

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 67 OF 2023

(Appeal from the Judgment and Decree of the Court of Resident Magistrate of Dar es Salaam at Kisutu in Civil Case No.147 of 2022 dated 20/03/2023 as per Hon.R.M.Rugemalira PRM)

AMANI SAFARI ADVENTURE LIMITED.....APPELLANT
VERSUS
PETROFUEL (T) LIMITED.....RESPONDENT

JUDGMENT

Date of last Order: 26/10/2023

Date of Judgment: 16/11/ 2023

GONZI,J.;

In the Court of Resident Magistrate of Dar es Salaam at Kisutu, the Respondent herein sued the Appellant vide Civil Case No.147/2022. The nature of the claim of the Respondent in the trial court can be seen at paragraphs 3, 4 and 5 of the Plaintiff, that is to say:

“3. The Plaintiff claims against the Defendant for the immediate payment of TZS 50,294,027.00/= being the Principal debt for the value of supplied fuel on cash bases to the Defendant, payment of the accrued interest at a

compound rate of 3% per month from April 2017 to 31st May 2022, payment of compound interest at the rate of 4% per month from the date of filing the suit to the date of full payment or earlier settlement, damages to the tune of TZS.200,000,000/= and costs of the suit.

4. That between May and June 2017 the Plaintiff supplied a volume of fuel to the Defendant for its commercial use and payment was cash upon delivery and issuance of invoice. It is stated that the Plaintiff supplied fuel and raised invoices for payment, the Defendant was settling the said invoices save for the following invoices hereunder which have remained unpaid since 2017 to date and have accrued interest.....”

From that point, the Plaintiff prepared and inserted a table with 8 columns. The first column contains the Invoice date, the second column contains invoice number, the third column shows pending amount, the fourth column shows the due date, the fifth column shows the date when the calculation was being made, the sixth column shows the number of overdue days, the seventh column shows the compound interest rate of

3%, the eighth column shows the total amount due with interest. In that table the Plaintiff itemized 23 invoices dating from 20th April 2017 to 29th June 2017. At the bottom of the table he summed up the total principal pending amount as Tshs.50,294,027.00/=; the total amount accrued from the compound interest of 3% being claimed as Tshs.243,176,626.13/= and the combined total of the amount claimed from the principal sum and compound interest thereon being Tshs.**293,470,653.13**.

Paragraph 5 of the Plaint is also worth taking a glance at:

"5. That the Plaintiff and defendant agreed that for every late payment on the agreed due dates, there would attract an interest of 3% per month and to that effect every invoice indicates the same agreement. It is stated that for every invoice issued viz a viz supplied fuel, and not paid on due date, it has accrued interest to the tune of TZS.243,176,626.13/= as shown and analyzed under paragraph 4 above. Further stated that as the defendant has not paid the value of the invoice on time, the accrual of interest is justifiable and payable".

It was on the basis of that claim that the Court of Resident Magistrate of Dar es Salaam at Kisutu heard the parties wherein the Appellant denied all the claims entirely. He denied to have ever entered into the alleged contract with the Respondent.

The Trial court framed two issues for determination as follows:

1. Whether the defendant was indebted to the Plaintiff.
2. To what reliefs each parties are entitled.

The court heard both sides and finally delivered its Judgment and Decree on 20th March 2023 in favour of the Respondent. The trial Court observed that:

"However, since the Principal amount of Tshs. 50, 294,027.00 have been proved and hereby granted and since the claim is based on commercial transactions which attract interest, this court find just for the plaintiff to be awarded the interest on commercial rate of 14% per annum from the date when the debt became due to the date of Judgment. The same position was given by the Court of Appeal of Tanzania at Dar es Salaam in the case

of Yara Tanzania Limited versus Ikuwo General Enterprises Limited, Civil Appeal No.309 of 2019 (unreported). The defendant shall also pay the costs of the suit.

It is from the above decision that the Appellant is aggrieved and has appealed to this court with the following grounds of appeal:

1. Despite of non-existence of evidential proof that commercial contract was formed, between the appellant and the respondent herein for the purposes of claiming the sum of Tshs.50,294,027.00 but the Honourable Trial Court erred both in law and facts to hold the same was proved on the required standard, hence, awarded the claimed amount.
2. That the Honourable trial Court erred in law and facts to hold that the goods, tax invoices and delivery notes were delivered and received by the appellant while in fact there is no evidential proof placed before the court to hold the same?
3. That the honourable trial court erred in law and facts in holding that the Respondent managed to prove specific damages, while in fact

there is no evidential material placed before the court to substantiate the said sum of Tshs.50,294,027.00.

