

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

CIVIL CASE NO. 67 OF 2012

IDDI MOHAMED SIMBA PLAINTIFF

Versus

1. THE EDITOR, MTANZANIA NEWSPAPER 1ST DEFENDANT

2. NEW HABARI (2006) LIMITED 2ND DEFENDANT

RULING

Date of last Order: 24/11/2015

Date of Ruling: 14/12/2015

FELESHI, J.:

The plaintiff sues the defendants for payment of general damages at Tshs. 12,000,000,000/= occasioned by the defendants' acts of defamation aiming at rupturing the good reputation of the plaintiff. The plaintiff also prays for the defendants to retract all false allegations made by them in the same caption at front pages of Mtanzania Newspaper owned by the defendant, payment of exemplary damages, interest on decretal amount awarded from the time of Judgment until payment in full, costs of the suit and any other relief(s) that this Court deems just and equitable to grant.

On 01/09/2015, learned counsel for the defendants raised a single Preliminary Point of Objection namely that:-

- 1. The suit is not maintainable before the Honourable Court because the suit ought to have been filed before the Court of the lowest grade with competent Jurisdiction to try it.**

The hearing of the Preliminary Points of Objection was conducted orally where the defendants engaged the services of IMMA Advocates while the plaintiff was represented by Excellent Attorneys.

Addressing the Preliminary Objection, Mr. Gaspar Nyika learned counsel submitted that, the suit ought to have been filed in the lower Court because claims of general damages are of discretion of the Court and cannot constitute pecuniary Jurisdiction of the Court. It is rather special damages which constitutes pecuniary Jurisdiction of the Court. Mr. Nyika cited section 13 of the Civil Procedure Code, [CAP. 33 R.E, 2002] which stipulates that, a case has to be filed in the Court of the lowest grade.

Besides, Mr. Nyika argued that, since section 51 when read together with section 56 all of the Newspapers Act, [CAP. 229 R.E, 2002] vests Jurisdiction to the High Court, Resident Magistrates' Court and the District Courts, then, the Court of the lowest grade for that matter is either the District or Resident Magistrates' Courts unlike the High Court.

The defendants' counsel cited the Court of Appeal decisions in the cases of **Tanzania – China Friendship Texttile Co. Ltd Vs. Our Lady Of Usambara Sisters** [2006] T.L.R 70 and **Tanzania Breweries Limited Vs. Anthony Nyingi**, Civil Appeal No. 119 of 2014 (Mwanza Registry) (Unreported) also the High Court decisions in the cases of **Noel Dominic Mambo Vs. The Director General Consolidated Holding Corporation**, Civil Case No. 68 of 2007 (Dar es Salaam Registry) (Unreported) and **George David Gordon Vs. Reliance Insurance**

Company (T) Limited, Commercial Case No. 102 of 2005 (Dar es Salaam Registry) (Unreported) where both the Courts held that a case has to be instituted in the Court of the lowest grade and that general damages does not constitute Pecuniary Jurisdiction of the Court.

In reply, Mr. Alex Mgongolwa learned counsel submitted that, the raised Objection does not meet the standards of a Preliminary Objection for it is not a pure point of law as held in **Mukisa Biscuits Manufacturing Company Ltd Vs. West End Distributors Ltd** [1969] E.A 696 that:-

"A preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion".

He added that, at paragraph 4 of the rejoinder, special damages have been pleaded to the effect that the plaintiff has lost his Board membership in reputable companies at both local and international levels which in three years, he would have earned him about Tshs. 300,000,000/= as will be proved in due course. The plaintiff's counsel contended that, in case the plaintiff succeeds in his above claims, the award would definitely exceed the pecuniary Jurisdiction of the lower Court thus arguing the High Court to be the proper forum to adjudicate the matter under scrutiny.

It is from the above the plaintiff's counsel argues that the Preliminary Point of Objection has been misconceived for failure to consider whole of the pleadings in totality that is, the Plaint, Written Statement of Defence

and the rejoinder. Mr. Mgongolwa thus urged for the Preliminary Point of Objection to be overruled with costs for the same is non meritorious.

In rejoinder, Mr. Nyika added that, the Preliminary Point of Objection was raised under the presumption that, whatever has been stated in the pleadings is correct. Besides, it is the pleadings that determines the plaintiff's claim and not the rejoinder. He maintained for the suit to be struck out.

As correctly submitted by the defendants' counsel, the law requires suits to be filed in the Court of lowest grade with competent Jurisdiction to try it. Imposition of section 13 of the Civil Procedure Code (supra) basically serves two (2) purposes, **one**, to cure congestion of cases in the High Court and **two**, avail parties enough opportunities to exercise their constitutional right of appeal whenever one loses in the lower Court.

