

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

CIVIL CASE No. 20 OF 2022

MGORE MIRAJI KIGERA PETITIONER

Versus

CHUKI MUSSA RESPONDENT

RULING

27.08.2023 & 29.09.2023

Mtulya, J.:

Section 13 of the **Civil Procedure Code** (the Code) provides, in brief, that:

Every suit shall be instituted in the court of the lowest grade competent to try it...provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.

A **Civil Case No. 20 of 2022** (the case) between **Mgore Miraji Kigera** (the petitioner) and **Chuki Mussa** (the respondent) was registered in this court to resolve a contest of defamation. In the fifth paragraph of the petition, the petitioner prayed for judgment of this court on the words uttered by the respondent to be pronounced defamatory and order the respondent to compensate the petitioner. The petitioner also prayed for general damages of Tanzanian Shillings Five Hundred Million and costs.

In the fourth paragraph of the petition, the petitioner indicated the mandate of this court in the following words:

...the cause of action is centered on defamatory words which the respondent wrote, sent, posted and uttered vide mobile network against the petitioner. The same words being in written form which its redress is triable before the court. However, the mobile network used by the respondent operates widely in the whole of the United Republic of Tanzania, hence the court has jurisdiction to determine and adjudicate this case on merit.

The petitioner has also drafted her 3 (x) (b) paragraph of the petition to display the following words:

...the petitioner has suffered damages following the effects of those words uttered by the respondent...general damages to the tune of Tshs. 500,000,000/=, the same will be determined on balance of probabilities after the petitioner's evidence being assessed by the court

On 31st January 2023, the responded had replied the complaint in the case. However, he attached two (2) points of law protesting

the jurisdiction of this court. The points of resistance, in brief, show that: first, the suit is incompetent as it contravenes the provisions of section 13 of the Code; and second, the suit is incompetent for indicating specific amount in a claim for general damages as seen in paragraph 3 (x) (b) of the petition.

On 13th June 2023, the case was scheduled for necessary orders. However, the respondent had prayed to argue the points by way of written submission, and the prayer was granted with its associated scheduling orders. The parties had complied with the orders and registered all relevant materials for and against the points.

According to the respondent, the petitioner is claiming general damages of Tshs. 500,000,000/=, without citation of specific damages to give this court mandate to resolve the complaint. In substantiating his submission, the respondent cited sections 7 & 13 of the Code, article 108 (1) & (2) of the **United Republic of Tanzania [Cap. 2 R.E. 2019]** (the Constitution), and the precedent of the Court of Appeal (the Court) in **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others**, Civil Appeal No. 126/01 of 2016.

Replying the submission, the petitioner stated that the raised two points of law are baseless and without any substance as section

13 of the Code has a proviso to accommodate the indicated paragraph 3 (x) (b) of the petition. In the opinion of the petitioner, the fact that the law in section 13 of the Code directs suits to be instituted at the court of lowest grade, it does not mean that the general powers of this court is ousted. According to her, suits related to tortious liability of claims of compensations may be instituted with suggestive general damages and not necessary to quantify the figures or pleaded specifically. In support of the move, the petitioner cited the law in section 2 (1) & (3) of the **Judicature and Application of Laws Act [Cap. 358 R.E. 2019]** (the Judicature Act) and precedents in **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others**, Civil Case No. 62 of 2016 and **Peter Joseph Kilibika & Another v. Patrick Aloyce Mlingi**, Civil Appeal No. 37 of 2009.