4. That the Honourable trial Court erred in law by failing to give reasons as to why the law and decisions supplied were not applicable in the dispute under consideration.

The appellant therefore prayed for this Court to quash and set aside the Judgment and Decree of the trial Court with costs.

On 26th October 2023, the appeal was heard orally before me whereby Mr. Jonathan Mbuga, learned advocate appeared for the Appellant and Mr. Stephen Mosha learned Advocate appeared for the Respondent. Mr. Mbuga dropped the 4th ground of appeal and therefore the hearing proceeded with respect to the remaining 3 grounds of appeal. After hearing both sides, the court fixed the date of Judgment on 13th November 2023. However, in the course of preparing the Judgment, I became curious as to whether the trial Court was seized with the requisite pecuniary jurisdiction to try the matter. This being a new issue which did not form part of the grounds of appeal and for which I had not heard the learned Advocates in respect thereof, I postponed the writing and delivery of Judgment and summoned the Advocates for the

parties to address me on whether or not the trial court had pecuniary jurisdiction. This is a crucial requirement that guarantees the parties the right to be heard. I was mindful of the principle established by the Court of Appeal of Tanzania, and which is now a settled position of the law in Tanzania, that when the court raises a new issue in the course of preparing its decision, it must firstly hear the parties thereon before making its decision. This principle was stressed, for example, in the case of **Shule ya sekondari Mwilamvya versus Kaemba Katumbu**, Civil Appeal No.323/2021 by the Court of Appeal of Tanzania which decided that:

"as indicated earlier, in this appeal, the CMA in the course of composing the Ruling discussed the issue of time limitation and ruled that the application before it was time-barred thus ought to be stricken out. Obviously, this is a clear breach of the parties' basic rights because they were not afforded a right to be heard on the question of time bar."

It was in that regard that I heard both counsel on 13th November 2023 at 13:00 hours. They both addressed me on the issue of pecuniary jurisdiction of the trial Court to handle the case which was before it.

Mr. Mosha submitted that the Tshs.243,176,626.13 pleaded in the plaint was not a substantive claim. The same was in the form of general damages and hence did not constitute the main claim. He submitted that even the trial court did not grant the claim of interest in the same rate as it was claimed. Rather, in its discretion, it granted only 14% thereof. Mr. Mosha submitted that as it was grantable at the discretion of the court, the claim for compound interest was not specific damages rather general damages and which does not determine jurisdiction of the court. He submitted that the amount that had accrued from interest was an outcome of delayed payment. He added that by treating the accrued interest as damages, and subject to determination by the court, the same could not be included in determination of pecuniary jurisdiction of the trial court.

Mr. Mbuga submitted that the trial court had no pecuniary jurisdiction because the compound interest of 3% per month was pleaded in the pleadings and hence constituted the main claim. Also he said that specific damages have a quality of being certain and quantified so the amount of Tshs.243,176,626.13 accruing from compound interest should be treated as independent claim and as such it denied the court

its jurisdiction. He argued that the case in the lower court was a commercial case as it concerned recovery of debts. As a commercial case, the jurisdiction of the trial court was even lower than in respect of ordinary civil suits.

After hearing the arguments by both counsel on the issue of pecuniary jurisdiction of the trial Court, I have decided to start with the same issue in the determination of the present appeal. It is trite that jurisdiction goes to the root of the judicial function and where a court or tribunal entertains a matter over which it has no jurisdiction, the resulting decision becomes a nullity. So, this question should always be determined first.

I raised the issue of jurisdiction of the trial court from two perspectives. The first was that the combined total of the amount claimed from the principal sum and compound interest thereon was Tshs.293,470,653.13. The whole of this sum was pleaded as the substantive claim that had accrued, and was pending as unpaid, at the time of instituting the case in the trial court. But the pecuniary jurisdiction of the Court of Resident Magistrate according to the Section 41 of the Magistrates Court Act was

similar to that of the District Court in exercise of its original jurisdiction. Its pecuniary jurisdiction, for movable properties like in the case at hand, was not more than Tshs.200 million for ordinary civil cases and not exceeding Tshs.70 million in respect of commercial disputes. This is as per section 40 of the MCA. Section 40(2)(a) of the Magistrates Courts Act, Cap 11 of the Laws of Tanzania. I reproduce the law:

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings; and

(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred million shillings.

