

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

CIVIL APPEAL NO. 14 OF 2022

(Arising from Karagwe District Court in Civil Case No. 8 of 2018)

SAMWEL ANGELO..... APPELLANT

VERSUS

FLORA LAUWO.....RESPONDENT

JUDGMENT

Date of Judgment: 24.02.2023

A.Y. Mwenda J,

This appeal is against the ruling of Karagwe District Court in Civil Case No. 8 of 2018. Before the said court, the present appellant sued the respondent for making and broadcasting a documentary with injurious information using STAR TV and CHANNEL TEN. The respondent through her legal representative one Advocate Silas John from GUNDA AND MALIMI ADVOCATES contested the appellant's claims in the written statement of defence. The said response was accompanied with a notice of preliminary points of objection. In the same, the respondent alleged as follows, that;

- (i) That, the court has no jurisdiction to entertain the matter and;
- (ii) The plaintiff has sued a wrong party.

At the hearing of the preliminary objection, the learned counsel for the respondent (the then defendant) was of the view that the court (The District Court of Karagwe) has got no territorial jurisdiction to entertain the matter. While relying on Section 14 and 18 of the Civil Procedure Code [Cap 33 RE 2002], he submitted that the plaintiff ought to have filed the said suit in Ilemela, Mwanza Region where the cause of action arose and not at Kayanga in Karagwe District. On his part, the plaintiff (now the appellant) in opposing the said point of objection was of the view that a preliminary objection must arise out of pleadings. He added that in their pleadings, the defendant's residence was not stated. He said neither in the plaint nor WSD, the defendant's residence was stated thus, to him he was justified to file the said suit in Karagwe District Court. Having considered the submissions from both sides, the Hon. Trial magistrate sustained the preliminary objection in that the court lacked territorial jurisdiction as the cause of action arose in Ilemela Mwanza. Aggrieved by the said ruling the appellant preferred the present appeal. His appeal covers only one ground which reads as follows;

1. That the lower court erred in law to dismiss original Civil Case No. 8/2018 on the reason that it lacked territorial jurisdiction.

When this appeal was called on for hearing, the appellant appeared in person while the respondent was represented by Mr. Frank Kalori John, learned counsel.

In his submission, the appellant averred that the preliminary objection which was entertained by the lower court was not a preliminary point of objection at all. Relying on the decision in the case of KARATA ERNEST AND OTHERS V. ATTORNEY GENERAL, CIVIL REVISION NO. 10 OF 2010 at page 1 and 2, the appellant said that a preliminary objection should not be the one which need/require evidence. He said the lower court's findings that the cause of action arose in Ilemela in Mwanza and not Karagwe required evidence to prove. The appellant went further to submit that in the pleadings there was no direct or clear answer that the cause of action arose in Mwanza. He said even in his submission, the learned counsel for the Defendant while making reference to Section 18 (1) (c) of Civil Procedure Code, said that his client resides in Ilemela Mwanza. According to the appellant, that argument meant digging deeper on evidence that the respondent's residence was Ilemela in Mwanza, the evidence which the Hon. Lower court's Magistrate relied on in concluding up the matter.

The appellant submitted further to the effect that what he complained about in his plaint was a documentary which was prepared by the respondent and broadcasted in STAR TV and CHANNEL TEN. He said that the said documentary was not a live coverage but was prepared and posted to broadcasted in the said Media Houses. According to him, since the documentary complained against is unclear as to where

it was prepared, it is thus difficult to know where the cause of action arose. The appellant then concluded by praying the present appeal to be allowed.

Responding to the submission by the appellant, Mr. Frank Kalori John submitted that it is the principle of law that the cause of action must arise from the plaint and its annexures. The learned counsel added in that in defamation cases, one has to look where defamatory contents originates. He said further that in paragraph 3 of the plaintiff's plaint, the appellant (the then plaintiff) said that on 20th September, 2015 the defendant made a documentary with injurious information against the plaintiff and it was broadcasted on STAR TV, a local television situated in Mwanza. According to Mr. Frank, the said paragraph (ie para. 3 of the plaint) shows where the documentary was broadcasted and to him it did not require any evidence. The learned counsel concluded his reply by submitting that by virtue of Section 18 of Civil Procedure Code [Cap 33 RE 2019], the suit in question ought to be filed in any court in Mwanza Region.

