

**IN THE HIGH COURT OF TANZANIA**  
**AT DAR ES SALAAM**  
**CIVIL CASE NUMBER 158 of 2008**

**BRIGHTON GONDWE.....PLAINTIFF**

**VS**

**MALAWI CARGO CO. LTD.....DEFENDANT**

**Ruling**

Date of last Order: 18-08-2010  
Date of Ruling: 18-10-2010

**JUMA, J.:**

The defendant (Malawi Cargo Co. Ltd) was absent on the 30 March 2010 when I suo motu raised the issue whether this Court has requisite pecuniary jurisdiction to entertain the suit. Though absent, the defendant on same day filed a Notice of Preliminary Objection to the effect that the claim of special damages of Tanzanian shillings seven million which is demanded by the Plaintiff (Brighton Gondwe) is well below the pecuniary jurisdiction of the High Court and contravenes section 13 of the **Civil Procedure Code, Cap. 33 R.E. 2002.**

For some background, the plaintiff was formerly employed by the defendant Malawi Cargo Company. Plaintiff headed a department responsible for dispatch and receiving goods. His day

to day work in the department included receiving copper cathodes. Between 1<sup>st</sup> and 3<sup>rd</sup> November 2005 there was an incident at the premises of the Defendant Company. A consignment of copper cathodes vanished from the premises of the defendant. It emerged that 11 bundles of copper cathodes weighing 24042 gross kg valued at Tshs. 108 811 643/= was stolen.

The loss was immediately reported to the Chang'ombe Police. The report made to police included the defendant's own suspicion that it was the Plaintiff and another fellow employee named Haruna Mwaipela who had stolen from their employer. The Plaintiff and Haruna Mwaipela were subsequently arrested and taken to the District Court Temeke (**Criminal Case No. 895/2005-Rusema-PRM**) where they were charged with two counts of conspiracy c/s 283 of the **Penal Code** and stealing by servant c/s 270 of the **Penal Code**. At the conclusion of the criminal case the district court found that although the plaintiff and his co-accused were alleged to have been prime suspects, none of the 11 stolen bundles were traced into their possession. This was enough doubt to acquit the plaintiff and his co-accused.

It was after his acquittal when on 6 November 2008 the plaintiff filed this suit to claim from the defendant the special damages amounting to Tanzanian shillings seven million for the legal services he incurred in the criminal case he had to face. He also claims Tanzanian shillings three hundred million as general damages to

be assessed by this court being general and exemplary damages for defamation and malicious prosecution. The plaintiff in his claim contends that the report which the official of the defendant company sent to the police that he stole 11 bundles of copper was false and the officer of the defendant company knew it was false.

On whether this court has pecuniary jurisdiction the defendant relies on the written submissions drawn and filed by Amicus Attorneys, a firm of advocates representing the defendant. Defendant refers this court to section 13 of the **Civil Procedure Code** which according to the defendant limits the jurisdiction of courts on where suits are to be instituted. According to the defendant's counsel, this provision employs a mandatory language to direct every suit to be instituted in the court of the lowest grade competent to try it. Further, defendant refers this court to the case of **Francis Andrew vs. Kamyn Industries (T) Limited (1986) TLR 31** in support of the contention that where the amount claimed is below the pecuniary jurisdiction of the High Court, then the High Court has no jurisdiction in terms of section 13 of the **Civil Procedure Code**. To further support the contention that the suit should have been filed in the district court, the defendant drew the attention of this court to the Court of Appeal decision in the case of **Tanzania-China Friendship Textile Co. Limited vs. Our Lady of Usambara Sisters, Civil Appeal No. 84 of 2002**.

Replying submissions on behalf of the Plaintiff were drawn and filed by Semgalawe and Co. Advocates. According to Plaintiff's Counsel, since it is the court which will grant what is appropriate to the damage suffered, the plaintiff cannot on his own limit himself to the pecuniary jurisdiction of the lowest grade as directed by sections 7 and 13 of the **Civil Procedure Code**. Mr. Semgalawe further submitted that in general, defamation suits cannot be estimated at monetary value therefore the question of pecuniary jurisdiction cannot be determined for purposes of filing one's suit within section 40 (2)(b) of the **Magistrates Courts Act, Cap 11**.

