

**IN THE HIGH COURT OF TANZANIA
COMMERCIAL DIVISION
AT DARES SALAAM**

COMMERCIALCASE NO. 70 OF 2021

EAST AFRICA DEVELOPMENT BANK	PLAINTIFF
VERSUS	
NAURA SPRINGS HOTEL LIMITED	1ST DEFENDANT
IMPALA HOTEL LIMITED	2ND DEFENDANT
PELEGIA AUYE	3RD DEFENDANT

RULING

K. T. R Mteule J.

20/10/2021 & 13/01/2022

This Ruling is on Preliminary objection raised by the Defendants herein to challenge the jurisdiction of this court in this suit, for having been filed in Dar es Salaam while the course of Action arose in Arusha, with subject matter and parties situated in Arusha. According to the Counsel for the Defendants, since this cause of action arose in Arusha while parties reside in Arusha and the subject matters are situated in Arusha hence filing this matter in Dar es Salaam contravenes **Section 14 and 18 of the Civil Procedure Code, Cap 33 [RE: 2019]** (CPC).

The Preliminary objection was argued by written submissions. The Defendants' Counsel submitted that contrary to the above-named provisions of the CPC are clear that the plaintiff has instituted this suit in the High Court- Commercial Division (Dares salaam Registry) and yet the immovable properties i.e. Mortgages sought to be sold are situated in Arusha, the business operations of the 1st and 2nd defendants are in Arusha and the Directors of the 1st and 2nd Defendant who is also the 3rd



defendant resides in Arusha. The counsel submitted that this court has no jurisdiction to entertain this matter.

The Counsel cited the cases of **Abdallah Ally Seleman t/a Ottawa Enterprises (1987) V Tabata Petrol Station Co Ltd & Mohamed J Lardhi, Civil Appeal No. 89 of 2017, (Attached) Kitusi J. A at page 14, 15, 19 and 20 respectively.**

It is the Defendant's counsel's view that the plaintiff ought to have filed this matter in the High Court- Commercial Division (Arusha Sub Registry) as provided under **Rule 5 of High Court Registries (Amendment) GN No. 638 of 278/2021** thus;

"In addition to the main registry at Dares Salaam. There shall be High Court Sub - registry at such places and for such areas as set out in the schedule to the Rules"

That the Schedule to the rules is very clear that Arusha is one of the sub registries of the High Court Commercial Division.

In reply to the Defendants' Counsel's submissions, the Plaintiff Counsel started by giving a background to the establishment and operations of the Commercial Division of the High Court tracing its origin from the **High Court Registries (Amended) Rules 1998 GN No. 141/1999**, and the current status under the High Court (Commercial Division Procedure) Rules, 2012 gn 250 OF 2012 (The Rules).

According to the Plaintiff since there is Commercial Court Procedure Rules, the Civil Procedure Code becomes inapplicable unless the rules are silent in that regard. The principle of statutory interpretation is that where the general law and the specific law applies on the same matter, the general law must give way to the specific law. That CPC is the general law, so it must give way to the Commercial Court Procedure



Rules, So Section 14 and 18 of the CPC are not applicable in filing suits at the Commercial Division.

The Plaintiff's Counsel submitted further that there is only one High Court Commercial Division while Arusha and Mwanza are only sub registries. In his view, Under the High Court Commercial Procedure Rules, there is no legal requirement that a Commercial Case must be filed where the cause of action arose or where the property is or where the defendant is.

The counsel for the Plaintiff listed examples of cases which were filed in the Commercial Division although there Thus for instance in

- (1) Commercial Case No. 55/2017 Elias B. Ramin & Company Limited versus D.B Shapriya & Co Limited (Unreported) - the cause of action arose from activities that took place in Mtwara. The suit was filed and determined at Dares Salaam Registry.
- (2) Rock Solution (I) Limited Versus TIB Development Bank Limited and Another Commercial Case No. 169/2018 - event leading to the filing of the suits took place in Mwanza and Mara Region, the suit was determined at Dares Salaam Main Registry.
- (3) Commercial Court No. 2 of 2018 JL, Consultancy Tz Limited versus Dangote Cement Tz Limited - the cause of action arose in Mtwara but the matter was determined at Dares Salaam.
- (4) Double Diamond Holding Limited versus East African Spirits Limited and Another - the parties where cantered in Arusha(Plaintiff) Dares Salaam and Shinyanga for Defendant's yet the matter was held and determined at Dares Salaam Registry.

The Plaintiff's counsel emphasised that for a Commercial case, there is no requirement to file the same as per provision cited by the defendant in his submission.

He challenged the authorities referred to in the defendant's submissions for being distinguishable from this case as all the proceedings referred to were not conducted in the Commercial Division of the high Court and that There is no reference to provisions that specifically apply to the High Court Commercial Division from the PC, High Court Registry Rules and High Court (Commercial Division Procedure Rules.

In the alternative the Counsel for the Plaintiff submitted that shall the Court form opinion that it will serve costs if the matter is transferred to Arusha Commercial Division sub registry, let it be as it shall be in consonance with order in Commercial Application No. 1/2021 EXIM BANK TANZANIA LIMITED VERSUS CHRISTOPHER ELISANA MALLY t/a TANZANIA ARTS HERITAGE GALLERY and in F. Lwanyantika Masha versus The Attorney General-Civil Case No. 136/2001 (unreported).