I took notice that the combined total of the amount claimed from the principal sum and the sum derived from the accrued compound interest thereon was Tshs.293,470,653.13. All this amount was specifically pleaded as substantive claim before the trial court and evidence was tendered thereon. The Respondent relied on contractual terms in his contract with the appellant as providing the right to the compound

interest at 3% per month for any delayed payment after an invoice is raised. Did the Court of Resident Magistrate have jurisdiction to entertain a civil suit wherein the claim was Tshs. 293,470,653.13? I doubted. Hence my decision to call the parties' lawyers to address me.

The second perspective of my raising the issue of pecuniary jurisdiction was that the nature of the claim was commercial transaction. Both parties were in agreement that the dispute was of commercial nature and even the trial Court in its judgment noted:

" since the claim is based on commercial transactions which attract interest, this court find just for the plaintiff to be awarded the interest on commercial rate of 14% per annum from the date when the debt became due to the date of Judgment."

Hence, it is not disputed that the trial court was determining a commercial case for movable property whose value exceeded Tshs. 70 million.

I am mindful that Section 40 (3) of the Magistrates Courts Act, Cap 11 of the Laws of Tanzania provided:

"Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited-

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed one hundred million shillings; and

(b) in the proceedings where the subject matter is capable of being estimated at money value, to proceedings in which the value of the subject matter does not exceed seventy million shillings.

I asked myself whether the Court of Resident Magistrate had pecuniary jurisdiction to entertain a commercial dispute wherein the amount specifically pleaded and claimed was Tshs. 293,470,653.13? again I entertained even greater doubt. Hence, I had to hear the parties' counsel on this. I thank the learned Advocates for addressing me on the issue I raised on my own motion.

The answers to the above posed questions can only be obtained once it is established as to whether or not compound interest in the trial court was claimed as part of the substantive claim or as a consequential ancillary relief to the main claim. What did the Respondent actually claim in the

Court of Resident Magistrate? The answer is in paragraphs 3,4 and 5 of the Plaintiff as reproduced herein before. In particular, I wish to reproduce once again paragraphs 3 and 4 of the plaint:

"3. The Plaintiff claims against the Defendant for the immediate payment of TZS 50,294,027.00/= being the Principal debt for the value of supplied fuel on cash bases to the Defendant, payment of the accrued interest at a compound rate of 3% per month from April 2017 to 31st Mat 2022, payment of compound interest at the rate of 4% per month from the date of filing the suit to the date of full payment or earlier settlement, damages to the tune of TZS.200,000,000/= and costs of the suit."

5.That the Plaintiff and defendant agreed that for every late payment on the agreed due dates, there would attract an interest of 3% per month and to that effect every invoice indicates the same agreement. It is stated that for every invoice issued viz a viz supplied fuel, and not paid on due date, it has accrued interest to the tune of TZS.243,176,626.13/= as shown and analyzed under paragraph 4 above. Further stated that as the defendant has not paid the value of the invoice on time, the accrual of interest is justifiable and payable".

The above paragraphs, if put under a careful observation, reveal that at the time of filing the suit in the trial court, there were two substantive claims which had already accrued and the ascertainable amounts of money under both claims was ripe and due for payment. These were the claim of "payment of TZS 50,294,027.00/= being the principal debt as the value of supplied fuel on cash basis to the Defendant" and the claim for "payment of the accrued interest at a compound rate of 3% per month from April 2017 to 31st Mat 2022."

The other claims in the plaint were the usual consequential or ancillary ones emanating from and consequent to the filing of the suit. The Respondent, then as the Plaintiff, in my view, presented to the trial Court a dispute with 2 substantive claims arising out of the same contract in order to be paid by the Appellant a total Tshs. 293,470,653.13.

During the trial, the Respondent as the Plaintiff then, tendered evidence in an attempt to prove the figure of 293,470,653.13. At page 12 of the Proceedings, PW1 tendered Tax Invoices and Delivery Notes (Exhibit P2 collectively) in respect of the Fuel and stated that:

"they are showing quantity find fitted and price of the fuel. They were with declaration stating the interest of 3% per month on failure to pay the required amount".

