

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 33 OF 2003

HIMA INVESTMENTS LIMITED.....PLAINTIFF
VERSUS
F. K. MOTORS LIMITED.....DEFENDANT

Counsel: Mr. Kalokola for plaintiff
Mr. Matunda for defendant

R U L I N G

BWANA, J.

The plaintiff filed the main suit on 24 February 2003 inter alia claiming from the defendant a principal sum of shs.22,268, 000/- with interest and costs. The defendant has come up with a defence wherein a preliminary objection is raised based on recent amendments to section 40 of the Magistrates Courts Act No. 2 of 1984 (herein referred to as the Act).

In his submission in support of the preliminary objection, Mr. Matunda claims that the amendments to the Act as introduced by the Written Laws (Misc. Amendments) Act No. 25 of 2002 the High Court has been ousted of the jurisdiction of cases whose pecuniary value is below shs.150m/- and 100m/- depending on whether the subject matter is immovable or movable property. His argument is further supported by the provisions of section 13 of the Civil Procedure Code, 1966 (the CPC) and section 2 of the Judicature and Application of Laws Ordinance, Cap 453.

Mr. Kalokola opted not to submit in reply. That does not mean that Mr. Matunda's views should be upheld and make him get his way.

I have carefully considered this issue. Luckily, a few days ago that is 16 May 2003, I had the opportunity to deliver another ruling on the same subject matter. That was in the case of Haji Ukwaju vs NMB and Another (Com. C. No. 27 of 2003). In that Ruling I examined the Constitutionality of the provisions of Act 25 of 2002 that are said to oust the jurisdiction of this court from hearing cases whose monetary value is below shs.100m/-. I discussed the implications of such an interpretation to other relevant laws (such a sections 6, 7 and 13 of the CPC) and public policy. I still support my views as expressed in the said Ukwaju Ruling.

In a nutshell, it is my considered view that if the said amendments introduced by Act 25 of 2002 are meant to oust the High Court of its jurisdiction then they are unconstitutional as they infringe Articles 107 A and 108 of the Constitution of the United Republic of Tanzania. However, my further considered view is that those provisions of the amendments as they are, tend to put a ceiling to the pecuniary jurisdiction of District and Courts of Resident Magistrates. They do not, however, oust the unlimited nature of the jurisdiction of the High Court. I supported that argument by citing earlier decisions of the High Court of Tanzania in the following cases:-

(1) Dr. Ally Shabhay Vs Tanga Bohora Jamaat (Cc No. 3 of 1996 – Tanga Registry).

(2) Bikubwa Issa Ali vs Sultani Mohamed Zahran (1997 TLR 295).

Again, the famous author, Mulla on Civil Procedure (5th Ed. Vol.1 pp.221) has discussed the matter at length and shares the views held herein.

All the above considered therefore, the preliminary objection raised is dismissed. This court has jurisdiction to try this case. I order accordingly. No order as to costs.

Sgd: Dr. S. J. Bwana

JUDGE

20/5/2003

539 words