

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA**

CIVIL CASE NO. 06 OF 2023

SAYIDA DAUD MASANJA.....PLAINTIFF

VERSUS

**VODACOM TANZANIA PUBLIC LIMITED COMPANY
.....DEFENDANT**

RULING

6th February, & 15th March, 2024

MASSAM J.

This is the ruling in respect of preliminary objection raised by the respondent to the effect that; **the case is incompetent for being filed in the High Court of Tanzania in contravention of Section 13 of the Civil Procedure Code [Cap 33 R.E 2019].**

The plaintiff had filled his plaint to this court against the Defendant praying this court to award:

(a) Damages for substantial distress and loss of privacy principal sum to the tune of Tsh. 10,000,000,000/= (Ten billion shillings only)

(b) Interest at commercial rate i.e. 21% on the decretal sum from the date of filing the suit until the day of payment in full.

(c) General damages to be determined by this honourable court.

(d) Costs of this suit be borne by the defendant.

(e) Any other reliefs or order that this honourable court deems fit and just to grant.

When the respondent filed WSD, accompanied with the preliminary objection based on the ground outlined herein above. This preliminary objection was argued by way of oral submission whereas the plaintiff was represented by the learned counsel Mr. Paul Kaunda on the other hand the defendant was represented by the learned counsel Mr Sweetbert Elgidius.

Arguing in support of his preliminary objection, Mr. Sweetbert Elgidius submitted that this matter is incompetent for being filed in the High court of Tanzania contrary to Section 13 of the Civil Procedure Code [Cap 33 R.E 2019]. He argued that all prayers brought was on general damage and not specific damages and according to the cited Section above it directs that every suit must be filed at the lowest grade competent to try it. He cited the case of **Subrina Amon Mwamnyange**, Land case No 163 of 2020 at the last page, **Manjit Singh Sandhu & others Vs Robibi R. Robibi**, Civil Appeal No 121 of 2014, and the case of **Shukuru M. Banzi Vs CRDB**, Civil case No 4 of

2018 at page 3 thus according to those cases and the provision mentioned this trial court does not fit the description as it lacks jurisdiction.

He added that on the issue of the matters on the infringement of violation of personal data are required to be filed in the commission according to Section 39(1) of the Personal Data Protection Act, 2022, which provides that any person who considers that a data controller or data processor has infringed personal data protection principle may file a complaint to the commission, therefore the plaintiff was required to bring this matter in this court as an appeal and not as a fresh case.

He also submitted that the plaint had two general damages only which denies this court jurisdiction as was discussed in **Mangit Singh Sandhu & others Vs Robibi R. Robibi** (supra) at page 8 and in **Mwananchi communication Limited VS Josha K. Kajula and Others, civil appeal No 126/01 of 2016 page 16, 17, Richard K.N Rweyongeza Vs Jitesh Jayantilah Landwa** at page 12 where the court dismissed the case as it had general damages only and not specific damages.

On his reply Mr. Kaunda submitted that this P.O has no merit and that the plaintiff claimed for specific damages at paragraph 3 with the word substantial distress and at page 5 on the prayers item (a) is a

specific damage. He argued that the High court is a substantial claim which determine the jurisdiction of the court, he referred this court to the case of **Tanzania China Friendship Textile Co Ltd Vs Our Lady of Usambara Sisters**, 2000 TLR at page 70, **Saruji Coopeation Vs African Mamble Ltd**, 2004 TLR at page 159 it was held

"we wish to adopt the statement in Marc Grego edition Page 1758 A, that when the precise amount of a particular item has become clear before the trial either because it already occurred and so become crystallised or because it can be measured with complete accuracy, these exactly loss must be pleaded as special damages"

He submitted that in their plaint the amount was clear and crystal that is the tune of 10 billion for distress and loss of privacy.

On the issue of Section 13 of the CPC he submitted that this provision should not be construed to oust the jurisdiction of the High Court and even if all damages were general damages does this court lacks jurisdiction? The same was answered in **Benitho Thadei Chengula Vs Abdulahi Mohamed Ismail** (administrator of the estate of the late Mariam A. Abdulahi Mohamed Ismail) at page 8, 9 and 11 as it was held that the error of instituting the case in High court instead of District court did not occasion a miscarriage of justice as it does not

prejudice any of the party, so the cases cited by the respondent have different circumstances to this case at hand.

