

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CIVIL CASE NO.136 OF 2001

CR. F. LWANYANTIKA MASHA..... PLAINTIFF

VERSUS

THE ATTORNEY GENERAL..... DEFENDANT

RULING

MANENTO, JK:

Dr. F. Lwanyantika Masha had instituted a civil suit against the Attorney General for special and general damages in respect of tortuous acts committed by the police against the plaintiff.

The facts leading to the tortuous acts complained of are that on 31/10/2000 at Sengerema District Headquarters, where the plaintiff was lawfully attending the addition of votes for the year 2000 General Election in which he was a parliamentary candidate for Sengerema constituency, the plaintiff was intentionally and wrongfully assaulted and beaten by the members of the police force. He was kicked by hard police boots, beaten with police batons, gun butts and fists, police sticks, on all parts of his body. That for purposes of territorial jurisdiction, the offices of the defendant are in Dar es Salaam. Hence, the suit was filed here at Dar es Salaam. The

Attorney General filed his written statement of defence, denying the liability generally. The pleadings were ready by 4/5/2003 ready for hearing after mediation had failed. Hearing date was then fixed to be on 27/7/2004 but again it did not take off. It was until 27/9/2005 when the suit was fixed for hearing, that the defendants, being represented by Mr. Kamba, principal State attorney, did raise a preliminary objection on a point of territorial jurisdiction.

The learned principal state attorney submitted that the cause of action arose at Sengerema, Mwanza Region which is within the Mwanza High Court Registry. He submitted that the Attorney General cannot be sued in any high court, but at the place where the cause of action arose. He cited an unreported Court of Appeal Case, Civil Revision No.50/1998 James Funke Gwagilo Vs. The Attorney General. Then he prayed for the transfer of the case to Mwanza High Court. Mr. Mnyele, learned counsel briefly submitted in reply that though he conceded to what the Court of Appeal held in Gwagilo's case (supra) yet some factors should also be considered. That the plaintiff has three residences. He partly stay at Mwanza, Sengerema and at Dar es Salaam. Secondly that the Attorney General has his head offices here at Dar es Salaam, where the plaintiff engaged the services of an advocate. Therefore, the fact that the Attorney General's head office is at Dar es

Salaam, that he is the defendant, then this court has jurisdiction to hear the case.

The Court of Appeal in dealing with this issue, it said that Section 18(c) of the Civil Procedure Code, 1966 is the one applicable in choosing the place/court where a suit like this one would be instituted. For ease of reference., I hereby reproduce section 18(c) of the civil procedure code, 1966.

S.18 Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction (c) the cause of action wholly or in part arises.

Under the High Court Registry Rules, found in the Judicature and Application of Laws Act, cap 358, rule 5, there are District Registries in addition to the Registry at Dar es Salaam. Thus, there is a District Registry in Mwanza Region, where Sengerema is situated. Rule 7(1) of the High Court Registries states categorically the place of suing on original jurisdiction, that the proceedings may be instituted either in the Registry at Dar es Salaam or in the District Registry (if any) for the area in which the cause of action arose or where the defendant resides. Therefore again, though the defendant's head offices are situated at Dar es Salaam, yet the cause of action did not arise in the territorial High Court Registry of

Dar es Salaam. It arose in the territorial jurisdiction of the District Registry of Mwanza.

Therefore, when reading section 18(c) of the Civil Procedure Code, 1966, the Gwagilo's case (supra) and the High Court Registries Rules, no way can this suit be conducted in the Registry at Dare s Salaam.

Mr. Kamba, learned Principal State Attorney finalized his submissions by requesting this court to transfer the proceedings to the District Registry at Mwanza, and Mr. Mnyele, learned counsel left it to the court to decide.

Well, the courts decision is based on the rule of the law and decided case of the Court of Appeal. The suit is therefore ordered to be transferred to Mwanza High Court Registry. It is further ordered that the parties be notified of the transfer, especially the plaintiff so that he can make a follow up at Mwanza District Registry.

No orders for costs are made.


A.R. Manento

JAJI KIONGOZI

4/10/2005

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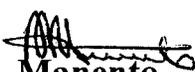
Coram: A.R. Manento, JK

For the Plaintiff – Absent

For the Defendant – Mr. Kamba PSA.

Cc: Livanga.

Order: The ruling is read in the absence of the plaintiff with notice.


A.R. Manento

JAJI KIONGOZI

4/10/2005