

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL APPEAL NO. 3 OF 2021

**(Originating from Civil Case No. 2 of 2020 in the Resident Magistrate's
Court of Kibaha at Kibaha)**

BETWEEN

MOHAMED SAID MPAKI.....APPELLANT

Versus

EQUITY FOR TANZANIA LIMITED..... RESPONDENT

Date of last order: 29th July 2022

Date of Judgment: 5th August 2022

JUDGMENT

MKEHA, J.

The respondent herein did file a plaint in the Resident Magistrate's Court of Kibaha at Kibaha for the following reliefs:

- (a) A declaration that the defendant has breached the financial lease agreement;

- (b) An order for immediate payment of Shillings Eighteen Million, Eight Hundred Fourteen Thousands Two Hundred Seventy-Eight (TZS 18,814,278/=) as a full price remaining unpaid for a leased truck and interest;
- (c) An order for repossession of motor vehicle No. T972 DKA;
- (d) Payment of General damages at the court's assessment;
- (e) Commercial interest on (b) above at the current prevailing rate of 23% from the date of filing of the suit to the date of judgment;
- (f) Interest on the decretal amount at the rate of 12% on (b) and (d) above from the date of judgment to the date of full payment and
- (g) Costs of the suit.

Along with her Written Statement of Defence, the appellant did file a counterclaim for the following reliefs:

- (a) An order for the payment of Tanzania Shillings Fifty Million (TZS 50,000,000/=) arising from the performance of the contract;
- (b) An order for delivery of Brand New Eicher Truck 10.75 as the subject matter of the agreement;
- (c) Costs of the proceedings and

- (d) Any other reliefs as the Honourable court deems proper to grant in the circumstances of the counterclaim.

After a full trial in respect of the suit and counterclaim, the learned trial Resident Magistrate composed a judgment whose operative portion reads as hereunder:

“Up to this juncture, I should address that the suit to be instituted in the court of the lowest grade competent to try it pursuant to section 13 of the Civil Procedure Code, 1966, Cap 33 R.E 2019. The matter is dismissed without costs.”

The appellant, who was the defendant before the trial court was dissatisfied. Through Mr. James Ndumbaro learned advocate, an appeal was preferred. The Memorandum of Appeal consists of the following grounds:

1. That, the Honourable Resident Magistrate erred in law for failure to consider a counterclaim that was proved on the balance of probabilities by the appellant;
2. That, the trial Magistrate’s Court erred in law and fact to dismiss the suit with no order of costs without stating the reasons to that effect.

With the leave of the court the following supplementary ground of appeal was also filed in court:

3. That, the trial Magistrate's Court erred in law and fact to dismiss the suit based on pecuniary jurisdiction and left the appellant condemned unheard on the counterclaim.

When the appeal was called for hearing, Mr. Ndumbaro learned advocate submitted that, the learned trial Resident Magistrate erred in law for failure to consider the counterclaim that was proved by the appellant. The learned advocate submitted further that, it was an error on part of the trial Magistrate to dismiss the suit based on pecuniary jurisdiction leaving the appellant unheard in respect of the counterclaim.

The learned advocate added that, evidence had been adduced in respect of the original suit and the counterclaim. However, on 22nd September 2021, judgment was pronounced without deciding the counterclaim. In view of Mr. Ndumbaro learned advocate, the dismissal of the suit for want of jurisdiction was a result of the wrong interpretation of section 13 of the Civil Procedure Code. In his considered view, the trial court had jurisdiction to decide the matter.

Mr. Mabondo learned advocate submitted in reply that, not only did the trial court err in not considering the counterclaim, but also the original suit. The learned advocate made a specific prayer that, the trial court be directed to decide the matter based on the evidence already on record. The learned advocate condemned the trial court for deciding a jurisdictional issue without according a right to be heard to the parties. He called to his aid the provisions of Order XIV Rule 5 (1) of the Civil Procedure Code. He also cited the decision in **CHARLES CHRISTOPHER HUMPHREY KOMBE Vs KINONDONI MUNICIPAL COUNCIL, CIVIL APPEAL NO. 81 OF 2017.**

The issue is **whether in terms of section 13 of the Civil Procedure Code a higher court does not have pecuniary jurisdiction to determine a matter which falls within pecuniary limits of a court of lower grade.** In this case, reliance was put on the provisions of sections 18 (1) (a) (ii) and 40 (2) (b) of the Magistrate's Court Act as well as section 13 of the Civil Procedure Code to hold that, the Resident Magistrate's Court does not have pecuniary jurisdiction to determine a principal claim for recovery of a civil debt to the tune of TZS 18, 814,278/=. And that, it is only the primary court that possesses such jurisdiction. The learned Resident Magistrate having so found,

proceeded to dismiss the suit for want of pecuniary jurisdiction without deciding or commenting in any way on the counterclaim which had been raised and heard.