In rejoinder, the appellant said that STAR TV is a mere Medium of Communication of defamatory contents/documentary. According to him, no one can be certain as from where did the said documentary received by STAR TV. The appellant added that there is an assumption from the respondent's side that the documentary was made/prepared in Mwanza. He thus reiterated to his previous prayer that this appeal be allowed.

Having summarized the rival submissions from both parties, the issue for determination is whether or not the point raised in the notice of preliminary objection qualify to be a point of preliminary objection or not.

In a bid to find an answer to the above mentioned issue, it is important to note that the legal principles regarding what qualifies to be a point of preliminary objection or not have been stated in a number decisions within and outside our jurisdiction. In the case of MUKISA BISCUIT MANUFACTURING CO. LTD V. WEST END DISTRIBUTORS LTD [1969] EA. 696 (CAN), the court while describing the nature of a preliminary objection had this to say that;

"The first matter relates to the increasing practice of raising points, which should be argued in a normal manner, quite improperly by way of preliminary objection. A preliminary is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the 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 improper raising of points by way of preliminary objection does nothing but unnecessarily

increase costs and on occasion, confuse the issues. This practice should stop”.

In a bid to explain the meaning of the word a *preliminary objection is like a demurrer*, the court of appeal in MOUNT MERU FLOWERS TANZANIA LIMITED V. BOX BOARD TANZANIA, CIVIL APPEAL NO. 260 OF 2018 having quoted the principle regarding preliminary objection in MUKISA BISCUITS (supra) (unreported) held as follows, that;

“From the above statement, a preliminary objection is like a demurrer. The latter word comes from the word demur”.

Which is defined in Black’s law dictionary, 8th Edn at page 465, as;

“3. To object to the legal sufficiency of a claim alleged in a pleading while admitting the truth of the facts stated”.
[Emphasis ours).

And “demurrer” which in some jurisdiction is termed as a motion to dismiss” has been defined in Black’s Law Dictionary as;

“A pleading stating that although the fact alleged in a complaint may be true, they are insufficient for the

plaintiff to state a claim for relief and for the defendant to frame an answer."

Further to that, the court in MOUNT MERU FLOWERS TANZANIA LIMITED V. BOX BOARD TANZANIA (supra) while citing the case of KARATA ERNEST AND OTHERS V. ATTORNEY GENERAL, CIVIL REVISION NO. 10 OF 2010 described some instances where preliminary objection can be raised that;

*"At the outset we showed that **it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only consist of a point of law which has been pleaded, or which arise by clear implication out of the pleadings**" 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 or wrong citation of the enabling provisions of law, where an appeal has been lodged where there is no right of appeal, where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required,*

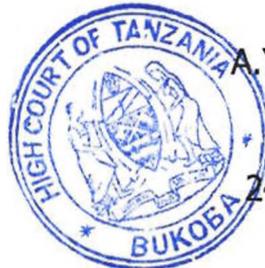
where the appeal is supported by a patently incurably defective copy of the decree appealed from etc.”

In the present matter, the respondent raised before the trial court that the court had no territorial jurisdiction because the cause of action arose in Ilemela Mwanza and not at Karagwe. I have considered this point of preliminary objection to satisfy myself as to whether it meets the requirements stipulated in the authorities stated herein above only to find that it does not. This is so because, in the pleadings, the then plaintiff, now the appellant complained against the respondent for preparation (making) the documentary with injurious defamatory information which was broadcasted on STAR TV, local television situated in Mwanza – Tanzania. His complain hinged on the preparation of the said documentary and as it was rightly submitted by the appellant, it is difficult, on the face of pleadings to know exactly where it was prepared. The learned counsel for the respondent, during his submission was also of the view that the lower court was justified to peg its ruling under section 18 (b) Civil Procedure Code [Cap 33 RE 2019], in that the suit such as the present ought to be filed where the cause of action raises from. By looking at the circumstances surrounding this case where the plaintiff (now the appellant) complained about making the documentary, the answer as to where the cause of action raised from requires evidence. What was raised by the

defendant as a point of preliminary objection is one word against the others, and it needs ascertainment of the facts to decide the said point.

From the foregoing this appeal is allowed and the points of preliminary objection is dismissed with costs. This case is remitted to the lower court (Karagwe District Court) to proceed with the hearing from where it stopped.

It is ordered.

 A.Y. Mwenda
Judge
24.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Samwel Angelo the Appellant and in the presence of Mr. Frank John Kalori learned counsel for the Respondent.

 A.Y. Mwenda
Judge
24.02.2023