Upon reading the written submissions advanced on behalf of the disputing parties, I am in no doubt that the decision of the Court of Appeal in **M/S Tanzania-China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sisters, Civil Appeal Number 84 of 2002 at Dar es Salaam** clarified the law firstly on the interpretation of unlimited jurisdiction of High Court in a situation where a matter before the High Court also falls within pecuniary jurisdiction of subordinate court. The case in addition clarifies which between substantive claims and claims for general damages determines pecuniary jurisdiction of the courts. The importance of the Court of Appeal decision in **M/S Tanzania-China Friendship Textile Co. Ltd (supra)** lies in its clarification of the principle of law regarding which, between substantive claim in a plaint and general damages prayed in the Plaint- determine the pecuniary jurisdiction of the court. According to the Court of Appeal decision, it is the substantive claim and not

the general damages which should determine the pecuniary jurisdiction of this court.

According to the third paragraph of the Plaintiff read together with the ninth paragraph of the Plaintiff containing the prayers, the plaintiff claims Tshs. seven million as special damages and Tshs. three hundred million as general and exemplary damages. I will apply the Court of Appeal guidance and hold Plaintiff's claim in his suit for purposes of determining whether this court has pecuniary jurisdiction is Tshs. seven million but not the claim for Tshs three hundred million general and exemplary damages. I will therefore with respect agree with the Defendant and hold that Plaintiff's substantive claim for Tshs. seven million restricts his suit to a District Court whose pecuniary jurisdictional ceiling in terms of section 40-(2) (b) of the **Magistrates Courts Act Cap. 11** is Tshs. 100 000 000/= for moveable properties like the plaintiff's claim is. I will not accept the Plaintiff's suggestion that the suit he filed is neither about moveable property nor immovable for purposes of the ceiling of pecuniary jurisdiction mentioned in section 40-(2) (a) and (b) of the **Magistrates Courts Act**. Sub section (2) (b) of section 40 is clearly applicable because the Plaintiff has himself determined the value of his suit in monetary terms by claiming Tshs seven million special damages and Tshs. three hundred million general and exemplary damages.

I must pause here and wonder where in section 40 of the **Magistrates Courts Act** the two learned counsels obtained the provision limiting the pecuniary jurisdiction of the District Courts to the maximum of thirty million shillings. The two learned Counsels have clearly not followed up on amendments that were effected on the **Magistrates Courts Act, 1984**. As amended by the **Written Laws (Miscellaneous Amendments (No. 2) Act Number 4 of 2004** section 40 states,

(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 jurisdiction is 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—

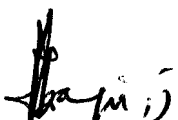
- (a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed one hundred and fifty million shillings; and
- (b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed one hundred million shillings.

The sums referred to under section 40-(2) (a) and (b) are one hundred and fifty million shillings and one hundred million shillings, respectively. It is not clear to me where the two learned counsels obtained the thirty million shillings they quote in their written submissions.

The next following question for my determination is whether, despite the fact that a claim for Tshs. seven million falls within

pecuniary jurisdiction of the District Court, this court should still entertain the suit on account of unlimited jurisdiction of High Court. Thankfully, the Court of Appeal in **M/S Tanzania-China Friendship Textile Co. Ltd (supra)** has also laid down the law on this issue, which I will apply to the effect that unlimited jurisdiction of High Court should not be invoked where there are specific provisions conferring jurisdiction to subordinate court. In this respect, section 13 of **Civil Procedure Code (CPC)** clearly directs that every suit shall be instituted in the court of the lowest grade competent to try it. In light of mandatory language employed by section 13 of the **CPC** it is my holding that notwithstanding its unlimited jurisdiction, this court shall not entertain Plaintiff's claim which falls within the pecuniary jurisdiction of a subordinate court.

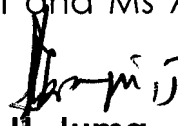
In the upshot, this court lacks jurisdiction to entertain the present suit. The suit is struck out. Each party shall bear its own cost because the defendant had belatedly raised the notice of preliminary objection after I had raised it *suo motu*.

  
**I.H. Juma**  
**JUDGE**  
**18-10-2010**

**Delivered in presence of:**

Brighton Gondwe the Plaintiff and Ms Anna Shayo, Advocate for the Defendant.



  
**I.H. Juma**  
**JUDGE**  
**18-10-2010**