The above proceedings show that the Respondent, who was the Plaintiff during the trial, was leading evidence in court to prove her substantive claim of accrued compound interest. She was proving it strictly by documentary evidence. She regarded the claim as substantive and embarked upon proving it during the trial as it formed part of the substantive claim.

Since the Respondent was claiming the 3% compound interest in the trial court as a contractual right, it follows that the claim for compound interest was an independent contractual right or entitlement, and that the Respondent could have sued the Appellant in the trial court solely to claim the accrued compound interest of 3% per month even in the absence of there being the main claim of unpaid principal sum. Assuming that the contract had been admitted and further that the Appellant had paid the Respondent the principal sum of Tshs. 50,294,027.00/= being the principal liability in the circumstances of this case, and further that he had only defaulted to pay the accrued sum emanating from the compound interest

of 3% per month, in my solid view still the Respondent could have competently filed a suit in court against the Appellant, claiming solely the amounts of the accrued interest under the contract. That kind of a claim, in my view, would have stood up as a substantive contractual claim. It could have been included in ascertaining the pecuniary jurisdiction of the Court. That ought to have been the case when the claim in the matter at hand was before the trial court.

A difference should be made between a claim of interest which is consequential to the Plaintiff winning the civil claim in court in one hand and the claim for an already accrued amount of money prior to institution of the suit, emanating from interest in a contractual undertaking or commercial transaction on the other hand. The interest accruing from a loan agreement, and which becomes due at the time before the suit is instituted in court, in my view, becomes part and parcel of the principal contractual sum from which it accrues. In the event of filing a suit, the principal sum and the amount derived therefrom as interest, coalesce and constitute a single substantive claim. This happens in the same way like the principal loan amount under a mortgage agreement and the interest accruing therefrom would be combined to constitute a single claim for

unspecified amount of unpaid mortgage loan. It would be treated as one claim in the event of the matter landing in court. In this way, the principal sum is like the business capital and the interest is like the profits arising therefrom.

The accrued contractually agreed interest stand in the same position like income or profit being paid from the investment contained in the form of the underlying principal sum. Also it is akin to a contractual right of compensation for breach of a contractual term in the underlying contract. It is a remedy for delayed payment of money which is due from the underlying principal amount. That was the case in the present dispute.

A party can sue upon the accrued interest and, when he does, he is required to prove it in the same way he is required to prove his other specific contractual claims. If he can substantiate the whole amount of the accrued and claimed interest, he can justifiably be awarded the whole amount of the accrued interest as claimed. Where, on the other hand, a claim for interest is pleaded in a suit based on commercial transaction, and the parties in their underlying contract defaulted to include a provision attracting interest for delayed performance thereof, then the claim of interest cannot be strictly proved in court for lack of the underlying

contract. Where there is no contractual term imposing the right and obligations of paying interest ,and hence specific claim of interest cannot be proved, but some money due under the contract is proved during the trial, the court may still grant the Plaintiff a reasonable amount of interest by taking into account the mercantile practice or commercial rate prevailing. The Courts grant interest in commercial disputes even where there is no underlying contract imposing the same because it is common understanding that commercial transactions normally carry interest. I am fortified by the decision of the Court of Appeal of Tanzania in **Yara Tanzania Limited versus Ikuwo General Enterprises Limited**, Court of Appeal of Tanzania, Dar es Salaam, Civil Appeal No.309 of 2019.

Back to the case at hand, in the trial court the Respondent raised the claim of 3% compound interest which had accrued and became payable, even before the filing of the suit. This claim amounted to Tshs.243,176,626.13/=. During the hearing, the Respondent led evidence to prove this accrued sum of 3% compound interest. In my view therefore, the claim for Tshs.243,176,626.13 in respect of 3% compound interest for each delayed payment of raised invoice, was another heading of prayers for specific damages. It was a substantive claim and was supposed to be

considered by the court as such when ascertaining its pecuniary jurisdiction. In **Mwananchi Communications Limited and 2 others versus Joshua Kajula** and 2 others, Civil Appeal No.126/1 of 2016 decided by the Court of Appeal it was restated that: **“it is a substantive claim which determine jurisdiction...”**.

