

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 22 OF 2017**

**FRANK GASPAR TARIMO.....PLAINTIFF**

**VERSUS**

**THE GLOBAL LINK,**

**GENERAL CONTRACTORS LTD.....1<sup>ST</sup> DEFENDANT**

**ALLIANCE INSURANCE**

**CORPORATION LIMITED.....2<sup>ND</sup> DEFENDANT**

**JOSEPH OTHMAN SANGA.....3<sup>RD</sup> DEFENDANT**

**CORE INSURANCE BROKERS LTD.....4<sup>TH</sup> DEFENDANT**

**RULING**

***19 Dec. 2017 & 13 Mar. 2018***

**DYANSOBERA, J.:**

The defendants have raised preliminary objections in respect of the suit filed by the plaintiff on the grounds that:

- i. This Honourable court lacks jurisdiction to entertain this suit as the same is not commercial but a tortious matter and even if it is commercial matter the amount claimed is within the jurisdiction of the subordinate courts.

Submitting in support of the preliminary objection for the 1<sup>st</sup> and 3<sup>rd</sup> defendants, counsel contended that the plaintiff avers that the nature and suit is commercial and the pecuniary value of the claim is above Tshs. 30,000,000/= well within the jurisdiction of this court. This, according to counsel for the 1<sup>st</sup> and 3<sup>rd</sup> defendants, is totally wrong. His reasons are that, first, for the suit to be termed as a commercial it should fall within the definition of section 2 of the Magistrates' Courts Act [Cap. 11 R.E.2002] and that in the case at hand there was no any commercial relationship between the plaintiff and the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

Second, that even if it was a commercial case, under section 40 (3) of the Magistrates' Courts Act the value of the suit is Tshs. 22,060,100 being costs for repairing a motor vehicle which is well within the jurisdiction of the District Court arguing that the legal fees, monthly profits and general damages have to be ascertained in court. Citing the case of **M/s Tanzania-China Friendship Textile**

**Co. Ltd v. Our Lady of the Usambara Sisters**, Civil Appeal No. 84 of 2002 (CAT) (unreported), counsel pointed out that it is the substantive and not the general damages which determine the pecuniary jurisdiction of the court.

Third, that the case before this court is based on tortious liability and therefore falls within the Magistrates' Courts Act under section 40 (2) (b) and that it is to be noted that under section 13 of the Civil Procedure Code, every suit shall be instituted in the court of the lowest grade competent to try it and the Court of Resident Magistrate and District Court shall be deemed to be courts of the same grade. It is prayed for the 1<sup>st</sup> and 3<sup>rd</sup> defendants that the suit be dismissed with costs.

The submission for the 2<sup>nd</sup> defendant is almost similar to those for the 1<sup>st</sup> and 3<sup>rd</sup> defendants, I need not repeat it.

As for the 4<sup>th</sup> defendant, it is submitted that the matter is not commercial but tortious because the plaintiff is not privy to the contract of insurance between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant and that the plaintiff does not sue under the said contract of insurance but as a third party who is aggrieved by the act of a tortfeasor, the 3<sup>rd</sup> defendant whose act of negligence caused

damage to the plaintiff's motor vehicle. Counsel for the 4<sup>th</sup> defendant sought to define what a commercial case is by citing the provisions of the Magistrates' Courts Act as amended by the Written Laws (Miscellaneous Amendments) Act, No. 4 of 2004 to mean 'a civil case involving a matter considered to be of commercial significance including liability of a commercial or business organization arising out of a commercial or business activities. It is further submitted that a cause of action is not a breach of insurance contract but an accident in which the plaintiff's motor vehicle was damaged following a negligent act of the 3<sup>rd</sup> defendant and that it could have been commercial if the same would have been between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. To buttress his point, counsel for the 4<sup>th</sup> defendant cited the case of **Lucas A. Nzengula v. Royal Insurance Tz Ltd**, Civil Appeal No. 66 of 2008 and the case of **Gasper Mlay v. Said Khamis and Others**, Commercial Case No. 91 of 2007.

