

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 145 OF 2014

PETER KEASI.....PLAINTIF

VERSUS

THE EDITOR, MAWIO NEWSPAPER.....1ST DEFENDANT

JABIR IDRISSA.....2ND DEFENDANT

R U L I N G

23 Feb. & 15 Mar. 2018

DYANSOBERA, J:

This is a ruling on a preliminary objection raised by the two defendants in their joint written statement of defence filed on 12th April, 2015 on the following grounds:

- i. The plaint does not disclose a cause of action
- ii. The suit is incompetent for lack of jurisdiction.

The preliminary objection was argued orally, the plaintiff being represented by Mr. Alloyce A. Komba, learned counsel while the defendant enjoying the legal services of Mr. Hekima Mwasipu, learned advocate.

On the first limb of preliminary objection on the plaint disclosing no cause of action, Mr. Mwasipu cited the case of **John M. Byombalirwa v. Agency Maritime Internationale (T) Ltd** [1983] TLR 1 on the meaning of cause of action to be legal right which the plaintiff will be entitled if he proves the

same and that it was further elaborated that the cause of action shall be reflected in the plaint which will entitle the plaintiff to have a legal right against the defendant. He contended that in the present suit, the plaint filed on 14th July, 2014, the base of the suit is defamation whereby the plaintiff is claiming that the defendants defamed him. According to learned counsel, the word defamation is a common law term which has the following elements, namely, one that the statement spoken or written must be false, two, it must be published or communicated, third, it must have caused injury to the plaintiff and lastly, it must refer to the plaintiff. Mr. Mwasipu sought to substantiate this argument by citing the quotation under paragraph 4 of the plaint, paragraph 5 (page 3), paragraph 6, 7, 8, 11 and 13 contending that nowhere were the defendants mentioned and no specific damage was pleaded to entitle the plaintiff to have a legal right from the court. Further that there was no statement which was false which is one of the elements of the tort of defamation. On this first limb of preliminary point of law, learned counsel for the defendants prayed the plaint to be rejected under Order VII Rule 11 (a) of the Civil Procedure Code.

Regarding the second preliminary point of law, it is submitted on part of the defendants that under paragraph 4 of the plaint, the plaintiff is claiming for payment of 2b/- for general damages. Counsel for the defendants told this court

that no specific or principal damage was claimed to determine the jurisdiction of this court. Counsel relied on the decision in the case of **Ms Tanzania and China Friendship v. Our Ladies Usambara Sisters**, Civil Appeal No. 84 of 2002 which provides that it is the substantive claim or specific damage which determines the jurisdiction of the court. It is the argument of the counsel for the defendants that the plaintiff has failed to establish that this court has jurisdiction.

Replying to the submission of learned counsel for the defendants, Mr. Alloyce Komba submitted that the preliminary objection raised is not based on points of law but only on facts. He contended that what the learned counsel for the defendants has stated is as if he is making a defence, the fact which is not proper as all the paragraphs the learned counsel for the defendants has been referred to are reflected in the written statement of defence. Further that the words under paragraph 4 of the plaint were just a head line of the attached document of Ann. KEASI-1 and the defendants have denied all the facts. The court could therefore determine whether the allegations were false or not at the trial stage and not at this preliminary stage as the plaintiff maintain that the words complained of lack truth, objective and accuracy and that they are actionable per se against the defendants and that the plaint discloses a cause of action as all the elements have been indicated in the plaint.

On the issue of jurisdiction, learned counsel for the plaintiff told this court that the case of **Our Ladies of Usambara Sisters** (supra) is distinguishable from the facts of this case as the facts in that cited case did not relate to defamation but on business transaction and that the same case stated that the High Court had unlimited jurisdiction upwards and limited jurisdiction downwards. It was, thus prayed for the plaintiff that the preliminary objection be dismissed with costs and the suit to proceed.

Mr. Mwasipu rejoined by stating that what he has submitted in support of the preliminary objection is purely points of law and that the cause of action can be grasped by perusing the plaint which contains paragraphs which are numerically numbered and that the elements of defamation have not surfaced on the plaint. As to the jurisdiction, learned counsel for the defendants insisted that it is the substantive claim which determines the jurisdiction of the court and the plaint has failed to show this important aspect which is a cornerstone to indicate the jurisdiction.

I have considered the preliminary objection, the rival submissions by learned advocates and the plaint and its annexes particularly **Annex KEASI-1**. I am satisfied that the preliminary objection has merit.

First, it is true that the Code does not define what a cause of action is but the meaning and expression "cause of action" can be gathered from different sources. As correctly

submitted by learned counsel for the defendants, the meaning of cause of action was well articulated in the famous land mark case of **John M. Byombalirwa v. Agency Maritime Internationale (T) Ltd** [1983] TLR where Kisanga J. (as he then was), held:

"The expression "Cause of action" is not defined under the Civil Procedure Code, 1966...but may be taken to mean essentially facts which it is necessary for the Plaintiff to prove before he can succeed in the suit .."

The same Court of Appeal in the **John M. Byombalirwa's case** held further that:

"The question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form a part of it, and upon the assumption that any express or implied allegations of fact in it are true."