I have consulted the cited article of the Constitution, sections in the Code and precedents. The indicated article 108 (1) & (2) of the Constitution, section 7 of the Code, and section 2 (1) & (3) of the Judicature Act provide for the general jurisdiction of this court in consideration of other laws. In that case, the mandate of this court depends on specific issue brought to it. In cases of civil nature related to claims compensation allegedly caused by defamatory statements, the law in section 13 of the Code is applicable (see:

Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others (supra). Section 13 of the Code provides that: *every suit shall be instituted in the court of the lowest grade competent to try it.*

However, the provision accommodates general jurisdiction of this court to resolve any matter brought before it. In the present petition, the petitioner has relied on the proviso to the section which provides that: *the provisions of this section shall not be construed to oust the general jurisdiction of the High Court* to bring this suit in this court, whereas the respondent has relied on the initial words of the enactment in the section, that: *every suit shall be instituted in the court of the lowest grade competent to try it* to protest the case at the preliminary stages of the case.

This court was invited in the case of **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra) and resolved at page 5 of the Ruling that: *for the defamation case, the petitioner does not need to plead specific damages*, whereas the Court of Appeal in the precedent of **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others** (supra), at page 21 of the judgment, stated that: *in determining the jurisdiction of the High Court, what should*

be considered is specific claims and not general damages claimed in considering the pecuniary jurisdiction.

In the precedent of **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra), the reasoning is displayed at page 5 of the decision that: *the parameters of defamation cannot be specifically pleaded as they are unquantifiable. It is a position of law that the High Court's jurisdiction is unlimited.* On the other hand, the Court in the decision of **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others** (supra), at page 21 of the decision, thought that: *the absence of such specification meant the suit should have been tried in the lower courts, that is District or Resident Magistrates' Court under section 40 (2) (b) of the Magistrates' Courts Act [Cap. 11 R.E. 2019].*

The decision of this court in **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra) was determined on 3rd March 2023 prior to the precedent in **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others** (supra), which was resolved on 22nd October 2020. However, the decision of **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra) had declined to invite and consider the decision in **Mwananchi**

Communications Limited & Two Others v. Joshua K. Kajula & Two Others (supra), and no reasons of departure were registered to decline the precedent of the Court, although it was cited by the respondent's counsel in support of his protest in the precedent.

I have had an opportunity to glance other five (5) decisions of this court and the Court, apart from **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra) and **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others** (supra), namely: **Ivanna Felix Teri v. MIC Tanzania Public Limited**, Civil Case No. 5 of 2019 resolved on 21st November 2019; **Jonathani Omary Kivugo v. Pro Share Capital Limited**, Civil Case No. 10 of 2022 resolved on 30th November 2022; **Shose Sinare v. Stanbic Bank Tanzania Limited & Another**, Civil Case No. 34 of 2016 resolved on 8th December 2022; **Khamis Muhidin Musa v. Mohammed Thani Mattar**, Civil Appeal No. 237 of 2020 resolved on 3rd December 2021; and **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail**, Civil Appeal No. 183 of 2020 resolved on 23rd August 2023. The initial three (3) rulings were decided by this court and the last two (2) judgments were resolved by the Court.

The indicated three (3) decisions of this court show different opinions whereas the two precedents of the Court have the same

and settled thinking. This court in the first cited case of **Ivanna Felix Teri v. MIC Tanzania Public Limited** (supra), it was sought that: *there is now a clear provision that serves the general jurisdiction of this court to entertain matters that are filed in it if the court is pleased to entertain them, even though the jurisdiction to entertain the case may lie in the subordinate court.*

The other two (2) decisions of the court in **Jonathani Omary Kivugo v. Pro Share Capital Limited** (supra) and **Shose Sinare v. Stanbic Bank Tanzania Limited & Another** (supra) had resolved that: *the law is clear that it is the substantive claim and not general damages which determines the pecuniary jurisdiction of the court* as directed by the Court in **Tanzania Breweries Limited v Anthony Nyingi**, Civil Appeal No. 110 of 2014 and **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others** (supra).