Maintaining that the matter ought to have been filed in the subordinate court, Counsel for the 4<sup>th</sup> defendant stated that the subordinate courts are the courts of the lowest grade competent to try this particular matter by virtue of section 13 of the Civil

Procedure Code. He also relied on the case of the **Courtyard Dar es Salaam v. the Managing Director Tanzania Postal Bank**, Commercial Case No. 35 of 2003 which in interpreting Article 108 (2) of the Constitution of the United Republic of Tanzania, observed that:

“Article 108 (2) thereof provides that the High Court has unlimited jurisdiction where there is no other law expressly providing for the trial of a matter before any other court.”

Further that the 2016 amendments to the Magistrates’ Courts Act raised the pecuniary jurisdiction of the subordinate courts to 200 million for movable and 300 million for immovable properties.

Replying to these submissions, counsel for the plaintiff submitted that the case at hand is purely commercial in nature as it involves the liability of a commercial or business organization doing insurance business which is of commercial significance. In support of this point, learned counsel relied on section 2 of the Magistrates’ Courts Act which states that ‘Commercial Case means a civil case involving a matter considered to be of commercial significance including but not limited to-

*“The liability of commercial or business organization or its officials arising out of its commercial or business activities’.*

Counsel for the plaintiff explains that the case at hand involves commercial organizations and their liabilities in that the 1<sup>st</sup> defendant is an insurance company doing business known as insurance business as well as the 4<sup>th</sup> defendant is commercial organization doing insurance business as a broker. According to him, commercial bodies; the 1<sup>st</sup> and 4<sup>th</sup> defendants entered into commercial transactions between them and the 2<sup>nd</sup> defendant whose motor vehicle was insured by the 1<sup>st</sup> defendant and 4<sup>th</sup> defendant driven by the 3<sup>rd</sup> defendant. The insurance cover created commercial liability to the defendants in favour of the 3<sup>rd</sup> party, the plaintiff and that the motor vehicle which is the subject matter caused accident by colliding with the plaintiff's motor vehicle which was also used for commercial purposes. It was also submitted that the plaintiff claims or cause of action is based on insurance cover and /or agreement which is purely a commercial transaction and not tortious liability. Counsel for the plaintiff relied on the case of **Zanzibar Insurance Corporation Ltd v. Rudolf Tembo**, Commercial Appeal No. 1 of 2006 supporting the fact that this is a

commercial case because the defendants are sued to indemnify the plaintiff for the loss suffered basing on the insurance cover which brings commercial liability to the defendants in favour of the third party.

As to the pecuniary jurisdiction of this court, counsel for the plaintiff said that he is claiming payment of Tshs. 2,000,000/= per month being compensation for monthly loss of income and or use of motor vehicle as from 21<sup>st</sup> March, 2016 to the date of full payment, payment of Tshs. 22,060,100/= as amount for repairing the motor vehicle and interest on the above at the rate of 21% per years from 21<sup>st</sup> March 201 to the date of full payment. It is contended that computation on the above listed claims which are specifically pleaded in the plaint form part of specific damages which determine the pecuniary jurisdiction. Upon the computation he made, learned counsel was of the view that the amount added together falls outside the jurisdiction of the subordinate court as far as section 40 (3) the Magistrates' Courts Act is concerned.

I have considered the preliminary objection and the submissions vis a vis the filed suit. There is no dispute that the suit filed by the plaintiff which is Civil Case No. 22 of 2017 is a civil

matter as its title depicts and not a commercial case as parties would want the court to believe. Besides, the said suit has been filed in the High Court, Dar es Salaam District Registry and not in the Commercial Division of the High Court. In that respect, the argument whether or not the present suit is a commercial case avoids the issue and is time wasting. I would decline to make any decision on that at this moment.

Does this court have pecuniary jurisdiction to try and determine this suit? This I will tell.

It is common cause that the question of jurisdiction is so fundamental that courts must as a matter of practice, be certain and assured of their jurisdictional position at the commencement of the trial otherwise, the whole trial will be a nullity.