I find that if the trial court had properly treated the claim for the already accrued interest of Tshs.243,176,626.13/= , which was explicitly presented in paragraphs 3,4 and 5 of the Plaint, as a constituent ingredient of the total substantive claim in the case, then the aggregate claim in the suit could have been Tshs. 293,470,653.13. Anyhow, that amount could have deprived the trial court of its pecuniary jurisdiction whether the case before it was treated as a civil suit or a commercial dispute.

May be, it is opportune moment to add a word or two about the nature of claims for interest which accrues before institution of the case in court. The Supreme Court of Appeal for South Africa in the case **of Land Agricultural Development Bank of South Africa v Ryton Estates (Pty) Ltd and Others** [2013] 4 All SA 385 (SCA). Stressed that:

"Due to the fact that interest is the 'life-blood of finance' and that tardy payment of monetary obligations will almost invariably deprive the creditor of the productive use of the money and thereby cause him or her loss. Accordingly, it is in the public interest that creditors be compensated when debtors fail to make payment of agreed interest on the due date."

There are two major types of pre-litigation interest claims. Firstly, the ones which have their basis in the terms of the contract between or among the parties to the dispute. The other type is interest in commercial transactions where there is no contractual term in the underlying contractual or other commercial relationship, but where ultimately money is found by the court to be due under the said contractual or commercial transaction. In the earlier situation it is called contractual interest while in the later case it is called default interest. In the online article posted in 2022 in Milosevic-law website (<https://milosevic-law.com>) titled **"Interest as the Principal Claim"** the following words are useful:

"Default interest is owed when the debtor is in arrears or is late with the fulfilment of a monetary obligation,

therefore, the default interest in a way represents a sanction for a delay in the fulfilment of a monetary obligation, and essentially represents the obligation of the debtor to pay compensation to the creditor for using the creditor's money after the debt is due.....Default interest runs as long as there is a main obligation, but even though it is an accessory right that accompanies the main claim, it is not extinguished by the payment of the principal debt, i.e. it cannot disappear, but becomes an independent claim and may be the subject of a separate lawsuit as the so-called "principal interest"... in a situation where the debtor settles the principal amount of the debt but does not settle the default interest calculated on the principal amount of the debt, in that case the default interest passes from the accessory right to the principal claim (because the beginning and end of its calculation is precisely known), is capitalized and can be claimed independently."

From the above excerpt, it is plain that, where parties default to include a clause charging interest and one of the parties fails to pay the money due under the debt, the debt yields interest and the interest accrues to become an accessory claim, to the principal claim or debt, in the nature of ***compensation***. This interest being essentially in the nature of a

compensation right or remedy, if ascertainable before filing the suit, adds up to, and counts in, the determination of pecuniary jurisdiction of the court.

From the persuasive authority from South African Supreme Court of Appeal in the case of **Land Agricultural Development Bank of South Africa v Ryton Estates (Pty) Ltd and Others** [2013] 4 All SA 385 (SCA) we learn again at paras 13 and 19 thereof that:

"A party who has been deprived of the use of capital for a period of time suffers a loss and must be compensated by an award of interest.... Mora interest constitutes compensation for loss resulting from a breach of contract and is not governed nor dependent on an agreement. Mora interest is a common law right, meaning that it automatically applies to contracts unless it is expressly, plainly and unambiguously excluded by agreement between the parties."

To bring it home altogether, I am of the view that in civil proceedings especially those of commercial nature such as claims founded on contract,

there are several types of interest claims the parties may plead or claim in court and each with its peculiar legal implications and conditional precedents. Firstly, there is contractual interest. This is expressly incorporated in the agreement and is chargeable after an agreed period time upon one party delaying to make good its financial obligations to the other party to the contract. Payment of this interest is a contractual term like any other, and upon its breach the amount due is ascertainable and payable in the nature of ***compensation***. If the underlying contract, to which the basic claim is embedded is proved, then the contractual interest pegged to it, is also deemed to be proved and will be awarded wholly by the court, unless there are other reasons which vitiate it. The opposite is true. No discretion on the court.

In the second place, there is non-contractual interest or default interest otherwise known as *mora* interest. This is chargeable for breach of a commercial contract whose terms do not expressly incorporate the sanction of payment of interest upon one party delaying to make good its financial obligations towards the other party to the contract. It is granted as a matter of mercantile practice or as a generally prescribed commercial rate prevailing in the economy. It is a sanction to make people fulfill their

commercial obligations timely. It cannot be ascertainable in advance as there is no underlying agreement relating to it; and as the mercantile practices differ from one commercial sector to another. The court has discretion on this.

