

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB - REGISTRY OF MWANZA
AT MWANZA
CIVIL CASE NO. 30 OF 2022**

PATEL TRADING CO. (1961) LIMITED-----PLAINTIFF

Versus

KASULU DISTRICT COUNCIL-----1ST DEFENDANT

ATTORNEY GENERAL-----2ND DEFENDANT

RULING

Sept. 21st & 29th, 2023

Morris, J

This suit, by Patel Trading Co. (1961) Limited against the defendants, does not seem to commence with a smooth take off. The defendants have raised a preliminary objection (PO) on three points that: the suit is time barred; it was prematurely filed without serving them the 90 days' notice; and the court lacks territorial jurisdiction. At the hearing, the first two points were abandoned. Consequently, parties argued for and against the court lacking the geographical mandate over the suit.

Briefly, the plaintiff is claiming against the defendants for breach of contract between them. It is alleged that the 1st defendant has failed to meet his part of the bargain. That is, he has refused to pay for services



rendered to him by the plaintiff who repaired his (1st defendant's) motor vehicles. The claimed amount is stated as being Tshs. 485,044,654.72/-.

When the matter came for hearing, the plaintiff was represented by advocate Renatus Lubango Shiduki. However, Mr. Emmanuel Ladislaus, learned State Attorney represented both defendants. It was the submissions of Mr. Ladislaus that, this case has been filled in the wrong registry of the High Court. Hence, this court lacks territorial jurisdiction. He argued further that, 1st defendant is found at Kigoma; and the contract was concluded there.

Hence, because there is the High Court registry at Kigoma, to the defendants, this suit is improperly maintained at the current registry. He also contended that the purpose of establishing High Court registries across the country is to, among other advantages, save time; manage financial resources well; and to mitigate general damages of litigants.

In reply, Mr. Lubango was of the view that, this registry has the geographical mandate to entertain this matter. He argued that under paragraphs 6 - 8 of the plaint; it is averred that the subject vehicles were repaired at the plaintiff's garage in Mwanza. He as well argued that repairs were done at the instructions of the 1st defendant. To the plaintiff, the

transactions between parties herein, took place at two locations at the same time. Further, he submitted that the defendants have not shown how the contracts or other transactions were exclusively in the mandate of Kigoma High Court Registry. Thus, according to him, sorting contents of the matter at this stage is illegitimate. The PO should be a pure point of law. go to the evidence stage.

In addition, he argued that according to section 18(c) of ***the Civil Procedure Code***, Cap 33 R.E 2019 (elsewhere, ***the Act***); when the cause of action wholly or partly arises in two or more distinct territorial locations; the suit may be filed in either of such jurisdictions. According to Mr. Lubango, the vehicles were repaired at Mwanza under the 1st defendant's instructions. Thus, the Court in either of its registries (Mwanza or Kigoma) retains jurisdiction over this matter.

In alternative, the plaintiff beseeched the Court; if it finds merit in the PO, he prayed for the remedy under Order VII Rule 10(1) and (2) of ***the Act***. That is, this court should return the plaint for the same to be filed in the appropriate registry. Further, reference was made to cases of ***Qamara Kwaslema Gwareh v Anwary Hassan and others***, Civil



Appeal No. 92/2015, (pages 9-10); and ***Mushuti Food Supply Ltd v CRDB and Others***, Civil Appeal No. 79/2023 (both unreported).

In rejoinder, it was submitted that section 18 of ***the Act*** is not applicable hereof because, in this matter, the defendant is able to defend the cause appropriately. To the defendants, the cited case of ***Qamara*** (*supra*) was in regard of pecuniary jurisdiction not the territorial mandate. Hence, it is distinguishable. As for the ***Mushuti's case*** (*supra*), he argued that the transfer therein was done upon application of party or the court on *suo motu* basis. Consequently, he prayed that the PO should be sustained with costs.

I have dispassionately considered the submissions of parties herein. I also have read the plaint and its annextures. The questions to be determine hereof are *whether or not the present suit has been filed in the Court without territorial jurisdiction; and the remedy thereof*. It was submitted by the plaintiff that under paragraph 7 of the plaint, the vehicles were brought at plaintiff's garage in Mwanza for repairs. But it is undisputed that LPOs were raised by the 1st defendant at and neglected to pay from Kasulu-Kigoma (not Mwanza). Therefore, the cause of action cannot be said to arise at Mwanza. In other hand it is not in dispute that



the 1st defendant is a local Government duly established under the ***Local Government (District Authorities) Act***, Cap 287 R.E. 2019.

