

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

COMMERCIAL CASE NO. 90 OF 2006

REGINALD A. MENGI PLAINTIFF
VERSUS
TANZANIA POSTAL BANK 1ST DEFENDANT
WESTERN UNION INTERNATIONAL LIMITED..... 2ND DEFENDANT

R U L I N G

Date of Final submission – 19/7/2007

Date of Ruling – 26/7/2007

MASSATI, J:

This is a ruling on two preliminary objections raised by the Defendant against the suit.

MS. LAW OFFICES OF CHIPETA ASSOCIATES who advocate for the Defendants have raised the following objections: -

- (i) This Honourable Court lacks pecuniary jurisdiction to try this suit.
- (ii) In the alternative this suit is not maintainable against the 1st Defendant as an agent of the 2nd Defendant who is a disclosed principal.

On the premises, the Defendants pray for the dismissal of the suit against the 1st Defendant.

Mr. Nguma, learned Counsel for the Plaintiff did not specifically traverse the preliminary objections. Nevertheless, Counsel agreed to argue the said preliminary objections in writing.

Arguing on the first preliminary objection Ms. Kirethi, learned Counsel who appeared for the Defendants, submitted that the Plaintiff's principal claim of USD 3.123 is below the pecuniary jurisdiction of this court, it being the equivalent of a more Tshs.3,966,210/= as it is within the competence of a subordinate court. For the purposes of determining pecuniary jurisdiction, the court cannot take into account, the claimed general damages of USD 100,000. Learned Counsel referred to the provisions of s. 40 (2) (b) of the Magistrates Courts Act; O. IV rule 1 (3) of the Civil Procedure Code (Cap 33 – RE 2002), a book by **JUDICIAL HINTS ON CIVIL PROCEDURE** 2nd ed. by RICHARD KULوبا, and B.D. CHIPETA'S book: **CIVIL PROCEDURE IN TANZANIA: A STUDENT'S MANUAL.** Wherefore the learned Counsel prayed for the dismissal of the suit with costs.

On the other hand Mr. Nguma, learned Counsel for the Plaintiff, contended that although the principal sum claimed is only USD 3,123 or Tshs.3,966,210/= it is a serious misconception to disregard the claim for general damages. He was of the view that the USD 3,123 principal claim together with USD 100,000 general damages would shoot up the total claim to Tshs.128,600,000/= well above the minimum pecuniary limit of this court of Tshs.30,000,000/=. Therefore, it was his prayer that the objection was “*misplaced*” and therefore should be dismissed with costs.

That the Plaintiff’s principal claim is USD.3,123 or equivalent Tshs.3,966,210, and that the claim for USD 100,000/= is for general damages, there is no dispute. There is also no dispute as to the pecuniary minimum threshold jurisdiction for this court, in terms of s. 40 (2) and (3) of the Magistrates Courts Act (Cap 11 RE 2002). What the Plaintiff contends is that the amount of general damages claimed should also be taken into account in searching for the court’s pecuniary jurisdiction. Although Mr. Nguma has referred to the court, the cases of **DONOGHUE VS STEVENSON** [1932] AC and **FRANCIS ANDREW VS KAMYN INDUSTRIES (T) LTD** [1986] TLR 31 (HC), and O. 11 rule 1 of the Civil Procedure Code, with due respect, I cannot see their relevancy to the preliminary objection under discussion.

The answer to the issue whether general damages could be taken into account in determining the pecuniary jurisdiction of any court for that matter, was recently provided by the Court of Appeal of Tanzania in **M/S TANZANIA – CHINA FRIENDSHIP TEXTILE COM LTD VS OUR LADY OF THE USAMBARA SISTERS** (CAT CIVIL APPEAL NO. 84 OF 2002) (Unreported). At p. 11 of the judgment the appellate court said: -

“...But since general damages are awarded at the discretion of the court, it is the court which decides the amount. In that respect claims of general damages are not quantified. But where they are erroneously quantified, we think this does not affect the pecuniary jurisdiction of the court.

In our view, it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court.”

For only the above reason, I think there is considerable force in the Defendant’s submission on the first preliminary objection. The objection is therefore upheld.

The determination of this objection is sufficient to dispose of the matter. There is no need for me to determine the second preliminary objection.

That said, the suit is hereby struck out with costs for want of jurisdiction.

Order accordingly,

SGD

S.A. MASSATI

JUDGE

26/7/2007

726 words

I Certify that this is a true and correct
of the original Judgment Ruling

Sign

Registrar Commercial Court Osm.

Date 10 / 8 / 07