

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

CIVIL CASE NO. 06 OF 2022

NDAVILI DAUD MALAWA PLAINTIFF

VERSUS

GODFREY JAPHET MWAMBALILA 1ST DEFENDANT

BISHOP KIBONA 2ND DEFENDANT

OSCAR IBRAHIM MWAMDELA 3RD DEFENDANT

RULING

Date of Last Order: 21/11/2023

Date of Ruling: 16/02/2024

NGUNYALE, J.

The plaintiff preferred the present Civil Case No. 06 of 2022 against the defendants seeking reliefs under malicious prosecution. In his plaint he prayed for judgment and decree for the following orders **one**, that he was maliciously prosecuted by the defendants **two**, payment of compensation of cash money 6,062,939. 56 for damage of his properties

three, payment of 169,312,500/= for expected income for 5 years and general damages in the tune of 200,000,000/=.

On the date of hearing of the case, the defendant raised a preliminary objection on point of law that the court lacks pecuniary jurisdiction to entertain the matter. They prayed the court to dismiss the plaint with costs. Without delay, the court blessed the proposal by the parties which suggested the objection to be argued by way of written submission because the plaintiff appeared unrepresented while the respondents were represented by Mr. Ezekiel Mwampaka learned Counsel.

In support of the objection the defendants submitted that, as a rule of law and practice civil cases are to be filed to the court of lowest level vested with jurisdiction. Nature of the case at hand ought to be filed to the District Court because it has jurisdiction to try it. He cited section 13 of the **Civil Procedure Code** Cap 33 R. E 2029 to bolster his point to the effect that suits shall be filed in the court of the lowest grade competent to determine them. The broad interpretation of the very provision means that suits shall be filed to the court of lowest grade. In the instant case the plaintiff claims 175,375,439/= which the District Court has pecuniary jurisdiction to determine. They referred the court to

section 40(2) (b) of the **Magistrate Courts Act** Cap 11 R. E 2019 which provides; -

"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."

The defendants were of the view that the proper forum for the plaintiff was to institute the said suit to the District Court and not to this court as he did because the value of the subject matter does not exceed 200,000,000/=. To substantiate the point that the court had no jurisdiction they relied to the case of **Wazir Hassan versus Arafa Bakari** (DC) Civil Appeal No. 12 of 2017 where the case of **Denja John Botto & 2 others versus Umoja wa Wafanyabiashara Ndogo Ndogo Maili Moja** Civil Appeal No. 157 of 2018 was cited insisting that, it was wrong for the party to institute a matter to the court which had no pecuniary jurisdiction.

The defendants prayed the court to dismiss the suit with costs.

The plaintiff by polite language submitted that, he was wrongly advised by a lawyer who prepared his pleadings after he was ordered to amend his plaint. He absolutely conceded to the objection raised by the

defendants save for the prayer of costs. He prayed the court to sustain the preliminary objection without costs because as a layman, he was misled by the lawyer, it was not his fault. The respondent's fairly received the submission of the plaintiff as remarked in their rejoinder; however, they qualified the prayer of costs. They argued that costs incurred should be born from the plaintiff.

Having heard both parties, I am in agreement with the parties that this court lacks pecuniary jurisdiction to determine this case. The said position is obvious through the legal provision and the case law cited by the objector and conceded by the respondent/plaintiff. Section 13 of the **Civil Procedure Code** Cap 33 R. E 2019 categorically provides that; -

"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."

The above provision has been interpreted in numerous cases of this court and the Court of Appeal of Tanzania; thus, I have no reason to fault the consensus reached by the parties on the position of the law.

Going by section 13 of CPC (2) (b) read together with section 40 (2) (b) of the **Magistrates Courts Act**, I am settled in my mind that the High Court has no jurisdiction to entertain the plaintiff's suit whose substantive claim was below 200,000,000/= in special damages. Before I conclude, I take into consideration that costs follow the event, in this case I find no reason to go against this rule though the plaintiff was a layman prosecuting his case.

In the end result I sustain the preliminary objection as raised by the defendants with costs. The plaintiff is at liberty to file the fresh suit before the court with competent jurisdiction subject to time limitation.

Order accordingly.

Dated at Dar es Salaam this 16th day of February 2024.



D. P. Ngunyale

JUDGE

The ruling delivered this 16th day of February, 2024 in the presence of Ms. Tumain Hamenya learned Counsel appearing for the plaintiff and the

defendants appeared in person vide video link from chamber at Mbeya High Court.



D. P. Ngunyale

JUDGE

16th Febr.2024