It is the law that suit can be filed where the cause of action arose or where the defendant resides or has place of business. Section 18 of ***the Act*** reads;

"18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-
(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;
(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
(c) the cause of action, wholly or part (sic), arises."

The plaintiff alleges that both Kigoma and Mwanza registries have requisite jurisdiction. It must be noted that, it is not enough simply to allege in the plaint that the court has jurisdiction. The pleadings should,

instead be read as a whole to determine the court's jurisdiction. See the case of ***St. Bernards Hospital Company Ltd v Dr. Linus Mlula Maemba Chuwa*** Comm. Case No. 57 of 2004 (unreported).

Further, one of the tricky parts hereof is that there are two defendants in this suit. The second one, is not based in Kasulu-Kigoma. He is across the country. However, paragraphs 3 and 14 of the plaint are categorical that the subject defendant (Attorney General) has been joined out of compulsive statutory necessity. That is why, the whole plaint does not disclose any specific wrong committed by the said 2nd defendant. Under section 6 of ***the Government Proceedings Act***, Cap 5 R.E. 2019; the Attorney General must be joined as a necessary party in all proceedings involving both the central and local governments. In that connection, *sensu stricto*, the 2nd defendant is not the envisaged co-party under section 18 of ***the Act***.

Therefore, this case ought to have been filed at Kigoma Registry where the 1st defendant; him being the alleged major perpetrator of the wrong herein, is established and does his business thereat. The rationale hereof is, as partly submitted by the defence attorney, to lessen costs of litigation; to deter the plaintiff from forum shopping at the defendant's

inconvenience; to ease procurement and attendance of witnesses in court; and to save time that may otherwise be wasted while parties are litigating far away from limits of the local competent court. See, for instance, the case of ***Ndoro Kili Meru Mountain Lodge Campsite v Twiga Bancorp limited and Thomas Barnaba Mmbando***, Land Case No. 138 of 2017 (unreported).

For the stated reasons, I find the PO is merited. The other important question to address here is the tenability of the prayer by the plaintiff's counsel. To recap, he invited the Court to invoke Order VII Rule 10 (1) and (2) of ***the Act*** and transfer (sic) the suit to the registry with jurisdiction. The said provision reads;

*"10-(1) The plaint shall, at any stage of the suit, **be returned** to be presented to the court in which the suit should have been instituted.*

(2) On returning a plaint the judge or magistrate, shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it (emphasis added).

This provision has no any bearing to the envisaged transfer of the case to the proper registry. In my view, the appropriate provision is rule

7 (4) of ***the High Court Registries Rules***, GN No. 164 of 1971 (***the Rules***) which provides;

*"The court may at any time **on application** or of its **own motion** transfer any proceedings from one registry to another and any proceedings so transferred, and all documents shall be filed accordingly"*(Emphasis added).

From the provision above, therefore, transfer is made by the court upon application or on its own motion. See also, ***Mushuti Food supply Ltd*** (*supra*); ***Abdallah Ally Selemani t/a Ottawa Enterprises (1987) v Tabata Petrol Station Co. Ltd and Another***, Civil Appeal No. 89 Of 2017 (unreported). In the latter case, the Order of this Court to strike out the case after sustaining the PO for want of territorial jurisdiction (as is the situation herein); was uphold by the Court of Appeal. In the case at hand, the plaintiff did not make an application to transfer the record to the registry of this Court at Kigoma. Instead, he prayed for transfer of the proceedings thereto in the course of his submissions. This alternate-prayer, in my humble view, was both an afterthought and it would tend to pre-empt the PO raised by the defendants. On such basis, I am obliged to decline the plaintiff's invitation in this regard.



In upshot, the PO is found to have the satisfactory merit. Consequently, I hold that this Court lacks the requisite territorial jurisdiction. The suit is hereby struck out for want of geographical mandate. Each party to shoulder own costs. It is so ordered. Right of appeal is also explained to parties.



C.K.K. Morris
Judge
September 29th, 2023

Ruling delivered this 29th day of September 2023 in the presence of Mr. Felician Daniel, learned State Attorney for the Defendants. He is holding the brief of Ms. Rosemary Makori, learned Advocate for the Plaintiff.

C.K.K. Morris
Judge
September 29th, 2023