IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF DODOMA

AT DODOMA

DC. CIVIL APPEAL NO. 02 OF 2023

(Arising from the decision of the Resident Magistrate Court of Dodoma in Civil Case No. 05/2021)

BUMACO INSURANCE COMPANY LIMITED..... ..APPELLANT

VERSUS

JOSEPH ERICK MUSHI..... RESPONDENT

JUDGMENT

Date of last Order: 21st March 2024

Date of Judgment: 12th April 2024

MASABO, J:-

This is a first appeal. It is challenging the decision of the Resident Magistrate Court of Dodoma, at Dodoma (the trial court) in Civil Case No. 02 of 2023. To appreciate the appeal, it is imperative to briefly narrate its background facts, albeit briefly. The suit from which this appeal arises was founded on a contract of insurance entered between the parties herein. The subject matter of the contract was a vehicle make Toyota Kluger with registration No. T923 DPS registered in the respondent's name. On 28th of May, 2021 the plaintiff insured his car with the respondent in a comprehensive annual insurance policy with an estimated insured cover of Tshs. 22,000,000/=. On 31st May 2021, only three days after the execution of the insurance policy, the car was involved in an accident while at Mzakwe, Kondoa Road in Dodoma

Region. The car was seriously damaged and the respondent who was driving it sustained some bodily injuries. The respondent reported the incident to the appellant's branch manager for Dodoma office. The vehicle was taken to police station and later on, it was taken to Spring Njombe Garage for repair at the instance of the Defendant after the accident was reported. The garage raised an invoice of Tshs. 19,923,120/= for the repair and after the same was presented to the respondent, he refused to pay claiming that the interval of the period between the date when the insurance contract was entered and the date of the accident was too short and raises suspicion of fraud. She also alleged that, the vehicle in question was also insured by another insurance company to wit UAP insurance, hence it was not eligible for the repair.

The appellant's refusal to pay the repair costs prompted the respondent to institute a civil suit before the trial court claiming Tshs 19,923,120/= being costs for the repair, Tshs. 700,000/= being costs of transportation of the damaged motor vehicle from Mzakwe to Dodoma Central Police station, Tshs. 15,000,000/= being income lost due to non-use of the motor vehicle, payment of Tshs. 7,500,000/= being costs of hiring an alternative means of transport, Tshs. 50,000,000/= as damages for injuries sustained by the respondent as a result of the accident and general damages of Tsh. 300,000,000/=.

The defendant opposed the claims and the suit went through a full trial and at the end of it, the trial court was convinced that the respondent partially proved his claims. It subsequently awarded him

Tshs. 19,923,120/= being the costs of repair for the insured motor vehicle, Tshs. 700,000/ for transportation of the damaged motor vehicle from Mzakwe to Dodoma Central Police station, Tshs. 100,000/= for injuries sustained and general damages to the tune of Tshs. 40,000,000/=.

The appellant was aggrieved by the trial court's decision. She has knocked on the doors of this court armed with the following six (6) grounds of appeal:- **One**, trial court had no jurisdiction to entertain the suit; **two,** the plaint instituting the suit was materially defective; **three,** the evidence tendered by both parties was not properly evaluated; **four,** the respondent did not prove his case on the balance of probabilities; **five,** the compensation/damages awarded were not proved on the balance of probabilities and, **six,** the general damages were wrongly awarded without any justification and proof.

On 13th February 2024, the case was scheduled for hearing. With the consent of the parties the hearing proceeded by way of written submissions. Both parties filed their submissions before the court as required. The submission by the appellant was drawn and filed by Mr. Adrian Mhina, learned counsel whereas the respondent's reply submission was drawn and filed by Ms. Josephine Mzava, learned counsel.

Submitting in support of the first ground of appeal, Mr. Mhina cited the provision of section 13 of the Civil Procedure Code, Cap 33 R.E. 2019 and section 40(2) of the Magistrate's Courts Act, Cap 11 R.E. 2019 and argued that, it is a principle of law that a suit should be filed in a court

with lowest grade competent to try it. He then proceeded that, the present suit was of a commercial nature. Hence not triable by the district court as it had exceeded the limit of Tshs 70, 0000, 000/= which is a pecuniary bar for district courts in civil cases with a commercial nature such as the present one. He proceeded to argue that the respondent's claims were above this figure and also above the Tshs 200,000,000/ pecuniary limit on district courts in normal suits. Thus as per section 40(2) and (3) of the Magistrates' Courts Act, the trial court had no jurisdiction to entertain the suit.

