 with Notes* by **Justice G.P Singh** (2016), 14th Edition, Lexis Nexis: Gurgaon –Haryana, India at page 401 - 402, when commenting on the interpretation of the clause beginning with **non obstante clause** such as the one at discussion, where he made

reference to the Indian Supreme Court case of **Union of India** (supra) and stated thus:

> *"A clause beginning with* ***'notwithstanding anything contained in this Act*** *or in some particular provision in the Act or in some particular Act or in any law for the time being in force,* ***is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause****."*
> (Emphasis supplied)

In view of the above discussion and authority referred, which I find to be persuasive and correct interpretation of the non obstante clause used in section 84A(1) of Cap. 1, hence good principle of law and adopted, I find no reasons as to differ with Mr. Nkuhi's proposition that, much as the clause used in that section providing for the courts language as **Kiswahili** starts with non obstante clause ***"Not withstanding any other written law"***, it cannot be construed in this case that, plaintiff's act of filing his suit using Kiswahili language in the **"HATI YA MADAI"** renders the suit incompetent for being in violation of the Rules of 2022 as alleged by Mr. Miraa, which Rules no doubt its application is subjected to the provisions of section 84A(1) as provided under subsection (2). To hold otherwise in my firm view with

due respect to Mr. Miraa, is tantamount to denying not only the plaintiff but also other Tanzanians of their right to use court's language in accessing justice or pursuing their rights in courts of law, since unavailability of Kiswahili versions laws on the substantive subject matters of litigation, practice and procedure, cannot act as an impediment to justice dispensation in as long as both parties are Swahili speakers capable of comprehending nature of the proceedings and understand the decision reached by the courts, which was no doubt a primary objective and intention of the Parliament when codifying Kiswahili as courts' language in the pleadings, proceedings and decisions. In this matter, in absence of any complaint that either of the parties does not understand Kiswahili language, the proposition by Mr. Miraa that, the plaintiff is a Chinese company whose directors are not Swahili speakers, I hold remains an afterthought and therefore does not carry any weight. I discard the proposition as the company being a legal entity duly registered under our law, speaks through its directors whom there is no evidence that are not Swahili speakers since they are the ones who chose to use Kiswahili language in the plaint. In light of the above discussion and for the purposes of usage of language of the courts, tribunals and other bodies in our jurisdiction, I hold Kiswahili in the Court's languang, and

therefore the suit filed by the plaintiff in Kiswahili language against the defendant is competently preferred. The case of **Zaid Jumanne Ziad** (supra) relied on by the defendants, I find is distinguishable to the facts of this case as in that case parties opted to use Kiswahili language at the appellate stage without leave of the Court while the proceedings and decision in the lower tribunal were conducted and decision thereon rendered in English language, unlike in the present matter where the suit is instituted in Kiswahili language and admitted by the Court without objection. The issue raised is therefore answered in affirmative.

Next for determination is the second ground in which Mr. Miraa argues, the plaintiff having been awarded compensation in Economic Case No. 3 of 2019, between **R Vs. George Japhet Kiboko and Another**, in law cannot maintain an action for compensation in the same subject matter. It is his contention that, the plaintiff in paragraph 11 of the plaint **"HATI YA MADAI"** admits to have been awarded compensation, hence in terms of section 348(1) of the CPA, she cannot file a similar compensation claim on the same amount. To fortify his argument the learned counsel cited to the Court the case of **R Vs. Tilusubya Mwishaki and Others (1983)** TLR 422, where the court stated circumstances under which compensation can

be awarded in criminal case. He therefore prayed the Court to sustain the preliminary objection and strike out this suit.