It is both clear in law and trite position that, Jurisdiction of a Court is a creature of Statute and not the likes and or dislikes of the parties. In the case of **M/S Tanzania – China Friendship Textile Co. Ltd** (supra) whose decision was reiterated in **Tanzania Breweries Limited** (supra) the Court of Appeal held that:

"(i) On the question whether the Trial Court had jurisdiction to adjudicate upon the matter, the issue was not raised before the High Court; but since it was about jurisdiction of the Court, it could be raised at any stage, even on appeal.

(ii) It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the Court;

(iii) 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 every suit must be instituted in the Court of the lowest grade competent to try it."

The case before this court, being one of defamation based on libel makes it therefore necessary for us to visit section 56 of the Newspapers Act, [Cap.229 R.E.2002] as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, No. 11 of 2010 which provides in extensor that:

“(1) For the purposes of this Part "court" means the High Court of Tanzania, a court of a resident magistrate or district court presided over by a civil magistrate and references to a district court are references to a district court presided over by a civil magistrate.

“(2) The provisions of this Part shall apply to every proceeding relating to a suit of a civil nature in respect of any action for libel arising out of anything or matter published in a newspaper and to no other proceeding.”

For similar reason, I wish to associate myself to what is understood by common law on cases falling under this category. According to Halsbury’s Laws of England, Volume 28 Hals PDF on Libel and Slander, paragraph 18 provides that:

“every person is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation should not be disparaged by defamatory statements made about him to a third person without lawful justification or excuse. If the defamation is made in writing or printing or some other permanent form the tort of libel is committed and the law presume damage if the defamation is oral or in other transient form it constitutes the tort of slander which is not actionable at common law without proof of actual damage”.

It was held in the case of **Ratcliff versus Evans** [1892] 2QB 524 Bowen L.J that:

“If a person has been libeled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as ‘general damage’.

Expounding on the impact of defamation cases to victims of defamation, this Court (Hon. Lugakingira, J.-as he then was) once held in **PM Jonathan Vs Athuman Khalifan** [1980] TLR 175 that:

"In the defamation case special damages may be very small but the impact of a person who have been defamed may unit across many sphere and damage done becomes permanent and irreversible and although is not quantifiable in terms of money for purposes of claiming specific damages but deserves the relief of aggravated damages also punitive damages and Exemplary damages as substantive claim."

The above decision, which by and large in my view embraced a common law position, was well within the position held earlier on by the then East Africa Court of Appeal in the case of **Kiriri Cotton Co. Ltd versus Dewani** [1958] EA 188 where it was held that:

"And in my opinion, established decision of the common law or doctrine of equity of superior Courts in England, given before the date of reception of the common law and doctrine of equity into the relevant colony or protectorate within the Court's jurisdiction are binding on this Court as well as on Supreme Court or High Court of that territory".

Now, no matter the contrary position one may take, I am inclined to the position this Court took in **Apollo Maruma T/A Maruma & Co. Advocates v. The Editor of Mwanahalisi and 2 others**, HC Civil Case No 16 of 2008, Arusha Registry (unreported) that in the light of the case of **Ratcliff versus Evans** (supra), the position of reception clause (proviso to section 2(2) of the Judicature and Application of Laws Act Cap 358 R.E. 2002) and the **Kiriri's case**, our jurisdiction is bound on the principles of litigation in civil suits relating to defamation in the form of libel where a plaintiff need not necessarily plead for specific damages.

Therefore, as an exception to the general rule, a plaintiff suing for defamation under libel need not plead for specific or special damages in order to engage the jurisdiction of the Court (see also: **Sauda Mfinanga v. Managing Editor Uwazi Newspaper and 3 others**, HC Civil Case No.15 of 2013, Dar es Salaam Registry (unreported) and **Oscar Mbuza v. The Managing Director Simon Group Ltd and Robert Kisen**, HC Civil Case No. 263 of 2014 Dar es Salaam Registry (unreported). In **Sauda Mfinanga** (supra) this Court observed that:

"....I am satisfied that the plaintiff even with her claim for specific damages of Tsh.3, 000,000/= ...rightly instituted her suit in this Court. It is no wonder, in my respectful opinion, section 56 of the Newspapers Act (supra) when read together with section 2(1) of the Judicature and Application of Laws Act, (supra) confers wide jurisdiction to this Court. Whereas section 2(1) of JALA (supra) confers the High Court with full jurisdiction in civil and criminal matters, section 56 of the Newspapers Act (supra) on the other hand parades...the High Court to enjoy jurisdiction with subordinate courts on trying defamation cases. The peculiarity of defamation cases is also manifested by the weight attached to the hearing procedure applicable to both the subordinate courts and the High Court. Both courts when trying defamation cases are obliged to adhere to the procedure provided for by section 57 of the Newspaper Act as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, No. 11 of 2010 whose sub-section (1) (a) & (b) provides that the court may, where ends of justice so require; and when the matter before it is of the nature attracting the aid of assessors, on its own motion or upon the application by either of the parties, to sit with not less than three competent assessor.