Submitting on the second ground of appeal, he argued that the plaint did not explicitly state if the trial court has jurisdiction to try the matter. The omission contravened the provision of order VII Rule 1(i) of the Civil Procedure Code which requires that the plaint should explicitly state so. He argued that the provision is coached in mandatory terms hence it was crucial for the plaint to explicitly state the value of the subject matter for purposes of ascertaining the court's jurisdiction.

Regarding the third ground of appeal, it was submitted that the trial court did not evaluate the evidence tendered by both sides. Rather, it considered the respondent's evidence only and in so doing, it contravened the law expounded in the cases of **Riddoh Motors Ltd vs. Coast Region Co-operative Union Ltd** [1971] HCD 159 and **Martha Wejja vs. The Attorney General and 3 Others** [1982] TLR 35. In conclusion, the learned counsel invited this court to re - evaluate the evidence and argued that this court being a first appellate court is mandated to re-evaluate the evidence.

The fourth and fifth grounds of appeal were consolidated and argued as one. In their support, it was submitted that the law is settled that, the party who alleges the existence of a certain fact bears a burden to prove it as provided under in section 110(1) and (2) of the Evidence Act, Cap 6 R.E. 2019. Mr. Mhina argued that, contrary to this law, the respondent did not prove the allegation. The profoma invoice which was submitted and admitted as exhibits 9 and 10 did not have a motor vehicle registration number and the trial court relied on them assuming that they concerned the insured car. Again, the trial court's award of Tshs. 30,000/= per day as costs for hiring an alternative transport was incorrect as no proof was rendered to prove the same.

Submitting on the sixth ground, he argued that the trial court erred in awarding general damages as the same was not proved by the respondent and there was no legal justification. In conclusion he prayed that the appeal be allowed with costs.

In reply, Ms. Mzava ardently opposed the appeal. She submitted that the trial court being a court of the resident magistrate and not a district court, had both territorial and pecuniary jurisdiction to try the matter. In regard to territorial jurisdiction, she argued that the cause of action occurred at Mzakwe, Kondoa Road in Dodoma Region. Hence it was within the territorial jurisdiction of the Court of the Resident Magistrate for Dodoma as it occurred within Dodoma. Regarding the pecuniary jurisdiction she argued that the trial court had jurisdiction because as per paragraphs 5, 6 and 7 of the plaint the specific claim was Tshs.

43,123,120/= at the time of filing the suit in mid-October 2021. Under paragraphs 8 and 9 of the plaint, the respondent was praying for the general damages which do not form basis for the pecuniary jurisdiction. Hence, should not be considered. In fortification of this submission, she cited the case of **M/S Tanzania China Friendship Textiles Company Limited vs. Our Lady of Usambara Sisters** Civil Appeal No. 69 of 2002 [2005] TZCA 104 TanzLII and **Wilson Lenjima Mkwai and Two Others vs. Maliyatabu Shimo and Another**, Civil Case No. 5 of 2009 (Unreported).

Replying to the submission that the case was of a commercial nature and not a normal civil suit, she argued that the case was a normal one as it did not emanate from a transaction of trade or merchants. It was a tortious liability originating from client and service provider relationship.

Submitting on the second ground of appeal she argued that, the respondent complied with Order VII Rule 1(f) of the Civil Procedure Code. Paragraphs 5, 6 and 7 of the plaint provided the pecuniary jurisdiction and paragraphs 8 and 9 dealt with tortious claims of damages for pain and suffering resulting from the injuries sustained in the accident and for mental anguish and psychological torture arising from the appellant's refusal to repair the respondent's motor vehicle despite the insurance cover.

In regard to the third ground of the appeal, she submitted that the trial court evaluated the evidence adduced before it. On the fourth and fifth ground, it was argued that the fact that the complaint that the registration number of the car subject to the case was not stated is an afterthought as the appellant had the chance to raise this during cross examination but she did not which shows that she had no problem with it. Also, the anomaly if any was cured by the evidence given by the witnesses working at the garage where the car was sent for the repair after the accident. She added that exhibits P9 and P10 tendered and admitted by the trial court were in respect of the car with registration number T. 923 DPS make Toyota Kluger and not any other car. As regards the justification for the award of Tsh. 30,000/= per day as costs for hiring an alternative transport, it was argued that from the date of the accident, the respondent has been deprived of its use and as a result, he has to use an alternative transport at a cost. Thus, the trial court was justified in awarding him the said sum.

