

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 154 OF 2023

VICTORIA GADIEL MAEDA PLAINTIFF

VERSUS

KAIRUKI HOSPITAL.....DEFENDANT

RULING:

5th Dec 2023 & 09th Feb 2024

KIREKIANO, J:

The plaintiff herein has filed a suit against the defendant on an action of negligence. The plaintiff claims from the defendant special damages amounting to Tshs 107,528,732.75. Other reliefs claimed are general damages, declaratory orders, and costs.

This ruling is in respect of a preliminary objection posed by the defendant against the plaintiff's claims to the effect that, this court is not vested with jurisdiction to try the suit as the same has been lodged in violation of section 13 of the Civil Procedure Code Cap 33 [RE 2019].

This objection was heard by way of written submissions. The plaintiff had the service of Mr. Mutakyawa Charles while the defendant had the service of Mr. Mohamed Tibanyendera learned to advocate.

In support of the objection, it was Mr. Tibanyendera's submission that it is the substantive claim that determines the jurisdiction of the court and not the general damages. This is in view of decisions in **Tanzania China Friendship Textile Co Ltd Vs our Lady of Usambara Sisters (2006)** but also **Mwananchi Communication Ltd and others vs Joshua K. Kajula and others Civil Appeal No 126 of 2016**. In this suit, the substantive claim by the plaintiff is Tshs 107,528,732.75 thus, given section 13 of the Civil Procedure Code Cap 33, this amount of claim ought to be instituted in the lowest court having jurisdiction to try it that is, the District Court.

Emphasizing the importance of this court's satisfaction with jurisdiction before entertaining the plaintiff's claim, he argued that it is risky and unsafe for the court to proceed with the trial of a case on the assumption that it has jurisdiction. To support this proposition, he cited several decisions that as **National Insurance Corporation of Tanzania Ltd vs Someke Kuwilwa Chanya and Others (Civil Appeal 24 of**

2019) [2020] TZHC 1802 <https://tanzlii.org> but also Fanuel Mantiri Ng'unda Vs Herman Mantin Ng'unda and 20 others Civil appeal no 8 of 1995.

Mr. Tibanyendera also cited the decision in **Shyam Thanki and Others v. New Palace Hotel [1972] HCD n. 92** to amplify the point that jurisdiction being a creature of statute the same cannot be assumed by convenience or consent of the parties. According to the defendant's counsel, the plaintiff's claim is based on anticipated damages to be assessed by the court and not the actual loss or damage insured by the plaintiff, he thus prayed that the plaint be dismissed with costs.

On his part, the plaintiff counsel Mr. Mutakyawa appreciated the decision in **Fanuel Mantiri** that the question of jurisdiction is very basic before this court entertains the claims. However, he was of the different view that section 13 of the Civil Procedure Code Cap 33 as amended by Act no 4 of 2016, does not oust the general jurisdiction of the High Court. This jurisdiction is as provided under Article 108 (1) and (2) of the Constitution of the United Republic of Tanzania.

He submitted that the proviso to section 13 maintains the general jurisdiction of the High Court. In support of this proposition, he cited the Court of Appeal decision in **Benitho Thadei Chengula Vs Abdulahi Mohamed Ismail Father and Administrator of the Estate of the late Mariam Abdulahi Mohamed Ismail** <https://tanzlii.org> The counsel for the plaintiff argued that since the jurisdiction of this court is not ousted, the trial of this case by this court will not occasion any injustice or prejudice on the part of the defendant considering that the defendant has already filed her written statement of defense.

There was no rejoinder submission by the defendant.

On my part having heard and considered the contending submissions by the parties' counsels, it is a common ground that, before indulging in the trial and determination of this suit like any other cause this court must be satisfied that it is bestowed with needed jurisdiction to try the case. This is a prerequisite in the administration of justice and the same cannot be overemphasized because lack of jurisdiction in trials costs time, effort, and resources as in the end proceedings will certainly be rendered a nullity. The cited cases of **National Insurance Corporation**, but also **Fanuel Mantiri Ng'unda** are accordingly considered.

I also subscribe to the defendant's counsel's submission that the pecuniary jurisdiction should be assessed by looking at the plaintiff's substantive claims and not reliefs that are subject to the court's discretion like general damages. This a settled principle stated in **Tanzania China Friendship Textile Co Ltd** and not disputed by the plaintiff's counsel.

In this suit at hand, the plaintiff's substantive claim is Tshs 107,528,732.75. Admittedly, this amount under section 40 (2) b of the **Magistrate Court Act Cap 11 [RE 2019]** is within the pecuniary jurisdiction of the District Court. It is based on the above, reflection is made on section 13 of the **Civil Procedure Code Cap 33** and the proviso thereto thus;

13. Every suit shall be instituted in the court of the lowest grade competent to try it and, for 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 supplied)

This is to say in spirit of section 13 of the Civil Procedure Code, the lowest court to try the case is the District Court. Does it mean that the plaintiff's decision to file the plaint in the high court, is in the wrong place? In the cited case of **Benitho Thadei Chengula**, the claims instituted in the high court were within the pecuniary jurisdiction of the District Court. When determining the ground of appeal on the jurisdiction of the High Court to try the case, The Court of Appeal having noted the proviso to section 13 of the Civil Procedure Code held on page 11, thus;

"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 redundant, we shall not uphold the first ground of appeal"

If the plaintiff instituted her claims in the district court the said court would have jurisdiction. However, in view of the proviso to section 13 of the Civil Procedure Code Cap and based on the foregoing, this court is vested with jurisdiction to try the plaintiff's claims.

In the end, the objection raised by the defendant lacks merit. The same is overruled. Cost shall be determined in the final determination of this suit.



A. J. KIREKIANO

JUDGE

09.02.2024

COURT

Ruling delivered in presence of Mr. Mngumi Samadani (advocate)
holding brief of Mr. Mutakyawa Charles Counsel for the plaintiff and
in absence of the defendant.



A J. KIREKIANO

JUDGE

09.02.2024