In the third place, we have pre-litigation interest which is claimed from the occurrence of the cause of action to the institution of the claim in court. This can be contractual where it is pegged to the underlying contract or it can be non-contractual (default) where it is claimed out of prevailing commercial/mercantile usage. The court has discretion in the it. Next in line is interest pendente lite that is claimed from the moment of institution of the suit in court until judgment and decree is delivered. Again, this may be pegged at contractual arrangement or based on prescribed or prevailing commercial/mercantile rates or trade usage. The court has discretion here. There is also future interest or post decree interest that is charged on the decretal sum at the prescribed court rate until the date of final satisfaction thereof. The court has discretion within the prescribed rate range.

Deductively and inductively, we bring the point home to the case at hand. The compound interest which the Respondent claimed was 3% compound

interest per month for every delayed payment of an invoice raised. In the Plaintiff, this interest was pleaded at paragraph 5 as follows:

"5. That the Plaintiff and defendant agreed that for every late payment on the agreed due dates, there would attract an interest of 3% per month and to that effect every invoice indicates the same agreement. It is stated that for every invoice issued viz a viz supplied fuel, and not paid on due date, it has accrued interest to the tune of TZS.243,176,626.13/= as shown and analyzed under paragraph 4 above. Further stated that as the defendant has not paid the value of the invoice on time, the accrual of interest is justifiable and payable".

During the trial, the Respondent as the Plaintiff then, tendered evidence in an attempt to prove the figure of 293,470,653.13. At page 12 of the Proceedings, PW1 tendered Tax Invoices and Delivery Notes (Exhibit P2 collectively) in respect of the Fuel and said that:

"they are showing quantity find fitted and price of the fuel. They were with declaration stating the interest of 3% per month on failure to pay the required amount".

It is, therefore, my finding that the claim by the Respondent before the trial Court for Tshs.243,176,626.13/= as the then accrued amount from the agreed compound interest, falls into category 1 of my analysis above. It was an express, prelitigation, contractual interest claim. It was based on an a contractual agreement between the parties. **It was in the nature of compensation.** It was of ascertainable amount. It required proof. It was an accessory claim capable of standing on its own, in court. If the underlying contract was proved, the court had to grant it as it was. If the underlying contract was not proved, the court was to deny it in whole. It was part and parcel of the underlying contract from which it was emanated and to which it was attached.

Does prelitigation, contractual interest claim add up to the pecuniary jurisdiction of the court? I answer this question affirmatively. I will borrow leaf from the two persuasive decided cases from India. In the case of **Mehnga Singh versus United Tech**, Consumer case No.1395 of 2017, decided by a panel of 3 Judges of the High Court in New Delhi India,

available online at www.casemine.com, the Plaintiff entered into a contract with the Defendant for construction of residential flat apartment for use by the plaintiff. They agreed on the price of Rupees 5,965,463 payable in installment. In their agreement they put a clause obliging the Plaintiff to pay an interest of 18% compounded annually for every delayed installment. They also put a term that if the Defendant failed to deliver the apartment within 3 years of the agreement, the Defendant would refund the apartment money to the plaintiff and together with compounded interest. The plaintiff managed to pay the contract price in installments within the 3 years. The Defendant failed to deliver the apartment as agreed. The Plaintiff instituted the claim in the National Consumer Disputes Redress Commission against the defendant. The Plaintiff claimed the principal sum he had paid and the amount of compounded interest that had accrued thereon. The defendant raised an objection on jurisdiction of the Commission that as per the relevant law, **the Commission could only determine a consumer dispute whose monetary value was not less than Rupees 10,000,000/=**. In that case, the principal claim for the apartment price was rupees **5,965,463** which was not within the pecuniary jurisdiction of the Commission. (it should be noted that in this

case the pecuniary limit of the commission was set at the bottom limit and not the upper limit as is the case normally). But in that case it was alleged that by aggregating and combining the principal amount which had already accrued as a contractual interest sum, to the principal claim sum, the aggregate thereof reached the prescribed pecuniary jurisdictional threshold of the Commission. The issue was whether the accrued pre-litigation contractual interest should be considered in determining jurisdiction of the Commission?

