

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

AT DAR ES SALAAM

CIVIL CASE NO. 187 OF 2022

ZAWADI BAHENGE..... PLAINTIFF

VERSUS

CRDB BANK PLC..... DEFENDANT

RULING

15th December, 2022

BWEGOGGE, J.

The plaintiff above mentioned commenced civil proceedings against the defendant praying for permanent injunction order, payment of general damages as assessed by this court, and exemplary damages, among others, for breach of privacy rights and personality by publishing the plaintiff's image, likeness and attributes in her commercial billboards spread over the country for business purpose without plaintiff's express consent.

Upon the defendant's receipt of the summons for order issued by this court, the same filed defence with notice of preliminary objection on point of law that:

"This hon. Court has no jurisdiction to entertain the matteras general damages do not determine the pecuniary jurisdiction of the court."

The defendant prayed this suit to be struck out with costs.

The plaintiff was represented by Messrs Ferdinand Makore and Joseph Mulamula whereas the defendant has the services of Ms. Paulina Massawe, learned advocate.

When the counsel herein above mentioned appeared before this court on the date scheduled for mention, Mr. Makore had acknowledged receipt of the notice of preferred objection on point of law, and affirmed his commitment to discharge his professional duty as well as the duty to uphold justice as the officer of the court. In this spirit, the counsel conceded to the preliminary objection raised by the defence counsel at the earliest opportunity to save the precious time of this court and adverse counsel. He further conceded that this court is not vested with pecuniary jurisdiction to entertain the claim pegged on general damages as held in the case of **Tanzania China Friendship Textiles Co. Ltd vs. Our Lady of Usambara Sisters** (2006) TLR 70, among others.

The counsel concluded that, since the plaintiff has conceded to the preliminary point of objection at the earliest opportunity, he prayed the same not to be condemned to pay costs. The counsel further prayed for the return of the plaint under order VII rule 10 of the Civil Procedure Code (Cap. 33 R.E. 2022).

On the other hand, the counsel for the defendant, from the outset, contended that it is their stance that the plaintiff has to pay costs as the defendant has incurred costs in engaging them. The counsel prayed the suit herein to be dismissed with costs.

And, in rejoinder, the counsel for the plaintiff reiterated that the remedy available herein is either the plaint lodged herein to be struck out or returned. That the costs are granted at the discretion of the court. This is all about the submissions made by the counsel herein.

The issue for consideration before this court is whether the plaintiff should be condemned to pay costs having conceded to the preliminary object on point of law advanced by the defendant.

The award of costs is the discretion of the court. The guideline as to the award of costs is provided under the provisions of *S. 30 (1) and (2) of the Civil Procedure Code [Cap. 33 R.E. 2022]* whereas it is aptly provided as thus:

"(1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law from the time being in force, the costs of, and incidental to, all suits shall be in the discretion of the court and the court shall have full power to

determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers."

And, subsection 2 of the above-mentioned provision, aptly provides;

(2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing."

The issue whether the conceding party should be condemned to pay costs of litigation is not nebulous in our jurisdiction. This issue is apparent in the case of **Said Nassor Zahor and 3 others vs. Nassor Zahor Abdulla el Nabahany and Another**, Civil Application No. 169/17 of 2017 [2017] TZCA 237, among others, whereas the 1st respondent's counsel conceded to the application but prayed not to be condemned to pay costs. The superior court held:

"The mere fact that counsel for the first respondent has readily conceded to the application, cannot exempt the respondents from paying costs of the application. These are the usual consequences of litigation to which the respondents are not exempt."

Further, the Court opined:

".....in civil cases, the general rule is that costs must follow the event. Costs are the panacea that soothes the souls of litigants that, in the absence of sound reasons, the Court is not prepared to deprive the winning litigant of.

This court has taken into consideration the prayer made by the defence counsel herein in that the plaintiff has to pay costs on the ground that the defendant had hired their services. In fact, the prayer in the preferred objection is to the effect that the suit should be struck out with costs. This court finds it obvious that costs of this litigation have already been incurred by the defendant notwithstanding the initiative made by the plaintiff's counsel to concede to the objection at the earliest opportunity.

Likewise, this court has taken into consideration the fact that the plaintiff's counsel has been candid in conceding to the objection at the earliest opportunity when the matter was scheduled for mention at the first instance. It is obvious that the concession has saved precious time of this court which would otherwise be utilized to hear the arguments for and against, and composing ruling thereon.

In the same vein, it is worth noting that this court has gone through the authorities presented by the plaintiff's counsel in support of the prayer for waiver of costs following concession to the objection advanced. The cases referred to are namely: **Jacob Gabriel Muya vs Cuthbert Justine Mrisha**


and 3 Others, Land Case No. 43 of 2021 [2022] TZHC 10225 and **Amos Manyama and 15 Other vs. M/S Bio Sustain (T) Ltd**, Misc. Land Application No. 113 of 2017 HC (unreported). In the former case, the trial Judge restrained herself to enter an order for costs against the plaintiff on ground that the counsel for the plaintiff had conceded to the preliminary objected advanced by the counsel for the 2nd and 3rd defendants at the earliest opportunity, thus saving the precious time of the court and adverse parties. And in the later case, the trial Judge had restrained himself to award costs against the applicant who conceded to the preliminary objection advanced by the respondent on ground that the respondent's counsel waived the same.

Based on the foregoing, coupled with concession made by the counsel for the plaintiff to the preliminary objection advanced by the defendant, this court hereby strike out the suit herein for want of jurisdiction to entertain the same. And, this court, in the interest of justice for both parties herein, hereby condemn the plaintiff to pay half of the costs of litigation incurred by the defendant as it shall be taxed by the tax master.

Order accordingly.

DATED at DAR ES SALAAM this 15th December, 2022.




O. F. BWEGOG
JUDGE

The ruling delivered this 15th December, 2022 in the presence of Mr. Joseph Mulamula, Counsel for the plaintiff, and Ms. Winfrida Hombeye, Counsel for the defendant.

Right of appeal explained.




O. F. BWEGOG
JUDGE