In response Mr. Nkuhi argued that, the second ground of objection by the defendants is not legally tenable before this Court for being barred by estoppel of Judgment as the same ground of P.O was raised and determined in Civil Case No. 87 of 2021, between the same parties. The above notwithstanding he argued, the defendants have not cited any law that bars the plaintiff from filing this matter for breach of contract of cargo transportation and Memorandum of Association and claim for compensation for such breach as the bar in his opinion would be premised on the claims of the suit being Res Judicata, Res Subjudice and Abuse of court process, in which none of them is advanced by them. As in this matter the facts obtained in Economic Case No. 3 of 2019 were held to be different from the facts in issue in Civil Case No. 87 of 2021 as per the ruling of this Court, this objection is wanting in merit hence should be dismissed as even the case of **Tilusubya Mwishiki and Others** (supra) is distinguishable from the facts of this case for being irrelevant, Mr. Nkuhi stressed. In rejoinder Mr. Miraa said, the ground of objection in Civil Case No. 87 of 2021 was based on issue estoppel the rule which prohibits courts of law to determine matters which had already

been determined and concluded by competent court, while the present ground is based on application of section 348(1) of the CPA providing for circumstances under which the court can award reliefs (compensation) in criminal cases, which can also be awarded in civil suits, as the plaintiff herein was awarded with compensation order which he never executed, following plea bargaining agreement entered in terms of the provision of section 194B(c) of the CPA in Economic Case No. 3 of 2019. To him therefore the claimed issues are different, hence the plaintiff cannot reclaim the same amount in civil suit which was awarded in the compensation order. It was his submission that, suit is not maintainable thus should be struck out with costs.

Having considered the rivalry submission by the legal minds and visited the pleadings herein and cases referred in support and against the raised objection, I think I am now set to determine it. The issue for determination is whether the plaintiff can maintain civil action against the defendants on the claim of compensation (money) already awarded by the Criminal Court. To start with the issue of estoppel by judgment as raised by Mr. Nkuhi, I find the same to be inapplicable in this case. The reasons I am so holding is not far-fetched as this Court in Civil Case No. 78 of 2021 when held that, the

plaintiff's claims for compensation based on breach of contract of cargo transportation and MoU signed between the parties was different from the decision in Economic Case No. 3 of 2019 awarding the plaintiff an order for compensation based on conviction and sentence of defendants on the charge of Stealing by agent, did so when was addressing the issue whether the principle of issue estoppel was applicable to the claims raised in Civil Case No. 87 of 2021 by the plaintiff. The determinant factor to the latter decision based on the issue whether the facts in the charge of Stealing by Agent in Economic Case No. 3 of 2019 were identical with what was sought to be re-agitated in Civil Case No. 87 of 2021, in which the court found were not, but not whether the plaintiff can in law maintain an action for compensation of Tshs. 569,594,000/ already awarded to her in terms of section 348(1) of the CPA in Economic Case, which I find to be different and separate issue calling for determination by this Court. To me therefore there was no need for the defendants to challenge the suit relying on principles of Res Judicata, Res Subjudice and/or Abuse of court process as Mr. Nkuhi would want impress upon this Court.

With the above understanding and before venturing into determination of the merits or otherwise of second ground of objection, this Court finds it

opportune to comment albeit briefly on the law related to Compensation in Criminal matters. **Black's Law Dictionary**, (2004), 8th Edition by Bryan G, Garner at page 854 defines the term Compensation as:

> *"Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another."*

Mitra's Legal and Commercial Dictionary, 6th Ed, by Tapash Gan Choudhury, at page 162 elaborates more on the term Compensation to mean:

> *"Equivalent given for injury; equivalent given for loss sustained; financial remuneration; indemnification; reclamation; recoupment; reward for service."*

It is learnt from the above definitions that, compensation is something awarded to someone in terms of monetary value as damages in recognition of loss, suffering or injury. Compensation being in the nature of civil remedy is awardable in both civil litigations when damages is suffered as well as to the victim of crime in criminal matters as one of punishments provided under section 31 of the Penal Code, [Cap. 16 R.E 2022]. The victim of crime may be compensated by a Criminal Court under section 348(1) of the CPA, where out of the offence committed to him/her, he/she has sufferer either material

loss, or personal injury and that, substantial compensation is recoverable in civil suit. Section 348(1) of the CPA reads:

> *348.-(1) Where an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person,* ***whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation*** *is, in the opinion of the court,* ***recoverable by that person by civil suit****, the court may, in its discretion and* ***in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation, in kind or in money****, as the court deems fair and reasonable.* (Emphasis is supplied).

