

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 21 OF 2011

BALTON (T) LTDPLAINTIFF

VERSUS

SIGA COMPANY LIMITED.....DEFENDANT

RULING.

Mruma J.

In its plaint the plaintiff states that she and the defendant are both limited liability companies incorporated under the company laws of Tanzania.

Its claim against the defendant is for payment of T.shs 61,279,940/= being damages allegedly suffered. In its plaint the plaintiff avers that it extended a draft facility to the defendant by supplying to it various agrochemicals, machineries and equipment on credit arrangement and upon the defendant's presentment of LPO to the plaintiff. The value of the materials supplied is said to be T.shs 51,279,940/= which, according to the plaintiff stands unpaid to date. The remaining T.shs is being claimed as

general damages.

It is further stated in the plaint that the defendant issued two cheques in favour of the plaintiff for the sums of T.shs 6,531,200 /= and T.shs 4,784,000/= respectively but they were all dishonoured and marked "refer to drawer".

The defendant made a commitment to clear the debt in five equal instalments but to date not a single instalment had been paid.

The plaint shows that in the circumstances of the case the plaintiff has suffered special damages to the tune of 51, 279,940 and also aggravated/general damages of 10,000,000/=.

In that accord, the plaintiff is praying for:-

- (i) T.shs. 51,279,940/= being special damages
- (ii) T.shs. 10,000,000/= being general/aggravated damages as per paragraph 10 of the plaint embracing punitive, exemplary incidental and consequential damages.
- (iii) Accrued compound interest on item (i) above at the commercial rate of 25% per annum from June, 2009 to the date of judgment.
- (iv) Interest on the decretal sum at the court rate of

7% per annum from the date of judgment till payment in full;

(v) Costs of this suit be provided for;

(vi) Any other relief and /or orders deemed fit and equitable by the Court.

Upon being served with the plaint, the defendant through the services of Messrs Msemwa and Co advocates, together with usual denials of the claims, raised a preliminary point of law couched in the following style:-

"This Court has no pecuniary Jurisdiction to hear the case"

On the 6/6/2011 parties represented by Mr. Kweka for the plaintiff and Mr. Msemwa for the defendants, addressed this court on the said preliminary objection orally.

Mr. Msemwa took the floor first and submitted that since the plaintiff is praying to be paid T.shs 51, 279,940/= as special damages and because of the prayer for T.shs 61,279,940 is at paragraph three of the plaint and not in the prayers' clause, this case should have been filed in the District Magistrate's Court or Resident Magistrate's Court which has power to determine matters worth T.shs

100 Millions. He supported his submission with section 40(2) (b) of the Magistrate's Courts Act. He also referred this court to section 18 of the CPC and submitted that every suit should be filed in a court of the lowest jurisdiction. The learned counsel added that though he was oblivious of section 40(3) (b) of the Magistrate's Court Act as amended by Act no. 4 of 2004 which limits the jurisdiction of the District Magistrate's Courts over commercial cases to matter valued at T.shs 30 millions, the case at hand is not a case of commercial significance so as to be in the ambit of section 40(3) (b) of the MCA.

To him, this is a normal case of breach of contract of supply which can be tried by the Resident Magistrate's court and it does not fall in the definition of a commercial case as per the definition under section 2 of the Magistrates' Court Act. He cemented his submission with reference to the decision of this court in **Commercial Appeal no. 1 of 2006 between Zanzibar Insurance Corporation Ltd versus Rudolf Temba.**

He went on to submit that the particulars of special damages as pleaded by the plaintiff were not shown and therefore it was against the law. On this he referred this

court to the decision of the High court in the case of **Govan Abdalah Govan versus TANROADS& Attorney General, Civil case no 52 of 2005**(unreported)

Mr. Kweka for the plaintiff strongly opposed the preliminary objection. Referring this court to roman (iv) of Act No. 4 of 2004 under which the term commercial case is defined, he submitted that this court has requisite pecuniary jurisdiction to do what required to do.

In substance, the learned counsel contends that because this suit is on the breach of contract it falls in the parameters of a commercial case and therefore there is no way he can concede that this case could be tried by the Resident Magistrate or District Magistrates' courts.

The learned counsel contended that once a case is found to be a commercial case it is only Act No. 4 of 2004 which operates.

As to the question of special damages, he stated that the allegation that they have not been specifically pleaded is untrue and misconceived. He says that reading the plaint as a whole and not each paragraph in isolation together with the annexure it is irresistible to conclude that the particulars have been clearly stated.

In the alternative the learned counsel submitted that in the worst scenario that this court find itself to lack pecuniary jurisdiction(which is disputed) then the remedy would be not to strike out the suit but to transfer the same to the court vested with jurisdiction. On this point he referred this court to page 163 of the Book titled "Magistrate's Manual" written by retired justice Mr. Chipeta B.D.

In rejoinder Mr. Msemwa has stated that to pray for transfer of the case would amount to pre-empting the preliminary objection and as such he insisted that the suit should be strike out.

On my part I am of the view that as rightly pointed out by Mr. Kweka, the preliminary objection on the ground mounted by the counsel is misconceived and misplaced.

The entire plaint discloses existence of business transactions between the defendant and the plaintiff. Firstly, the defendant and the plaintiff are all business entity as disclosed in the pleadings.

Secondly, their transactions involved an extension of draft facility by way of supply of various agrochemicals, machineries and equipment to the defendant which to

date stands un-paid for. In the circumstances the un discharged amount can be not other than a liability arising out of the business activities of the defendant.

To me therefore, this court is being called to determine **“the liability of a Commercial or business organization or its Officials arising out of its Commercial , or business activities”** which is a commercial case as per section 2 of the Magistrates’ Courts Act as amended by Act no. 4 of 2004. Therefore it can be no other than a commercial case properly so called.

Fortunately counsel for defendant is aware of the existence and import of section 40(3) (b) of the Magistrates’ Court Act as brought in by Act no.4 of 2004, which limits the pecuniary jurisdictions of the lower courts (RM’s and DM’S) in relation to commercial cases to T.shs 30,000,000/=, henceforth, since the subject matter of the claim in this case is above the said threshold (i.e. T.shs 51,279,940/=), it is apparent that the counsel’s squabble at this stage of the suit is real a negative energy.

For the reasons stated above, I find the objection to be

outrageously wanting . The same stands dismissed with costs.

Order accordingly


A.R. MRUMA
JUDGE

2/11/2011

Coram: Hon. A.R.Mruma, Judge.

For the Plaintiff – Mr. Kweka (Principal Officer of the Plaintiff).

For the Defendant – Absent.

CC: J. Grison.

COURT: Ruling delivered this 2nd day of November, 2011 in presence of Mr. Kweka, Principal Officer of the Plaintiff but in absence of the defendants and their advocates.


A.R. MRUMA
JUDGE

2/11/2011

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