

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA
CIVIL CASE NO. 16 OF 2018

NAMBURI AGRICULTURAL COMPANY LIMITED.....PLAINTIFF

VERSUS

KIBELO AGROVET SUPPLIER.....DEFENDANT

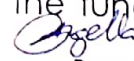
RULING

Date of Last Order: 13/12/2019
Date of Ruling : 10/01/2020

MONGELLA, J.

The Defendant through his Advocate, Mr. Simon T. Mwakolo raised a preliminary objection to the effect that this Court lacks pecuniary jurisdiction to entertain the case instituted by the Plaintiff. The Plaintiff instituted a commercial suit in this Court claiming specific damages to the tune of T.shs. 40,460,000/-. The preliminary objection was argued by written submissions.

In his submissions, Mr. Mwakolo argued that the amount claimed ought to have been filed in the Resident Magistrate/District court in view of the amendments of section 40(2)(b) of the Magistrates Courts Act, Cap 11, R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. According to him this law amended the pecuniary jurisdiction of the District and Resident Magistrate's Courts to the tune of


Page 1 of 5

T.shs. 200,000,000/= thus the High Court's pecuniary jurisdiction is above that amount. He cited the case of **Tanzania-China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters** [2006] TLR 70 and that of **Tanzania Breweries Ltd v. Anthony Nyingi** [2016] TLS LR 99. In **Our Lady of Usambara** (supra) it was held:

"That it is substantive claim and not the general damages which determine the pecuniary jurisdiction...Although there is no specific provisions of law stating expressly that the High court had no jurisdiction to entertain claims not exceeding TZS 10,000,000/-, according to section 13 of the Civil Procedure Code that every suit must be instituted in the Court of the lowest grade competent to try it."

Mr. Mwakolo proceeded to argue that the competent court to try the case filed by the Plaintiff is the District or RM's Court and by virtue of section 13 of the Civil Procedure Code, this Court has no jurisdiction. He cited the case of **Ezeiel Obed Lwila v. NMB PLC and Reliance Insurance Co. (T) Ltd**, Civil Case No. 7 of 2013 (HC-Mbeya, Ngwembe, J.), whereby the plaintiff had claimed T.shs. 70,000,000/- as a commercial case, but the case was dismissed on the ground that the Court lacked jurisdiction. He also cited the case of **Maisha Mchunguzi v. Subscania (T) Branch**, Civil Appeal No. 41 of 1998 in which the CAT held:

"Jurisdiction of the court is sacrosanct that the issue takes precedence over every other issue in the proceedings when it is raised. It is now settled that in proceedings the first thing the court has to determine before adjudicating on any matter is its jurisdiction."



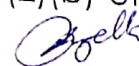
With the above submission he prayed for the suit to be dismissed with costs.

Responding to Mr. Mwakolo's arguments, Mr. Isack Chingilile, learned Advocate for the Plaintiff submitted that, in the outset there is no dispute that the Plaintiff's case before this Court is a commercial case. He argued that it being a commercial case whose amount exceeds T.shs. 30,000,000/- renders this Court with jurisdiction to entertain it. He added that as per Article 108(2) of the Constitution of the United Republic of Tanzania as amended and section 2(1) of the Judicature and Application of Laws Act, Cap 358, R. E. 2002 the High Court has jurisdiction over all matters that are outside the jurisdiction of the courts below it. He also referred to section 40(3)(b) of the Magistrates Courts Act, Cap 11 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2004 which provides:

"(3) Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited,

(b) in the proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed thirty million shillings."

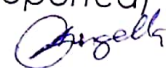
He argued that although the above provision has been amended by the Written Laws (Miscellaneous Amendment) Act, No. 4 of 2019, dated 20th September 2019, at the time the Plaintiff's case was filed in this Court the applicable law was the Magistrate's Courts Act as amended by Act No. 4 of 2004. He challenged Mr. Mwakolo's reliance on section 40(2)(b) of the



Magistrate's Court Act as amended by the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2016 and argued that the said law did not amend section 40(3)(b) of the Magistrate's Courts Act as amended by Act No. 4 of 2004 which provides for a limitation of T.shs. 30,000,000/- for commercial matters to be filed in the District Court. He argued that this provision calls for a fresh interpretation other than the one settled in the case of **Tanzania China Friendship** (supra). With this submission he prayed for preliminary objection to be dismissed.

I have read and considered the submissions by both parties and the cases they have presented before this Court. The question of pecuniary jurisdiction of the High Court in commercial cases has been dealt with in a number of decisions by this Court and it appears that there are conflicting decisions. However, in my considered opinion, the wording of section 40(3)(b) of the Magistrate's Courts Act as amended by Act No. 4 of 2004 is very clear as to the pecuniary jurisdiction of the Court in cases of commercial nature. It categorically states that the jurisdiction of the District Court in matters of commercial nature shall not exceed thirty million. Thus obviously if the amount exceeds thirty million the case has to be filed in the High Court. This position is also supported by a number of decisions from this Court. In **NMB Bank PLC v. Anna Milinga**, Civil Case No. 223 of 2018 (unreported) this Court, (Mlyambina, J.) held that:

*"The case been of commercial in nature in terms of section 40(3) of the Magistrate Courts Act, the District Court has no jurisdiction to proceed with the matter whose value exceeds thirty million shillings. The same stand was adopted in the cases of **Zanzibar Insurance Corporation Limited v. Rudolf Temba**, Commercial Case No. 1 of 2006 (unreported), **Charles Sungwa v. Daniel Lucas**, Commercial Case No. 2 of 2018 (unreported)*

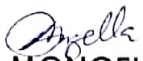


since the value of the claim in this suit exceeds 30,000,000/= this Court has jurisdiction to entertain the matter..."

As pointed out by Mr. Chingilile, this position however, has been amended by section 24 of the Written Laws (Miscellaneous Amendment) Act, No. 4 of 2019 whereby section 40(3)(b) of the Magistrate's Courts Act regarding pecuniary jurisdiction of the District and RM's Court in commercial cases has been increased to seventy million Shillings. The matter at hand however, being filed in this Court on 28th December 2018 is therefore governed by section 40(3)(b) of the Magistrate's Courts Act as amended by Act No. 4 of 2004 as rightly argued by Mr. Chingilile.

Following the above observation, it is my finding that this Court has pecuniary jurisdiction to entertain the Plaintiff's case. The Defendant's preliminary objection therefore lacks merit and is dismissed with costs.

Dated at Mbeya on this 10th day of January 2020


L. M. MONGELLA
JUDGE
10/01/2020

Court: Ruling delivered in Mbeya in Chambers on this 10th day of January 2020 in the presence of Mr. Simon Mwakolo, learned Advocate for the Defendant also holding brief for Mr. Isack Chingilile, learned Advocate for the Plaintiff.




L. M. MONGELLA
JUDGE
10/01/2020