On the issue of Section 39 of the protection of data he submitted that this Act was in force on 13 June 2023 and his plaint was filed on 11/05/2023 a month before, he added that the Act has Rules "Kanuni za kushughulikia malalamiko ya ukiukwaji wa msingi wa ulinzi wa taarifa binafsi, tangazo la Serikali No 349 la tarehe 12.05.2023, in Rule 5 sub rule 1(c) which provides:

Baada ya kumalizika kwa tathmini ya lalamiko chini ya kanuni ya nne tano tume inaweza kukataa lalamiko iwapo suala linalolalamikiwa lipo katika mahakama, baraza, usuluhishi au chombo chochote cha utoaji haki.

Therefore, according to this rule the commission will not have jurisdiction and even if it had, till to date there is no Personal Protection Data Commission instituted. He added that the English subsidiary legislation came into force after being gazetted on 13/06/2023 after filing this suit. He lastly submitted that the cause of action is on tort of negligence and not privacy disputes hence this court has jurisdiction, and prayed to dismiss this Preliminary Objection with costs.

On his rejoinder the counsel for the defendant submitted that the plaintiff was filed on 11.05.2023 and notice of enforcement of the Act was brought on 25.4.2023 and notice directed that on 1.05.2023 the Act will start its operation therefore they filed the plaintiff when the Act was enforce.

On the issue of damages, he contended that the plaintiff pleaded for distress and loss of privacy which has to be asserted by the court and the same can be granted or not hence cannot be specific damage but general damage therefore this court has no jurisdiction, he prayed this matter to be dismissed with costs.

I have considered the contending submissions by the learned counsels from both sides. The issue to be determined is **whether the raised preliminary objections have merits.**

On the issue of jurisdiction of this court, the defendant asserted that the plaintiff was in breach of Section 13 of the CPC by filing this case in this court because the damages prayed by the plaintiff is only general damages and since the pecuniary jurisdiction of the High court is determined by the specific damages prayed by the party to the case, therefore this court has no jurisdiction

This court is aware that, the jurisdiction of the High Court of Tanzania is stipulated by Article 108 (1) of the Constitution of the United Republic, 1977 which reads that:

"There shall be a High Court of the United Republic (to be referred to in short as "the High Court") the jurisdiction of which shall be as specified in this Constitution or in any other law."

Now regarding this matter at hand, it is trite law that the specific damages are the ones which determines the jurisdiction and not general damages as elaborated in numerous cases including the decision in **M/s Tanzania - China Friendship vs Our Lady of The Usambara Sisters** (Civil Appeal 84 of 2002) [2005] TZCA 104 (19 October 2005) where the court was of the view that:

*"...In our view, it is **the substantive claim and not the general damages which determines the pecuniary jurisdiction of the court.** In the instant case, the substantive amount is Tshs. 8,136,720/=. It is this amount which determines the pecuniary jurisdiction of the court..."*

See also **Tanzania Saruji Corporation v. African Marble Company Limited** [2004] T.L.R 155.

I have taken time to peruse the plaintiff's plaint at paragraph especially at page 2 which reads:

That, the plaintiff claims from the defendant principal sum to the tune of Tshs 10,000,000,000/= (Ten Billion) as damages for substantial distress and loss of privacy arising from the defendant's negligence for failure to protect the personal data of the plaintiff.....

This paragraph has stated the amount to which the plaintiff is praying this court to award, the plaintiff is seeking the award for substantial distress and loss of privacy to the tune of Tsh. 10,000,000,000/= by reading that paragraph, there is no hesitation that the plaintiff claims for general damages to a tune of though it is not stated in the plaint that the claim is for general damages, I am saying so because, it is a common knowledge that special damages are normally specifically pleaded by stating how the amount claimed have been arrived and need to be proved see the case of **Zuberi Augustino Vs Anicet Mugabe** (1992) TLR 137).

