

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPEAL NO. 121 OF 2014

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)

- 1. MANJIT SINGH SANDHU 1ST APPELLANT**
- 2. SHOKAT HASSANALI 2ND APPELLANT**
- 3. HOTEL TILAPIA LIMITED 3RD APPELLANT**

VERSUS

ROBIRI R. ROBIRI RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Mwanza)**

(Mwangesi, J.)

dated 1st day of July, 2014

in

Civil Case No. 13 of 1999

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JUDGMENT OF THE COURT

8th & 11th December, 2015

KAIJAGE, J.A.:

The appellants were losing parties in Civil Case No. 13 of 1999 instituted by the respondent, a successful party, in the High Court of Tanzania at Mwanza. In that suit, the respondent sued the appellants for torts of malicious prosecution and defamation for which the former claimed from the latter special and general damages to the tune of Tshs.2,420,000/= and Tshs.100,000,000/=, respectively. In its judgment dated 1/7/2014, the High Court dismissed the claim for special damages

and awarded the respondent a sum of Tshs.10,000,000/= as general damages. Aggrieved, the appellants instituted this appeal.

The appellants' joint memorandum of appeal lists five (5) grounds of appeal, but we consider the following ground touching on the jurisdiction of the High Court could dispose of this appeal without necessarily canvassing the remaining grounds:-

"To the extent that the respondent claimed special damages to the tune of Tshs.2,420,000/=, the learned High Court Judge erred in law in trying and determining the matter as the High Court had no pecuniary jurisdiction."

Before us, the appellants had the services of Mr. Faustine Malongo, learned advocate, while the respondent appeared in person, unrepresented.

When the appeal was called on for hearing, both parties adopted, without more, their respective written submissions earlier filed pursuant to the provisions of rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

On the said jurisdictional ground, it is submitted on behalf of the appellants that in terms of Article 108 (1) and (2) of the Constitution of the United Republic of Tanzania, 1977 (*the Constitution*), the jurisdiction of the High Court is exercisable subject to the provisions of other laws including, but not limited to the Magistrates' Courts' Act, Cap. 11 R.E. 2002 (the Act) and the Civil Procedure code, Cap. 33 R.E. 2002 (the CPC).

Elaborating on the foregoing, reference has been made to the decision of this Court in **M/S TANZANIA CHINA FRIENDSHIP TEXTILES CO. LTD Vs. OUR LADY OF THE USAMBARA SISTERS** (2006) TLR 70, to contend that since a claim of special damages and not general damages determines the pecuniary jurisdiction of the High Court, the respondent should have conformed with the dictates of section 13 of the CPC as read with section 40 (2) of the Act to institute his suit in a court, other than the High Court, which had competent jurisdiction. We have thus been urged to allow the appeal by quashing and setting aside the proceedings, judgment and decree of the High Court for want of jurisdiction.

On the other hand, the respondent in his written submission maintains that the High Court cannot be faulted in any way for entertaining

the suit he instituted, notwithstanding the claim of special damages to the tune of Tshs.2,420,000/= pleaded in the amended plaint along with a claim, in general damages, to the tune of Tshs.100,000,000/=. He pressed us to dismiss the ground of appeal impugning the jurisdiction of the High Court.

On our part, we are, with respect, in entire agreement with the submission made on behalf of the appellants. **First**, we accept that the Constitution, in Article 108, provides that the Jurisdiction of the High Court is subject to the provisions of other written laws. The said Article reads:-

*"Art. 108 (1) There shall be a High Court of the United Republic (to be referred in short as ("the High court") the jurisdiction of which shall be as specified in this Constitution or **in any other law.***

*(2) **If this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court shall have jurisdiction to deal***

with any matter which according to legal traditions obtaining in Tanzania, is ordinarily dealt with the High Court; save that, the provisions of this sub article shall apply without prejudice to the jurisdiction to the jurisdiction of the Court of Appeal of Tanzania as provided for in this Constitution or in any other law."

[Emphasis supplied].

Secondly, we agree that the current position of law on pecuniary jurisdiction is as was thus stated in **TANZANIA-CHINA FRIENDSHIP** case (supra):-

- "(i) It is **a substantive claim** and **not the general damages** which determine the pecuniary jurisdiction of the court.*
- (ii) Although there is no specific provision of law stating expressly that the High Court had no pecuniary jurisdiction to entertain claims not exceeding TZS.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.”

[Emphasis supplied].

As correctly submitted by the appellants, the CPC and the Magistrates' Courts' Act are among the written laws referred to in Article 108 (1) and (2) of the Constitution. Going by section 13 of the CPC as read with section 40 (2) (b) of the Magistrates Courts Act, we are settled in our minds that the High Court had no jurisdiction to entertain the respondent's suit whose substantive claim was Tshs.2,420,000/= in special damages. We shall hereunder take the liberty to reproduce those relevant provisions contained in the other written laws. In this regard, section 13 of the CPC provides:-

"S.13 Every suit shall be instituted in the court of the lowest grade competent to try it and, for purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade."

Indeed, there can be no doubt that the respondent's suit instituted in 1999 was triable by a Resident Magistrates Court or a District Court held

by a civil magistrate in view of section 40 (2) of the Magistrates Courts Act, as amended by Act No. 27 of 1991 which provides:-

"s. 40 (2) A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdictions conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited -

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed twelve million shillings; a

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

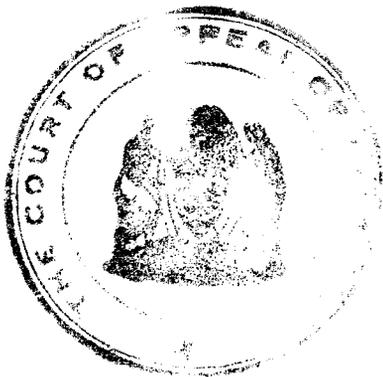
[Emphasis supplied].

In the light of the foregoing, we are of the firm view that since general damages could not be used to determine the pecuniary jurisdiction of the courts, and since section 13 of the CPC requires that every suit be instituted in the court of the lowest grade competent to try it, and in view of the fact that the High Court, in this case, was not a court fitting that description, the trial High Court had no jurisdiction to try the respondent's suit.

Accordingly, we allow the appeal on the jurisdictional ground. We quash and set aside the entire proceedings, judgment and decree of the trial High Court, with costs to the appellants.

It is so ordered.

DATED at MWANZA this 11th day of December, 2015.



E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL