

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM SUB-REGISTRY)

AT DAR-ES-SALAAM

CIVIL CASE NO. 125 OF 2023

FATNA FARADJI KAYUGA PLAINTIFF

VERSUS

MIC TANZANIA (PLC) LTD DEFENDANT

Date: 04/09/2023 & 15/03/2024

RULING

NKWABI, J.:

The plaintiff is suing the defendant who trades under the business name "**TIGO**" for interfering with her personal privacy and disparaging her. The plaintiff alleges that the defendant illegally printed out conversations and communication made by the plaintiff through her cell phone number 255 716149268 and exposed and circulated the same to a third party who in turn made such communication and conversation public. She is therefore after the reliefs which include damages as shown underneath:

- (a) An order for payment of T.shs 450,000,000/= (say four hundred million and fifty shillings only.
- (b) An order to the defendant to an unconditional apology to the plaintiff.

- (c) An order for interest on the decretal sum at the Court rate of 12% from the date of judgment until full and final payment.
- (d) Costs of this suit (both incidental and consequential).
- (e) Any further relief(s) as this honourable Court deems fit.

In an expedition to clinch an early victory against the plaintiff, the defendant has raised a preliminary point of objection as demonstrated below:

"That the suit by the plaintiff is bad in law for being filed in a wrong forum contrary to the provisions of section 7(c), (d), 39(1) of the Personal Data Protection Act No. 11 of 2022 and Regulation 4(1) of the Personal Data Protection (Complaint Settlement Procedure) Regulations, 2023. Therefore, this honourable Court has no jurisdiction to entertain this suit."

Descending from the above legal point of objection the counsel for the defendant urged me to strike out the case with costs. I ordered the preliminary objection be argued by way of written submissions. The orders were complied with. Mr. Victor Kikwasi, learned counsel for the defendant drew and filed the written submissions for his client. Mr. Wilson Moses Mafie, learned counsel for the plaintiff replied, which reply submission triggered a

rejoinder submission duly drawn and filed by Mr. Victor Kikwasi. I am resolutely, thankful to the learned counsel of both parties for their submissions.

Expounding the legal point of objection, Mr. Kikwasi argued that the Personal Data Protection Commission (PDPC) is vested with powers to deal with data protection and the right to privacy. It is mandated to regulate the industry and has powers to resolve disputes arising from those specific industries. He pointed out that all complaints relating to data protection are dealt with under the Data Protection Act, No. 11 of 2022 and its Regulations. He cited sections 7, and section 39(1) of that Act together with Regulation 4(1) of the Personal Data Protection (Complaint Settlement Procedure) Regulation. That regulation provides that:

"Any person who considers that there is a violation of personal data protection principles or is dissatisfied with the decision of the data controller or data processor regarding personal data may submit a complaint to the Commission using Form No. 1 set out in the Schedule to these Regulations."

He observed that Courts would not normally entertain a matter which has a specific forum unless there is no proper remedy in the special forum referring me to the case of **Attorney General v. Lohay Akonay & Another** [1995] T.L.R. 80 among others. He reiterated the basic foundation of jurisdiction as stated in **Fanuel Mantiri Ngúnda v. Herman N'unda & Others** [1995] T.L.R. 155. Mr. Kikwasi implored upon this Court to strike out the suit with costs.

The counsel for the plaintiff did not purchase the views of the counsel for the defendant. Mr. Mafie maintained that what is before this Court is tortious liability where the plaintiff is seeking compensation for unlawful interference and enjoyment of her privacy. He stressed in the reply submission that, in this suit the plaintiff is not complaining on how the data collected or processed. The counsel for the plaintiff said, the case of **Tibe Rwakatare (administrator of the estate of the late Rwakatare) v. Juma Said Kasola**, Land Case No. 19 of 2022, HC cited by Mr. Kikwasi is distinguishable. He finally beseeched this Court to find that the preliminary objection is misconceived, groundless, unfounded and frivolous with no any merits whatsoever and should be dismissed with costs.

In rejoinder submission, the counsel for the defendant observed that the plaintiff and her counsel are unaware of the provisions of section 37, 39 and 50 of the Act and the powers of the Commission. He noted that section 50 of the Act empowers the Commission to order for payment of compensation to the Data Subject.

I have given due consideration to submissions of the counsel of both parties. I think this preliminary objection shall not hamper me much. This is because unlike the submission of the counsel for the plaintiff that damages (compensation on tort) could not be granted by the Commission, the Act, under Section 50 as correctly argued by the counsel for the defendant is empowered to order compensation apart from any penalty to the data controller or the data processor who is at fault in favour of a data subject who proves his complaint/allegation.

Given that there is a Commission empowered to entertain a complaint of this nature and make orders for compensation (damages), and the law being settled that a party has to exhaust those other remedies before resorting to Court and a right to appeal to the High Court against such decision of the Commission is available to the plaintiff, this Court lacks jurisdiction to entertain this matter. I am happy as I find relief in **Salim O. Kabora v.**

TANESCO Ltd & 2 Others, Civil Appeal No. 55 of 2014 CAT (unreported)

where it was stated that:

"The import of the above quoted excerpt is that where a certain law provides for a specific forum to first deal with a certain dispute, a resort to it first is imperative before one seeks recourse to court. Where that is not observed, the attendant court's decision is rendered a nullity."

As a consequence of the above discussion, I find that the submissions against the preliminary objection maintained by the counsel for the plaintiff are, with far-reaching estimation to Mr. Mafie, disgraceful. I rebuff the same. I may also add that unlike the counsel for the defendant, I am of the opinion that the counsel for the plaintiff is recognizant of section 50 of the Act but feigned to be unfamiliar with it.

That being the position held by this Court, the preliminary objection is sustained as indicated above. The Civil case No. 125 of 2023 is hereby struck out with costs. It is so ordered.

DATED at **KIGOMA** this 15th day of March, 2024.




J. F. NKWABI

JUDGE