The panel of 3 Judges in that case held that:

"In our view, the interest claimed by the flat buyers, in such a case represents not only the interest on the capital borrowed or contributed by them, but also includes compensation on account of appreciation in land value, and increase in the costs of construction, apart from loss of opportunity to acquire a residential flat at a particular price. The cost of the flat along with interest claimed comes within the pecuniary jurisdiction of this commission."

In the case at hand the principal claim of Tshs. 50,294,027.00/= along with the accrued claimed contractual interest of Tshs. 243,176,626.13/= ought to have been aggregated. Once aggregated, it exceeded the pecuniary jurisdiction of the trial RM's Court for movable properties which was Tshs.70 million for commercial disputes and Tshs.200 million for ordinary civil cases.

The second case that I would also like to refer to is the case of **Hardat Singh versus Jeewan Lal**, Civil revision No.1535 of 1964, High Court of Allahabad, India (available online at www.casemine.com). In this case the Plaintiff had sued the Defendant for breach of loan agreement to recover Rupees 670. He had also claimed interest at the rate of 1% per month as their contract had a provision for charging interest for delayed payments. The trial Judge granted the principal claim but rejected to grant the claimed contractual interest. The Plaintiff appealed to the District Judge. The District judge allowed the appeal and granted the claim of contractual interest too. The Respondent was aggrieved, and he appealed to the High Court challenging the award of contractual interest to the Plaintiff. The appeal was dismissed, and the High court Judge confirmed the decision of the District Judge. It was held, inter alia, by the High Court Judge that:

"the trial Judge had no power to deprive the Plaintiff-Respondent of what was due to him under the contract. Its discretion was limited to the matter of costs and interests pendente lite or future...in a suit for the recovery of loan due under contract, the court has no power to deprive the Plaintiff of what has been found due to him under a contract.....in this case, interest was due under the same contract as the principal and the court had no more power to deprive the respondent of the contractual interest than to dismiss his suit for the recovery of the loan itself.

It follows therefore that, where the parties have a contract out of which interest accrues, then the accrued interest becomes part and parcel of the contractual rights and obligations of the parties and thus the same is inseparable from the principal contractual claim out of which the interest emanates. Thus, I insist that in the trial court, the claim for compound interest of Tshs.243,176,626.13/= was intertwined and intricately interweaved with, the claim of the principal sum of Tshs. 50,294,027.00/=. They were both contained in the same agreement and were in respect of

the same commercial transaction. The trial Court ought to have considered the claim for the already accrued interest compensation and thus as an inseparable constituent ingredient of the substantive claim before the court and it should have found that the cumulative effect of the two claims was to oust the trial subordinate court of its pecuniary jurisdiction. Obviously, the trial court had no pecuniary jurisdiction to entertain a suit whose monetary value presented as specific damages exceeded Tshs.200 million. Further, given that the nature of the claim was essentially a commercial dispute as rightly found by the trial court, the trial court's pecuniary jurisdiction could not have exceeded Tshs.70 million.

What happens where a trial court entertains a case over which it has no jurisdiction? It is trite law that where a court acts without jurisdiction, whatever is decided thereby is a nullity. In **John Agricola v Juma Rashid** (1990) TLR 1 it was held:-

"Lack of jurisdiction in the presiding magistrate is a fundamental defect that is not curable at all. A trial by a District Magistrate who lacked jurisdiction in a court he was presiding was a complete nullity."

To cap it all, I find that the trial court determined a suit over which it had no pecuniary jurisdiction. The resulting judgment and decree were thereby a complete nullity.

Having declared the judgment and decree nullity, I don't see any good reasons to continue determining the grounds of appeal argued in this appeal.

I hereby quash and set aside the Judgment and Decree of the Court of Resident Magistrate of Dar es Salaam at Kisutu in Civil Case No.147 of 2022 dated 20/03/2023.

I allow the appeal with costs. Right of appeal explained.

It is so ordered.



A handwritten signature in black ink, appearing to read "A.H. Gonzi", is written over the printed name.

A.H.Gonzi

JUDGE

16/11/2023

Judgment is delivered in court this 14th day of November 2023 in the presence of Mr. Mbuga, Advocate for the Appellant and Mr. Mosha Advocate for the Respondent.



A handwritten signature in black ink, appearing to read "A. H. Gonzi", is written over the seal.

A. H. Gonzi
JUDGE
16/11/2023