The hearing procedure above supports the position that when defamation based on libel is open for proof the trial court is supposed to be extra careful. It is through that way it may in appropriate circumstances justifiably award aggravated or exemplary damages on top of pleaded special damage which the plaintiff is entitled to recover in addition to general damage. It is in this way I am convinced that even a defamed high reputable lay member of the community who cannot quantify the impact of damage can justly approach the court of his choice and get commensurate reliefs for the damage he suffered."

In view of the foregoing discussion, it is clear that the preliminary objection is unattainable in this libel-based defamation case. The same is overruled.

Also, basing on the decision of the Court of Appeal in the **M/S Tanzania – China Friendship Textile Co. Ltd** (supra) the submission by the Plaintiff's Counsel that the Preliminary objection raised is not a pure point of law is baseless. The reason is simple and is that the Preliminary Objection basically attacked the jurisdiction of this Court which, as held above, that issue may be raised at any stage, even on appeal. The argument is thus non meritorious and is hereby dismissed.

As regards to Mr.Mgongolwa's submission that the Plaintiff has lost about Tshs. 300,000,000/= in the position of a Board Member in various local and international companies as raised in the Rejoinder that argument is devoid of any merit as since the claim/allegation was not pleaded in the Plaintiff. One would ask why the plaintiff did not raise the same in the Plaintiff if at all he wanted this Court to award him such relief. It is a settled principle of law that the parties are bound by their own pleadings. See decisions of the Court of Appeal of Tanzania in **Scan Tan Tour Ltd Vs. The Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012 and **Peter Ng'homango Vs. The Attorney General**, Civil Appeal No. 114 of 2011 (both unreported) where the Court held to that effect.

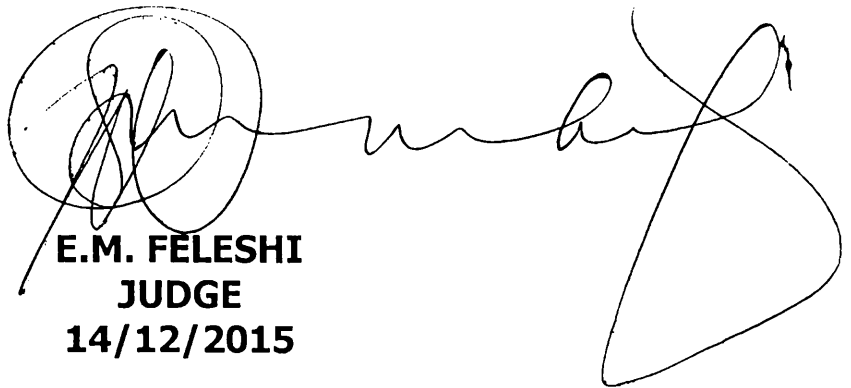
Besides, according to **Mogha's Law of Pleadings in India**, 10th Edition at page 25, the learned author states that:-

"The Court cannot make out a new case altogether and grant relief neither prayed for in the plaint nor flows naturally from the grounds of claim stated in the plaint."

In view of the foregoing, the argument by the Plaintiff's Counsel lacks merits and cannot stand at any stretch of imagination.

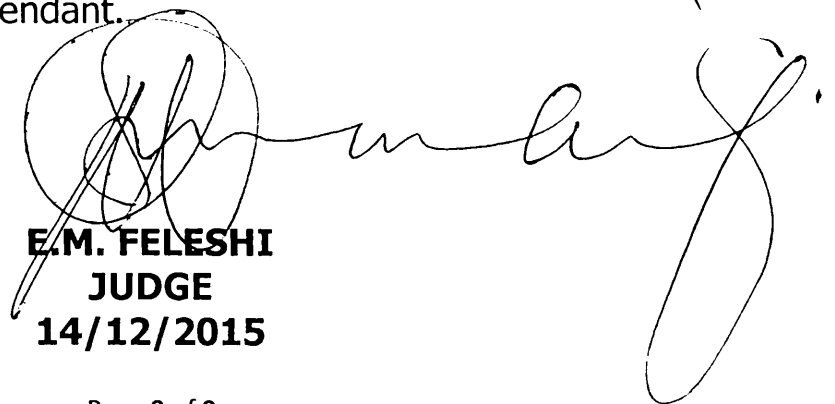
In the upshot, as indicated above this Court, though on a different ground, overrules the Preliminary Objection. Based on the Newspapers Act (supra) and the exception to the general rule applicable for libel defamation, the Court is well engaged to adjudicate over the case before it. In the circumstances of the matter, I issue no order as to costs.

Order accordingly.



**E.M. FELESHI
JUDGE
14/12/2015**

Ruling delivered in chambers this 14th day of December, 2015 in presence of Mr. Alex Mshumbusi, Advocate for the Plaintiff and Ms Caroline Kivuyo, Advocate for the Defendant.



**E.M. FELESHI
JUDGE
14/12/2015**