Section 13 of the Civil Procedure Code provides as hereunder:

“Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of resident magistrate and a district court shall be deemed to be courts of the same grade: Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court”.

Save for the proviso found in section 13 of our Civil Procedure Code, the provision is in *pari materia* with section 15 of the Indian Code of Civil Procedure. In both laws, the provisions fall under the heading: PLACE OF SUING.

Interpreting the said provision of the law, eminent authors on the subject of Civil Procedure have written the following: That, the phrase “place of suing” simply means the venue for trial and has no reference to the competency of the court. That, the section is a rule of procedure and not of jurisdiction and it does not therefore oust the jurisdiction of the courts of higher grades which have concurrent jurisdiction in the matter. That, the word shall is construed to mean that it is imperative

and not obligatory. That, the object is that the court of the higher grades should not be overcrowded with suits. See **Sarkar's Law of Civil Procedure Code, 10th Edition at pages 166 to 167**. See also **RENADA MINERALS CORPORATION VS CONSOLIDATED HOLDING CORPORATION & ANOTHER, CIVIL CASE NO. 52 OF 1999 (HCT at Arusha)** by His Lordship Rutakangwa J, (as he then was).

From what is gathered from the learned author while commenting on a provision of a statute in *pari materia* and the case law cited hereinabove, the principle may be stated thus, a court pecuniarily competent may always decree an amount less than its pecuniary limit but a court of limited pecuniary jurisdiction has no power to decree an amount in excess of that limit. Therefore, a Resident Magistrate sitting at the District or Resident Magistrate's Court is not precluded from trying a suit whose value is within the jurisdiction of the Primary Court. It is the opposite for which the law regarding pecuniary jurisdiction seeks to limit.

To achieve the purpose for which section 13 of the Civil Procedure Code is enacted, that is, to avoid the courts of higher grades from being overcrowded with suits, judicial officers responsible with a duty of

admission of cases for registration, should always heed to the following instructive advice of the Court of Appeal:

“There should be placed a mechanism which will ensure that litigants are appropriately advised to lodge in other registries matters not specifically assigned to a particular Division so as to ensure that the purpose for which the Divisions are established is not paralyzed. In the event a case not of a division’s specialization is instituted in any of the divisions, the parties should not be thrown out as was the case herein under the pretext of lack of jurisdiction. Instead, the parties should either be advised to withdraw and file the same in another court competent to try it; otherwise, such a case should be heard to its conclusion.” Read: **THE**

NATIONAL BANK OF COMMERCE LIMITED Vs NATIONAL CHICKS CORPORATION LIMITED AND FOUR OTHERS, CIVIL APPEAL NO 129 OF 2015, CAT AT DAR ES SALAAM.

The instructive advice hereinabove was kindly rendered by the Court of Appeal in the course of deciding the above-cited case on how to filter cases to be admitted and registered before different specialized divisions of the High Court of the United Republic of Tanzania. The said advice was specifically rendered to the Divisions of the High Court on how to filter cases basing on particular specialization. Mindful of the position that the specialized Divisions retain the unlimited jurisdiction of the High Court on establishment, I hold that, the same approach can as well be

used by courts of higher grades in the judicial hierarchy with necessary modifications, to make section 13 of the Civil Procedure Code a meaningful provision by achieving the purpose for which it was enacted.

For the reasons I have endeavoured to offer, it is my holding that the learned trial Resident Magistrate erred in holding that, the trial court lacked pecuniary jurisdiction to try the suit before it. I also hold that, it was a misdirection on part of the learned trial Resident Magistrate to fail to decide the counterclaim that had been raised and heard. The trial court's judgment is therefore set aside. Since there is evidence on record that the suit and the counterclaim were both heard before the trial court, it is directed that, on return of the original record to the trial court, the same be re-assigned before another magistrate of competent jurisdiction to decide on the suit and counterclaim based on the evidence on record. The appeal is allowed. No order is made as to costs.

DATED at DAR ES SALAAM this 5th day of August 2022.




C. P MKEHA

JUDGE

05/08/2022

Court: Judgment is delivered in the presence of the parties'

advocates.




C. P. MKEHA

JUDGE

05/08/2022