

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE No. 12 OF 2011.**

**CATHERINE OYANA (Suing as**

**Next of Kin of Maurice Oyana) .....PLAINTIFF**

**Versus;**

**MUHIMBILI MEDICAL HOSPITAL.....DEFENDANT**

**RULING**

06/09/2012 & 07/05/2014.

Utamwa, J.

This is a ruling in respect of a preliminary objection (PO) raised by the defendant, **Muhimbili Medical Hospital** against the suit filed by the plaintiff **Catherine Oyana** (Suing as Next of Kin of Maurice Oyana). The PO is based on a single point of law that this court is not vested with the pecuniary jurisdiction to entertain the suit, the specific damages of which is less than Tanzanian Shillings (Tshs.) 100, 000, 000/= . The PO was argued by way of written submissions. The plaintiff was represented by **Mr. Okwong'a** learned counsel while the defendant used the legal services of **Ms. Veronica**, learned counsel from the Legal Unit of Muhimbili National Hospital.

According to the plaint, the claim is essentially for fatal bodily injuries, pains, and damages suffered by the plaintiff's brother, Maurice Oyana as a result of fatal injuries caused to him while in the custody of the defendant leading to regular loss of memories, eye sight loss, dental formula loss and expenses incurred in the course of his treatment, shock and mental suffering by the plaintiff and the family of the said Maurice Oyana after the said injury (see especially paragraph 3 of the plaint). Wherefore, the plaintiff seeks for the following reliefs;

- a) Court be pleased to order the payment of the sum of Tshs. 1, 000, 000, 000/= being compensation for the damages and injuries, loss of memory and pains suffered by Maurice Oyana and the harms particularized above.

- b) Court be pleased to order the defendant to pay all the expenses of treating and caring for the said Maurice Oyana amounting to Tshs. 12, 674, 000/=
- c) Special damages in the sum of Tshs. 18, 500, 000/= being compensation for loss of further education.
- d) Costs of this suit be met by the defendant.
- e) Any other relief the court deems fit and just to order.

In her written submissions in chief supporting the PO the learned counsel for the defendant argued that, according to s. 6 of the Civil Procedure Act, Cap. 33, R. E. 2002 every suit shall be instituted in the court of the lowest grade competent to try it depending on the value of the subject matter according to the plaint. She further argued that according to s. 13 of Cap. 33, subordinate courts to this court are the courts of lowest grade. Such court include Resident Magistrates Courts and District Courts the pecuniary jurisdiction of which is Tshs. 150, 000, 000/= and 100, 000, 000/= depending on the nature of the claim as per s. 40 of the Magistrates Court Act, 1984, Cap. 11, R. E. 2002 as amended by Written Laws (Miscellaneous Amendments) Act, No. 25 of 2002.

The learned counsel for the defendant further contended that, the total amount for the claimed specific damages [i.e. Tshs. 12, 674, 000/= and 18, 500, 000/= as per the reliefs numbered b) and c) herein above] is thus within the jurisdiction of subordinate courts and not of this court. She added that, what determines the pecuniary jurisdiction of the court are specific damages claimed into the plaint and not general damage for, general damages are awardable subject to the court's discretion. She supported her argument by the decision of the Court of Appeal of the United Republic of Tanzania (CAT) in **Tanzania China Friendship Textile Company Limited v. Our Lady of the Usambara Sisters** [2006] TLR. 70 and that of **Edwin William Shetto v. Managing Director of Arusha International Conference Centre** [1999] TLR. 130. She thus submitted that it was wrong for the plaintiff to file the suit in this court upon considering all claimed general and specific damages in assessing the pecuniary jurisdiction of this court. She thus urged this court to dismiss the suit with costs.

In his replying written submissions, Mr. Ukwong'a learned counsel for the plaintiff essentially argued that, since the claim is based on tort involving the issue of physical injuries and the plaintiff claims for general damages which are unliquidated until the court determines them upon exercising its discretion, then the two precedents by the CAT do not apply in this case.

In her rejoinder submissions, the learned counsel for the defendant argued that the scope of pecuniary jurisdiction is the monetary value of the subject matter

of the suit in both movables and immovables. She added that, in this case the plaintiff among other things claims for specific (quantified) damages which thus determine the pecuniary jurisdiction of the court to try the claim. She also submitted that the two precedents cited above propounded principles of law which apply in this case also.

I have considered the record of this suit and the arguments by both sides. It is clear that both parties do not dispute on the position of the law as put forward by the learned counsel for the defendant. Their discrepancy is only footed on the applicability of that law in the suit under discussion. The issue before me is therefore, whether or not under the circumstances of this suit, this court has jurisdiction to try it. As rightly argued by the learned counsel for the defendant, it is true from the plaint that the plaintiff in this suit claims for both general and specific damages. Specific damages include the claim for Tshs. 12, 674, 000/= being expenses of treating and caring for the said Maurice Oyana amounting. According to the law, this is the sum that must be used in assessing the pecuniary jurisdiction of the court competent to try the suit as rightly argued by the learned counsel for the defendant and the CAT decision in the **Tanzania China Friendship Textile Company Limited** case (supra). Other general damages claimed by the plaintiff are irrelevant in assessing such jurisdiction as long as they are unquantifiable general damages which have to be determined by the court upon exercising its discretion.

The argument by the learned counsel for the plaintiff that the **Tanzania China Friendship Textile Company Limited** case is inapplicable in the suit at hand is untenable. As rightly argued by the learned counsel for the defendant, this case set a principle of law which applies in all matters where an issue of pecuniary jurisdiction is involved. I would add here that, claims for damages remain claims for damages only, whether arising from bodily injuries or any other cause of action. Moreover, an issue of pecuniary jurisdiction remains an issue of pecuniary jurisdiction whether related to a claim for damages resulting from bodily injuries or not. It cannot thus be argued that the above cited precedent does not apply to some cases involving the issue of pecuniary jurisdiction of courts related to bodily injury as argued by the learned counsel for the plaintiff.

It must be born in mind here that, the CAT is the highest court in our court system hierarchy and its decisions are laws of the land binding to all other courts and tribunals of this country regardless of their correctness, see **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda cha Uchapishaji cha Taifa [1988] TLR 146 (CAT)**. This position is by

virtue of the common law doctrine of *stare decisis* which is applicable in our jurisdiction. This court must thus follow the precedent in the **Tanzania China Friendship Textile Company Limited** case since it was decided by the CA.

Having observed as above, I agree with the learned counsel for the defendant that this court lacks pecuniary jurisdiction to try the suit. The issue posed above is thus determined negatively. I however, do not agree with the learned counsel for the defendant that the remedy for this irregularity is to dismiss the suit. As long as I do not have jurisdiction to deal with the matter the proper remedy will be to strike it out and not to dismiss it. I thus strike the suit. The plaintiff shall pay the costs. It is accordingly ordered.

ZJHK. UTAMWA

JUDGE

7/5/2014