

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 29 OF 2015

AFRICAN BANKING CORPORATION
TANZANIA LIMITED.....PLAINTIFF

VERSUS

GWAMI PHARMACY COMPANY
LIMITED.....1ST DEFENDANT

MICHAEL KAROLI WAGE.....2ND DEFENDANT

ROSEMARY ALMASI WAGE.....3RD DEFENDANT

RULING

Mansoor, J:

Date of RULING- 13TH NOVEMBER 2015

The plaintiff raised objections against the Defendant's written statement of defence and the counterclaim regarding the format of the pleadings in font size and font style in that the font size and style of the written statement of defence and of the counter claim is not in conformity with the provisions of

Rule 19 (1) of the High Court (Commercial Division) Procedural Rules, 2012. The Defendant's Counsel one Mr Nyambo Michael conceded to the objection and prayed to amend the Written Statement of Defence.

Before I deal with the objection on the form of the pleadings, I shall first determine the objection on the pecuniary jurisdiction of the Court to entertain the counterclaim. I agree with the decision of Justice Masati in the case of **George David Gordon vs Reliance Insurance Company Limited**, Commercial Case No. 102 of 2005 (unreported), *that "it is the plaintiff's valuation that controls and determine the court's jurisdiction, and it is incumbent upon the plaintiff to plead facts which make the suit prima facie entertainable by the Court."*

On this I agree with the submissions by the Counsel for the plaintiff that the question of jurisdiction is fundamental, and that any trial conducted by a Court or Tribunal with no jurisdiction is a nullity and I also agree with the submissions by the learned Counsel for the plaintiff that so long as the

defendant did not attach the valuation report showing the value of the disputed properties, this Court cannot vest itself with jurisdiction just by assuming the value of the property, the subject of the suit.

Secondly, the pecuniary jurisdiction of the case is determined by the value of the substantive claim and not the quantified general damages. The case of **Tanzania –China Friendship Textile Co. limited vs. Our Lady of the Usambara Sisters Civil Appeal No. 84 of 2002**; reported in TLR 2006 at page 70, where the Court of Appeal stated at page 71, and I quote:

*“on the question whether the Trial Court had jurisdiction to adjudicate upon the matter, the issue was not raised before the High court, but since it was about jurisdiction of the Court, **it could be raised at any stage** , even on appeal.”* (Emphasis mine)

And it continued:

“It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the Court.”

The value of the land in dispute was not given in the documents attached to the counter claim, and this was conceded by the Counsel for the defendant.

As held in the above cited case at page 76, that

“Since general damages are awarded at the discretion of the Court, it is the court which decides which amount to award. In that respect, normally, claims for general damages are not quantified. But where they are erroneously quantified, we think that, 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.”

The above cited case is the Court of Appeal decision, and from the above findings, a clause in the counter claim showing the value of the subject matter must be specifically pleaded and a valuation report must be attached therein conferring jurisdiction of the Court to hear this matter and as held in the

above cited case general damages whether quantified or not cannot be the basis of conferring pecuniary jurisdiction to the Courts. It is the value of the substantive claim that gives pecuniary jurisdiction to the Courts.

The jurisdiction of the Court should be determined and fixed by the valuation of this suit land at the time of its institution. That valuation reflects the value of the subject matter of the suit and therefore, the forum or jurisdiction of the Court is not determined by the court-fees paid or the amount of general damages quantified by the Plaintiff, but by the valuation of the subject matter of the suit. It clear that it is the value of the subject matter of the suit that fixes the pecuniary jurisdiction of the courts.

For the above stated reasons, the counter claim is dismissed with costs.

Regarding the format of the written statement of defence being in violation of Rule 19 (1) of the Commercial Court Rules and

the prayer made by the defendant to amend the written statement of defence, I would say that the defects of Court pleadings is an irregularity in procedure and so the pleadings and the defect does not render such process/pleadings defective.

Dismissing the suit or defence on this defect can scarcely qualify for substantial justice. I refer to the Court of Appeal in the case of **Samwel K vs. Hidaya Didas (Civil Application No. 20 of 2012 (unreported))** that while the Advocate admitted that failure to endorse the pleading by the plaintiff and his advocate individual name is a defect, the decision of Court of appeal was clear in laying down its intentional approach of substantial justice in Tanzania that the primary fundamental duty of the Courts is to do substantial justice by deciding not on a mere technicality at the expense of a hearing on the merits. Notwithstanding that the endorsement of the plaint by a the plaintiff is irregular, surely, in casting the lot of the Court with justice over form, where the Court of Appeal held in the above cited case to the effect that the spirit of

justice does not reside in formalities, or words but on substantial justice. After all, the law is, or ought to be, but the handmaid of justice, and the law should often serve to render justice.

In the spirit of the case by the Court of Appeal, I shall not dismiss the written statement of defence but I shall order the Counsel for the defendant to amend the written statement of defence so as the proper format to be done by the defendant. The Amended Written Statement of Defence should be filed in conformity with Rule 19 (1) of the High Court Commercial Rules, 2012.

Preliminary objections partly succeed.

DATED at DAR ES SALAAM this 13th day of November, 2015

**MANSOOR
JUDGE
13th November 2015**