Under paragraph 4 of the plaint, the plaintiff seeks to establish the cause of action against the defendants in the following terms:

"4. the plaintiff's claim against the defendants jointly and severally is for payment of Tshs. 2,000,000,000/= (Two billion Shillings) as general damages, exemplary or punitive or vindictive damages and aggravated damages for a defamatory

article published by Mawio Newspaper in its issue No. 0098 of June 5-11,2014 under a headline: “CCM KUTUMIA BILIONI 3.4 KUJITANGAZA”, which in natural and ordinary meaning, means CCM (Chama cha Mapinduzi), the ruling political party, has budget of 3.4 billion shillings for media publicity. A copy of the article is annexed hereto and marked Annexure “KEASI-1” which the plaintiff prays for leave of this Honourable court to form part of this **plaint.**”

Now, Annexure KEASI-1 reads in part:

“Kampunti hiyo yenye leseni ya usajili No. B.01034572, ambayo ilisajiiwa katika Halmashauri ya Wilaya ya Ilala, jijini Dar es Salaam tarehe 22 Novemba 2006 na kupata namba ya mlipa kodi (TIN) yenye Na. 104-905-285, imepewa kazi hiyo kwa kitita cha Sh. 3,407,665,000(3.4 bilioni).

“Mradi huu utakihakikishia chama chako kuendelea kubaki madarakani kwa muda mrefu ukilinganisha na vyama vingine vya siasa katika Bara la Afrika” Anaeleka Keasi [plaintiff], katika andishi lake alilolituma kwa Katibu Mkuu wa chama hicho, Abdurahman Kinana, 14 Mei, mwaka huu. Anasema, “...Mradi huu utafanya CCM kuendelea kuaminika”

From paragraph 4 of the plaintiff's plaint and Annexure KEASI-1 it is not clear who is defaming who? Are the defendants defaming the CCM? Or is the plaintiff defaming CCM, if at all the said words were proved to be defamatory of any person. Besides, it is not clear whether the defamatory words, if any, referred to the plaintiff or the company called AP Media and Consult Limited of whom the Plaintiff is the Managing Director. This is particularly so because, in this case there are two entities. The first entity is the plaintiff himself and second entity is the company styled as AP Media and Consult Limited of whom the Plaintiff is the Managing Director. The issue is then, who was defamed among the two. Specifying and particularising this issue is crucial because, in the commercial arena, the inquiry is whether the published statement concerns the business itself or someone affiliated with the business in his individual capacity. Generally, the defamation must refer to the person defamed. In this case it had to be specifically pleaded whether the alleged defamation referred to the company business or to PW 1 individually.

In sum, a cause of action arises when facts on which liability is founded exists. This is not the case with matter. In view of the clear provisions of Order VII Rule 11 (a) of the Civil Procedure Code [Cap.33 R.E.2002], the suit has to be rejected. If that is the case, then there is no need to go

further as that would amount to wastage of time and resources. That first limb of preliminary objection is upheld.

As to the question jurisdiction, section 13 of the Civil Procedure Code, Cap.33 R.E. 2002 requires suits to be filed in courts of the lowest grade competent to try them. As rightly pointed out by Counsel for the defendants, no claim for specific damages was made and pleaded. in other words, there was no substantive claim which could clothe this court with the pecuniary jurisdiction to the exclusion of the subordinate courts. The Court of Appeal of Tanzania in the case of **Ms Tanzania-China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters**, [2006] TLR 70 while dealing with the pecuniary jurisdiction of the courts and interpreting the provisions of section 13 of the said Code, held inter alia that:

“(1) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court

(2) Although there is no specific provision of law stating expressly that the High Court had no pecuniary jurisdiction to entertain claims not exceeding 10,000,000/= according to **the principle contained in section 13 of the Civil Procedure Code** that every suit must be instituted in the court of the lowest grade competent to try it”.

The object and purpose of the said provision is I think three fold. First, it is aimed at preventing overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. Second, to avoid multifariousness of litigation and third, to ensure that case involving huge amount must be heard by a more experienced court.

In the instant case, the claim of general compensatory damage amounting to 2,000,000,000/= as general damages, exemplary or punitive or vindictive damages and aggravated damages for a defamatory article published in the Mawio Newspaper in its issue No. 0098 of June, 5-11, 2014 pleaded by the plaintiff under paragraph 4 of the plaintiff was not specific damages because, it was a liquidated claim but general damages which were subject to assessment in the discretion of the court. Such claim cannot, by any stretch imagination, be regarded as a substantive claim.


It is my view that this suit should have been properly instituted either in the District Court or in the Court of the Resident Magistrate which have competent jurisdiction to try the same.

As observed by the Court of Appeal of Tanzania in the case of **Tanzania Breweries Limited v. Anthony Nyingi**, Civil Appeal No. 119 of 2014 (Mwanza), 'under the doctrine of *stare decisis*, or precedent, the decision of the Court of Appeal prevails as the correct interpretation of laws relating

to civil jurisdiction of the High Court until such time the Court of Appeal may depart from it, or some relevant statute is amended'. I am bound by that decision.

That said, I would hold that for the purposes of jurisdiction, the courts subordinate to this Court have jurisdiction to try and determine this suit by the plaintiff together with the counter claim raised by the defendant.


The first and second limb of preliminary objection raised on part of the defendants is sustained and the suit is struck out with costs to the defendants.


W.P. Dyansobera

JUDGE

15.3.2018

Delivered this 15th day of March, 2018 in the presence of Mr. Amidu Burhani Byabusha holding brief for Mr. Alloyce Komba, learned counsel for the plaintiff and in the presence of Mr. Hekima Mwasipu, learned advocate for the two defendants


W.P. Dyansobera

JUDGE