In this case the plaintiff merely stated it to be Tsh. 10,000,000,000/= for substantial distress and privacy loss the plaintiff had duty to give specific explanation as to how he came into that

conclusion and as to how that sum has been arrived, how does privacy loss amount to that tune of 10,000,000,000/=. See also the case of **Ivanna FelixTeri vs MIC Tanzania Public Company Limited**, Civil Case No. 5 of 2019, and since it will be on the discretion of the trial judge to determine the mount for substantial distress and loss of privacy the claim by the appellant are general damages and not specific.

Also, the court in **MIC Tanzania Public Company Limited**, (supra) the Court of Appeal provided specifically on the criteria used in determination of the Jurisdiction of this Court. The Court said that:

"if the suit does not highlight the specific claims and only has general statement of claim, then it misses an important ingredient which can enable this Court to determine its pecuniary jurisdiction. Such a suit has to be filed in the lower."

That being said, does failure by the plaintiff to stipulate the specific damages bar this court jurisdiction?

I am persuaded by the assertion of the learned advocates of the plaintiff that the error of instituting it in the High Court instead of the District Court did not occasion a miscarriage of justice as it does not prejudice any of the parties.

I am also aware that Section 13 of the Civil Procedure Code, [Cap 33 RE 2019] requires a suit to be instituted to the court of the lowest grade competent to try it. I wish to quote it verbatim thus: -

*"Every suit **shall be instituted in the court of the lowest grade competent to try it** and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade: Provided that, **the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.**"* (Emphasis added)

It is my understanding that the above provision does not confer or oust the jurisdiction of the High Court in any matter notwithstanding the pecuniary value of the subject matter but rather it provides for the procedure that a suit be instituted in court of the lowest grade competent to try the matter. Refer the current cited current case of **Benitho Thadei Chengula vs Abdulahi Mohamed Ismail**, (Civil Appeal No.183 of 2020) [2023] TZCA 17519 (23 August 2023) where the Court of Appeal held that:

".....Besides, since section 13 of the CPC was amended two years later by Act No. 4 of 2016 by adding the proviso whose effect is to render the present objection regarding jurisdiction to be redundant, we

shall not uphold the first ground of appeal. In our view, doing otherwise will serve no useful purpose other than historical"

Consequently, since the filing of this case in this court instead of the District court does not occasion miscarriage of justice and because there is no direct law that ouster the jurisdiction of the High Court, and since the general jurisdiction of the High Court is conferred by the Constitution of the Republic as explained herein above in line with Section 7 of the CPC (supra) except to the matters for which jurisdiction is expressly ousted, this court has jurisdiction to try this matter and this point of Preliminary Objection is overruled.

The defendant also submitted that, matters on the infringement of violation of personal data are required to be filed in the commission according to section 39(1) of the Personal Data Protection Act, 2022, which provides that any person who considers that a data controller or data processor has infringed personal data protection principle may file a complaint to the commission and not to this court.

On this point I will again, agree with the counsel for the plaintiff that the cause of action in this case is tort of negligence as witnessed by the plaint at paragraph 3 I quote:

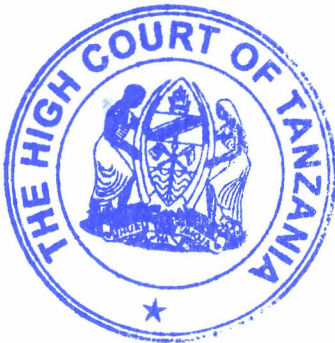
*"That, the plaintiff claims from the defendant principal sum to the tune of Tshs. 10,000,000,000/= (Ten Billion) as damages for substantial distress and loss of privacy **arising from the defendant's negligence for failure to protect the personal data of the plaintiff**.....(Emphasis is mine)*


From this extract it is evident that the cause of action is tort of negligence and not the infringement of violation of personal data as asserted by the defendant.

In the upshot, I hereby overrule the point of preliminary objection raised and hereby order the case to proceed on merit. No orders as to costs.

It is so ordered.

DATED at SHINYANGA this 15th day of March, 2024.




R.B. Massam
JUDGE
15/03/2024