Reading the judgment in the precedent of **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail** (supra), the Court believed that: *after the amendment of section 13 of the Code by Act No. 4 of 2016 to add the proviso, the objection regarding jurisdiction is redundancy.* In the opinion of the Court, as displayed at page 11 of the judgment, is that:

*...in the instant case, **we are more concerned to be justice of the case** and it is our considered view that **the error** of instituting it in the High Court instead of District Court, **did not occasion a miscarriage of injustice as it did not prejudice any of the parties**...we shall not uphold the first ground of appeal. In our view, doing otherwise will serve no purpose other than historical. It will reduce the decision to a mockery as it was cautioned by the High Court in the case of **Vidyadhar Girdharal Chavda v. The Director of Immigration & Others [1995] TLR 125** (Emphasis supplied).*

However, the Court in the decision had noted two (2) important issues, namely: the suit was properly filed in the High Court as the claim of specific damages of Tanzanian Shillings Two Hundred Million in 2014 could not be filed in the District Court; and second, the precedent in **John Sangawe v. Rau River Village Council [1992] TLR 90**, requires involvement of the community at the grassroots level, that the matters are better dealt with first by courts which are closer to the people than the High Court.

On the other hand, the decision in **Khamis Muhidin Musa v. Mohammed Thani Mattar** (supra), the Court thinks, at page 11 of the judgment, that:

*The position of this Court has quite a long time been that general damages cannot and do not form the basis of determining the court's pecuniary jurisdiction. Substantive, specific or liquidated damages do. Some of the cases in which this position has consistently been maintained include **Tanzania-China Friendship Textiles Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70, **John Mome Morro v. Gratian Mbelwa & Three Others**, Civil Case No. 80 of 2021, and **Mwananchi Communications Limited & Two Others v. Joshua K. Kajula & Two Others**, Civil Appeal No. 126/01 of 2016.*

However, finally the Court had resolved against the objection for two (2) reasons, namely: first, prayers number four and five in the plaint referred to general damages upon which the High Court would not have taken as a benchmark to determine its pecuniary jurisdiction; and second, prayers number one and two had addressed the question of declarations and general damages and

was not a suit for recovery of any liquidated damages for purposes of determination of pecuniary jurisdiction.

Perusing the two (2) indicated precedents of the Court in **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail** (supra) and **Khamis Muhidin Musa v. Mohammed Thani Mattar** (supra) and this court in **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra), were all searching for justice and fairness to the parties, hence the courts had no option than to resolve the contests against the registered points of objections.

The decision in **Irene Wambura Maganga & Another v. Chapakazi Newspaper & Two Others** (supra) had its peculiar circumstances, as reflected at page 5 of the decisions, that: *first, the matter has been in court from 2016 to 2023; second, both plaintiffs had already registered necessary materials in favor of the case, and both parties enjoyed legal representation.* This court finally thought at the bottom of page 5 of the Ruling that: *for the interest of justice, it will be prudent that the matter be heard on merit.* In the present case, I see no any special circumstances of similar species. The case was filed in December last year, no any evidence was already produced, and the respondent does not enjoy legal representation.

In my considered view, I think, for the interest of justice and fairness, the parties to have their dispute be resolved at lower courts as rightly stated in the precedent of **John Sangawe v. Rau River Village Council** (supra), where full court of the Court of Appeal resolved on the need to involve the community at the grassroots level. The Court thought that matters be better dealt with first by courts which are closer to the people than the High Court.

In my view, the enactment of the proviso in section 13 of the Code was not intended to capture every species of disputes. It has left discretion of this court with reasons. I indicated the reasons of refusing the present plaint and hereby strike it out for want of lower court of competent jurisdiction to try the contest.

In my considered opinion, learned minds and parties who bring disputes in this court via section 13 of the Code, must first access the interpretation of this court in section 13 of the Code produced in the Ruling of this court resolved in the precedent of **Ivanna Felix Teri v. MIC Tanzania Public Limited** (supra). The Ruling has considered insertion of the proviso in section 13 of the Code in 2019 via section 9 of the **Misc. Amendment Act No. 4 of 2016** and had put in place a very important clause that: this court

may wish entertain any matter via its general jurisdiction, if it so wishes to resolve it.