The Defendant's counsel filed a rejoinder. Although its details are not give here, the same will be considered in the due course of determining this Preliminary Objection. It suffices to say that from the parties' submissions, the issue for determination is **whether the court lacks jurisdiction in determining this matter.**

The extent of the jurisdiction of the High Court as a general and that of the High Court Commercial Division specifically are already addressed by the Court of Appeal and a guidance is given. It is an established position of law in our jurisprudence that the high Court is one with a wide jurisdiction provided by the Constitution, the *Judicature and Application of Laws Act, Cap. 358 R. E. 2002 (The JALA)* and other statutory laws. This was the position in **The National Bank of**

Commerce Limited Versus National Chicks Corporation Limited and Others, Civil Appeal No. 129 OF 2015 (CAT) where it was stated by their Lordships Justices of Appeal thus: -

*"More so, **section 5 of the Judicature and Application of Laws Act, Cap. 358 R. E. 2002 (The JALA)**, provides that: -*

"Subject to any written law to the contrary, a judge of the High Court may exercise all or any part of the jurisdiction of, and all or any powers and authorities conferred on the High Court. "(Emphasis added)

It is manifest that the High Court is one in this country, and it derives its jurisdiction or mandate from either the Constitution or any law to that effect. It is also absolutely clear that it has unlimited jurisdiction and judges of the High Court are mandated to exercise all or any part of the powers conferred on the High Court."

From the above stated position, it is apparent that there is one High Court of Tanzania with unlimited geographical jurisdiction within the Country. The Registries are designed to facilitate administrative operations and not to take away the statutory powers of the High Court. The High Court Commercial Division was specifically established and assigned the task to determine matters of Commercial significance with no specific provision of laws to prescribe its geographical limitation. Even though **Rule 5 A of the High Court Registry Rules** could have been construed to have confined the powers of the High Court Commercial Division to a specific geographical location, which is however not the case, then it can never take away the powers conferred to the High Court by the Constitution or an Act of parliament which prescribe the jurisdiction.

In **The National Bank of Commerce Limited (supra)** it was further held:-



We also agree with Mr. Ngeleshi that were we to agree with Mr. Nyamgaluli that Rule 5A of the HCRR took away the jurisdiction of a judge of Commercial Division, then such Rule, being a subsidiary legislation, would be inconsistent with the provisions of section 5 of the JALO, therefore void in terms of section 36 (1) of the Interpretation of Laws Act, Cap 1, Revised Edition, 2002. That section provides that

"(1) Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act and subsidiary legislation shall be void to the extent of any such inconsistency."

In view of what we have stated herein, we find and hold that the learned trial judge had jurisdiction to hear and determine a claim touching on defamation. " (Emphasis added)

It is plain that while the High Court is a creature of the Constitution, the registries and divisions of it are a creature of Rules and the provisions of the Rules cannot override the provisions of the Constitution. That said, we have found ourselves constrained to differ with Mr. Kamara's forceful submission that the Commercial Court has no jurisdiction to adjudicate land matters."

From the above quote, it is apparent that the High Court Commercial division cannot be limited in determining a matter of commercial significance basing on the geographical origin of the subject matter or parties' residence. The Counsel for the Defendants' argument that filing this matter in Dar es Salaam contravened the Provision of Section 14 of the Civil Procedure Code is misconceived because since the High Court is one in Tanzania, any commercial matter can originate from anywhere within Tanzania. The choice of the Registry is for a matter of convenience and not related to any contravention with the law.

For clarity, I will reproduce the provisions of Section 14 and 18 of the CPC. They provides; -

" 14. Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) For the recovery of immovable property with or without rent or profits;*
- (b) For the partition of immovable property;*
- (c) For foreclosure, sale or redemption in the case of a mortgage of or a charge of or a charge upon immovable property;*
- (d) For the determination of any other right to, or interest in, immovable property;*
- (e) For compensation for a wrong to immovable property; or for the recovery of movable property actually under distraint or attachment, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:*

Provided that, a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be instituted either in the court within the local limits of whose jurisdiction the property is situate or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain."

Section 18 (a) and (b) provides;-

"Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- (a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;*
- (b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution;*



In short, the provisions emphasise the filing of suites to be confined within the geographical boundaries of the jurisdiction of the particular court. However, the High Court's geographical jurisdiction is as wide as the entire Tanzania. This matter having been filed herein; in my view, no law is violated.

From the foregoing analysis, the Preliminary objection lacks merit, and it is overruled.

Order accordingly

Dated at Dar es Salaam this 13th Day of January 2022




KATARINA T. REVOCATI MTEULE

JUDGE

13/1/2022

COURT:

Ruling delivered this 13th day of January 2022 in the presence of Gabriel Mnyelle Advocate for the Plaintiff and Nashon Nkungu Advocate Holding brief for Emmanuel Sudi for the Defendants.




KATARINA T. REVOCATI MTEULE

JUDGE

13/1/2022