Circumstances under which compensation is awarded in criminal matters were also elaborated by this Court speaking through Katiti, J, (as he then was) in the case of **Tilusubya Mwishaki and Others** (supra), when referring to section 176 of the Criminal Procedure Code which section is in pari materia with the provision of section 348 of the CPA, where the Court observed:

> *"The precedent for ordering compensation under that section seems to be as follows:*

(a) That the victim of the crime must have suffered either material loss, or personal injury, in consequence of the offence committed and charged, and

(b) That substantial compensation is in the opinion of the court recoverable by the victim of the offence in a civil suit."

From the above exposition of the law and case cited, it is now common law that, compensation is recoverable in criminal matters in as long as the victim suffered material loss or person injury and it is in the opinion of the Court that, the same is recoverable in civil suit. In this matter while Mr. Miraa is submitting that, the same amount of compensation already awarded in the Economic Case cannot be reclaimed in civil suit, Mr. Nkuhi holds a contrary view in that, section 348(1) of the CPA cited by the defendants does not expressly bar filing of civil cases on breach of contract neither is it applicable to civil cases like the one at hand as the same is regulated by the CPC. As alluded to above the issue here is not whether the plaintiff can maintain her suit basing on breach of contract as cause of action, but rather whether she can claim in this suit the same amount of compensation to the tune of Tshs. 569,594,000/ already awarded in criminal case. Glancing at paragraphs 11, 12 and 13 of the plaint **"HATI YA MADAI"** it is conspicuously noted that, the plaintiff pleaded to have been awarded compensation of Tshs.

569,594,000/- to be paid to her by the 2nd and 3rd defendants herein as victim to the offence of Stealing by Agent, through plea bargaining agreement entered between them and Republic in Economic Case No. 3 of 2019, the amount which has never been paid to date. Undisputedly it is the same amount which forms the basis of cause of action being the claimed special damage for breach of contract of cargo transportation and MoU signed between the parties, the cause of action in which Mr. Nkuhi submits is not barred by section 348(1) of the CPA. Now the sub issue here is whether compensation order issued to the plaintiff in criminal proceedings under section 348(1) of the CPA, is executable by filing a civil case claiming the same amount as done by the plaintiff. The answer to the issue in my firm opinion is the **big NO**. Section 349 of the CPA provides for the mode of recovery of compensation awarded in criminal proceedings to be in the like manner obtained for recovery of penalty, no doubt through warrant of levy as any default in compliance with court's order by the party, is punishable with six (6) months imprisonment. The said section 349 of the CPA reads:

> *349.* ***The sums allowed*** *for costs or* ***compensation shall in all cases be specified in the conviction or order, and they shall be recoverable in like manner as any penalty may be recoverable under this Act****; and in* ***default of***

> ***payment*** *of such costs or* ***compensation*** *and in default of distress as hereinafter provided the person in default* ***shall be liable to imprisonment for a term not exceeding six months unless the costs or compensation are sooner paid****.* (Emphasis supplied)

In this case unless the plaintiff has more claims other than compensation of Tshs. 569,594,000/-, which is specific damages for the purposes of determination of pecuniary jurisdiction of this Court, the amount which is already awarded in Economic Case No. 3 of 2019, I hold he cannot maintain civil action on the same subject matter. To allow him therefore to prosecute this suit based on claims already awarded by Criminal Court to the full satisfaction is tantamount to reducing down the status of compensation orders awarded in criminal matter which orders are executable like the ones obtained in civil matter. The issue is therefore answered in negative, as the second preliminary objection is hereby upheld.

Much as the plaintiff claims no any other specific damage apart from the above cited compensation of Tshs. 569,594,000/-, this Court is satisfied that, the suit is not maintainable in law as she ought to have followed the procedure provided for under the Criminal Procedure Act, [Cap. 20 R.E 2022] for recovery of the compensation award instead of preferring this suit.

In the event, I find the suit is incompetent before the Court and the same is hereby struck out.

Given the nature of the matter, I order each party to bear its own costs.

It is so ordered.

Dated at Dar es salaam this 12th day of May, 2023.

E. E. KAKOLAKI

JUDGE

12/05/2023.

The Ruling has been delivered at Dar es Salaam today 12th day of May, 2023 in the presence of Mr. Adrew Miraa, advocate for the 1st, 2nd and 3rd defendants who is also holding brief for Mr. Albert Nkuhi, advocate for the plaintiff and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI
JUDGE
12/05/2023.