In a very brief note to learned minds, parties and legal stakeholders, this court's general jurisdiction to resolve issues lodged before it, is not affected by the pecuniary jurisdiction of the subject matter. It is upon its decision, when it so wish to take up the matter or return the plaint/ petition to the plaintiff/ petitioner.

However, that should not be taken as a pigeon hole to turn this court into a court of original jurisdiction on every kind of disputes. This court is not a garbage container for disputants to throw in it any kind of disputes, as they so wish. This court is reserved for serious contests for record and precedents. That is why reading the indicated large bundle of decisions emanating from this court, the trend is in favor of the general claims to be filed in the lower courts (see: **Jonathani Omary Kivugo v. Pro Share Capital Limited** (supra); **Shose Sinare v. Stanbic Bank Tanzania Limited & Another** (supra); and **John Sangawe v. Rau River Village Council** (supra).

This encourages plaintiffs of general claims to be filed in lower courts to involve a large portion of Tanzanian communities at the grassroots machineries of settling disputes. I will always support the move favored by this court in the circumstances like the

present one. That is the public policy towards enactment of the civil procedure laws. The policy is in favor of disputes to be heard at lower levels of decisions making. Courts are established for all communities in Tanzania and must be easily accessible to all classes in our communities (see: **Leonidas Karani Kitambi v. Gregory Mushaijaki**, Misc. Land Application No. 38 of 2021). The move helps a large number of poor communities in this nation to access our courts with diminutive distance and less costs in search of justice (see: **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited**, Land Case No. 27 of 2022).

I am aware of the indicated Court's decisions in **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail** (supra) and **Khamis Muhidin Musa v. Mohammed Thani Mattar** (supra) on the subject. However, the decisions have their own peculiar circumstances, and were in search of justice and fairness. In the precedent of **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail** (supra), the Court had found that the suit was properly filed in the High Court as the claim of specific damages of Tanzanian Shillings Two Hundred Million in 2014 could not have been filed in the District Court.

The Court also had noted that the precedent in **John Sangawe v. Rau River Village Council** (supra) directed the

involvement of communities at the grassroots level. The Court requires that matters are initially dealt with lower courts which are closer to the people than this High Court. Similarly, in the precedent of **Khamis Muhidin Musa v. Mohammed Thani Mattar** (supra), the Court had noted two (2) issues, which were very peculiar to the case that it was the general damages claimed by the plaintiff were not taken as a benchmark to determine the pecuniary jurisdiction of the High Court, but declaration orders.


In any case, the tragic incident that led to the death of a school girl in the precedent of **Benitho Thadei Chengula v. Abdalahi Mohamedi Ismail** (supra) and the injection into a joint venture agreement of hotel construction amounting to Tanzanian Shillings Eighty-Five Million Shillings in 2012 resolved in the case of **Khamis Muhidin Musa v. Mohammed Thani Mattar** (supra), may shock the conscience of humanity. I believe the precedents have resolved the issues in accordance to the circumstances of each peculiar case. This court shall follow the course without any reservations. It will decide matters brought before it in accordance to the peculiar circumstances to the cherish the practice of the Court.

Having said so, as I indicated in this Ruling that this petition cannot escape lower court's jurisdiction, if the petitioner so wish. In

the end, I dismiss the petition without costs. The reason is obvious that the matter was not determined to the finality to identify the wrongdoer between the parties. In any case, the contest may be in the course at its appropriate court.

Ordered accordingly.

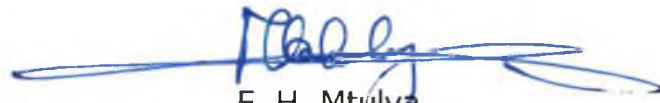



F. H. Mtulya

Judge

29.09.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of the petitioner's learned counsel, **Mr. Godchile Chirare** and in the presence of the respondent, **Mr. Chuki Mussa**.


F. H. Mtulya

Judge

29.09.2023