

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**CIVIL CASE NO. 9 OF 2023**

**THE ATTORNEY GENERAL .....PLAINTIFF**

**VERSUS**

**YAPI MERKEZI CONSTRUCTION AND INDUSTRY INC.....1<sup>st</sup> DEFENDANT**

**YUSUPH JUMA MTONI.....2<sup>nd</sup> DEFENDANT**

**RULING**

*Date of last order: 20/2/2024*

*Date of ruling: 28/3/2024*

**KHALFAN, J.**

The plaintiff filed the instant suit against the defendants jointly and severally for an assortment of reliefs as follows; payment of TZS 53,809,108.75/= as special damages with regards to the uncovered motor vehicle repair costs, payment of general damages to the tune of TZS 50,000,000/=, interest on the decretal sum by this honourable court. Costs of the suits be borne by the defendants.



Only the first defendant filed a written statement of defence in which it essentially denied the plaintiff's claims. I take note that the first defendant raised a preliminary objection to the effect that:

- 1. The plaintiff sued a non-existing party, Yapi Merkezi Construction and Industry Inc.*

In addition to the objection raised by the first defendant, this court *suo motu* raised a concern whether it had jurisdiction to entertain the matter. Since the point raised by the court goes to the jurisdiction, I find it appropriate to deal with it before determining the objection raised by the first defendant. Hence, I invited the parties to address the court whether it had jurisdiction to entertain the matter.

Mr. Omar Ngatanda learned state attorney appeared for the plaintiff while Ms. Sekunda Lyimo learned advocate appeared for the first defendant.

Responding to the point raised by the court, Mr. Ngatanda argued that the matter was filed earlier on before the Resident Magistrate Court of Dodoma but when it was at its initial stage, it was rejected for the reason that it lacked jurisdiction since it involved the government. Thus, he filed the matter before this court.



Mr. Ngatanda readily admitted that this court lacks jurisdiction to entertain the matter. To buttress his arguments, the learned state attorney referred the case of **Attorney General v. Diocese of Njombe** [2004] TLR 93 in which it was pointed out that it is only suits against the government which must be filed in the High Court and not suits by the government. He argued that the position in the case cited is fortified by the provision of section 7 of the Government Proceedings Act [CAP 5 R.E 2019], (hereinafter referred to as the GPA), which provides in no ambiguous terms that suits against the government must be instituted before the High Court.

He submitted that in terms of section 8 of the GPA all suits by the government shall be instituted and proceeded in accordance with the procedure applicable in proceedings between private persons. He argued that suits by the government shall be instituted in the court competent to try it and not mandatorily in the High Court. He therefore argued that the court with competent jurisdiction to try the instant matter is the Resident Magistrate Court or the District Court.

On her part, Ms. Lyimo concurred with the arguments by the learned state attorney. She pointed out that this court lacked jurisdiction to entertain the matter. She argued that the GPA does not state whether the suits by the



government must be instituted in the High Court. Ms. Lyimo also argued that in terms of section 8 of GPA suits by the government should follow the procedure applicable to suits by the private persons.

She submitted that suits by private persons are governed by section 13 of the Civil Procedure Code [CAP 33 R.E 2019], (hereinafter referred to as the CPC) which requires that suits be instituted in the court of competent jurisdiction. The learned counsel argued that since the substantive claim in the instant matter is TZS 53,809,108.75/=, then, by virtue of section 40(2)(b) of the Magistrates' Courts Act [CAP 11 R.E 2019], (the MCA) such suit has to be instituted in the District Court or Resident Magistrate Court.

Having gone through the parties' arguments, it is without doubt that in the instant matter, the substantive claim by the plaintiff is TZS 53,809,108.75/=. I take note that the plaintiff also claims TZS 50,000,000/= as general damages but what confers the jurisdiction of the court is substantive/specific claim and not general damages.

Rightly as argued by the learned state attorney and so concurred by the learned advocate, in terms of section 7 of the GPA, all suits against the government must be instituted in the High Court. I also subscribe to the



arguments by the learned trained minds that suits by the government should be instituted as per the procedure governing suits between individual persons. Therefore, it is not mandatory for the suits by the government to be instituted before the High Court rather than comply with section 13 of CPC which requires that suits be instituted in the court of lowest grade to entertain the same.

Rightly as argued by the learned advocate, the claim by the plaintiff in this matter falls under the jurisdiction of either the District Court or Resident Magistrate Court. Therefore, in view of the decision in the case of **Attorney General v. Diocese of Njombe** (supra), not all suits in which the government is a party regardless of the value of the subject matter; must be instituted in the High Court. If the Government wants to sue in the High Court then the value of the subject matter must fall within the jurisdiction of the court.

I am aware of the exception under section 37(1)(c) of the Land Disputes Courts Act [CAP 216 R.E 2019] which provides for all proceedings under the Tanzania Investment Act, the Land Act and the Land Acquisition Act in respect of proceedings involving the Government that they must be





instituted in the High Court regardless of the value of the subject matter. However, in the instant case this does not fall within the referred law.

Hence, this court lacks jurisdiction to entertain the matter. Having found that this court lacks jurisdiction to entertain the matter, I find it not necessary to determine the preliminary objection raised by the first defendant. This suit is accordingly struck out with no order as to costs.

It is so ordered.



**F. R. Khalfan**

**JUDGE**

**28/3/2024**