Section 7 (1) of the Civil Procedure Code, 1966 provides that the High Court has jurisdiction to try all suits of a civil nature unless expressly or impliedly barred. However, section 13 of the same Code is clear that every suit shall be instituted in the court of the lowest grade competent to try it and that Court of Resident



Magistrates and District Courts shall be deemed to be courts of the same grade.

The pecuniary jurisdiction to the District Court under Section 40 (2) (a) (b) of the Magistrates' Courts Act as by the Written Laws (Miscellaneous Amendments) Act, No. 25 of 2002 was respectively 150 million and 100 million but a recent amendment brought by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 the pecuniary jurisdiction of the said court has risen to, respectively, 300 million shillings and 200 million shillings.

As far as the pecuniary jurisdiction of the court is concerned, the position of the law has been that it is the substantive claim and not the general claim which determined the pecuniary jurisdiction. This was position was echoed by the Court of Appeal in the case of **Ms China Friendship Textile Company Limited v. Our Lady of the Usambara Sisters**, Civil Appeal No. 84 of 2002 (CAT) (unreported). Although counsel for the plaintiff said that he is claiming payment of Tshs. 2,000,000/= per month being compensation for monthly loss of income and or use of motor vehicle as from 21<sup>st</sup> March, 2016 to the date of full payment,

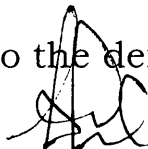
payment of Tshs. 22,060,100/= as amount for repairing the vehicle plus interest, as correctly submitted by advocates for the defendants, the substantive claim in this suit is Tshs. Tshs. 22,060,100/= which is below the pecuniary jurisdiction of the High Court but within the jurisdiction of the District Court. The amount other than Tshs. 22,060,100/= which is a liquidated sum is subject to the assessment and discretion of the court and cannot form a substantive claim.

As pointed above, on the question of pecuniary jurisdiction, section 13 of the Civil Procedure Code, Cap.33 R.E. 2002 requires suits to be filed in courts of the lowest grade competent to try them. The object and purpose of the said provision is, in my opinion, three fold. First, it is aimed at preventing overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. Second, it is aimed at avoiding multifariousness of litigation and third, its aim is to ensure that case involving huge amount must be heard by a more experienced court. The provision is, therefore, not a mere ritual or decorative luxury. It was enacted for a purpose.

A point to stress. I am aware of the provisions of sub-rule (4) of Rule 1 of O. VI of the Civil Procedure Code [Cap.33 R.E.2002] as amended by GN 140 of 1999 that 'it shall not be mandatory for a commercial case to be instituted in the Commercial Division at the High Court but as was held in the case of **China Civil Engineering Construction Corporation v. National Insurance Corporation of Tanzania and the Presidential Parastatal Reform Commission**, Commercial Case No.6 of 2003, " pursuant to **S. 40 (2) of The Magistrates Court Act, 1984, as amended vide Act 25 of 2002**, this Division (and indeed the High Court generally) has no jurisdiction to entertain suits whose liquidated claim is not above shs.100 million (**Commercial Case No. 16 of 2003, The Jubilee Insurance Company of Tanzania Ltd vs DHL (TZ) Ltd; CC 18 of 2003, Akiba Commercial Bank Ltd vs The Network of Technical Publications in Africa & 4 others; CC 35 of 2003, The Courtyard Dar es Salaam vs The Managing Director, Tanzania Postal Bank.**

As indicated above, in the present suit, the sum claimed is shs.22, 060,100 which is below the amount prescribed by the Act No. 3 of 2016 or even Act 25 of 2002.

For those reasons, I sustain the preliminary objection and strike out the plaintiff's suit with costs to the defendants.

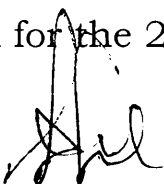


W.P.Dyansobera

JUDGE

9.3.2018

Delivered this 9<sup>th</sup> day of March, 2018 in the presence of Mr. Camilius Ruhinda, learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> defendants and holding brief for Ms Eugenia Minja, learned counsel for the plaintiff and in the presence of Mr. Magee holding brief for Mr. Julius Manyeka, learned counsel for the 2<sup>nd</sup> defendant.



W.P.Dyansobera

JUDGE