On the last ground of appeal on general damages, it was submitted that the trial court has discretion to award general damages and in the present case, it was justified to award them because, as per the requirement of the law, the court stated the reasons for awarding such damages. In fortification of this submissions she made reference to the case of **Antony Ngoo and Davis Antony Ngoo vs. Kitinda Kimaro,** Civil Appeal No. 25 of 2014 [2015] TZCA 269 TanzLII and **Alfred Fund vs. Geledi Mango and Others**, Civil Appeal No. 49 of 2017 [2019] TZCA 50 TanzLII. In rejoinder, Mr. Mhina by and large reiterated his submission in chief.

After considering the submissions above and the lower court record which I have thoroughly scrutinized, I will now proceed to determine the appeal, starting with the first and second grounds of appeal. The complaint in these two grounds concerns the issue of jurisdiction of the trial court. While perusing the record, I have observed that this is not the first time the appellant has raised these points. She first raised them as preliminary points of law when filing his written statement of defence before the trial court on 12th November 2021. With the consent of both parties, the preliminary objection was scheduled to be disposed of by way of written submission to be filed as per the schedule drawn by the trial court. The appellant defaulted filing of her submission in chief in support of the preliminary objection and consequently, the preliminary objection was deemed abandoned and dismissed for want of prosecution.

Much as none of the parties alluded to this fact, I thought I should put this record into light before embarking on the two points because, under normal circumstances, the abandonment of the preliminary objection at the hearing stage could have delimited the appellant from raising the same points at appeal stage. This is however not the case here as the point of jurisdiction which remained undetermined after the appellant abandoned his preliminary objection is pivotal and can be belatedly raised by a party or *suo motu* by the court at any stage as stated by the Court of Appeal in **Mwanachi Communications Ltd & Others vs Joshua K. Kajula & Others** (Civil Appeal 126 of 2016)

[2020] TZCA 1824 (22 October 2020) TanzLII also reported in [2020] TLR 495 where it held that:

> The law is well settled that the question of jurisdiction may be canvassed at any stage even on appeal by the parties or *suo motu* by the court since it goes to the substance of a trial as held in **Michael Leseni Kweka vs John Eliafe,** Civil Appeal No. 51 of 1997; **Tanzania Revenue Authority vs New Musoma Textiles Ltd**, Civil Appeal No. 93 of 2009; and **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (all unreported) and in the last case the Court stated:
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> "Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."

This was also stated in **R.S.A Limited vs. Hanspaul Automechs Limited Govinderajan Senthil Kumal**, Civil Appeal No. 179 of 2016 [2020] TZCA 282 (8 June 2020) (TanzLII) where it was held that:

> The jurisdiction to adjudicate any matter is a creature of the statute, an objection in that regard is a point of law and it can be raised at any stage.

Thus, even if the parties have no contention over the jurisdiction of the court to entertain their dispute, the court can raise and resolve it *suo motu* as the parties cannot consent to crown the court with the jurisdiction it does not possess. It is a creature of statute, (Also see **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 **Commissioner General of Tanzania Revenue Authority vs. JSC**

Atomredmetzoloto (ARMZ), Consolidated Civil Appeal Nos. 78 and 79 of 2018 [2020] TZCA 306 TanzLII).

Back to the instant appeal, the question awaiting determination is whether the trial court had jurisdiction to determine the suit. The question is twofold. On the one hand, it requires this court to ascertain if the pecuniary jurisdiction was stated in the plaint and whether, the trial court had jurisdiction. On the first limb of the question, the appellant is claiming that the trial court had no pecuniary jurisdiction to entertain the suit as the plaint did not disclose the total value of the matter. He has argued that, the omission which is in infraction of the provisions of Order VII Rule 1 (i) of the Civil Procedure Code. On the respondent's side it has been argued that the pecuniary value of the subject matter was pleaded under paragraphs 5, 6, and 7 of the plaint and its total value is Tshs. 43,123.120/=. On the second limb of the question, it has been argued that the trial court had no pecuniary jurisdiction to entertain the suit as the total value of the claim appearing in the different paragraphs of the plaint exceed Tshs 70,000,000/= which is the pecuniary bar of the district courts and the courts of the resident magistrates in commercial cases. In the alternative, he has argued that the pecuniary value appearing in different paragraphs exceeds Tshs 200,000,000/= which is the pecuniary bar of these courts in normal civil suits.

Let me start with the provision of section 7(1) of the Civil Procedure Code, Cap 33 R.E 2019. It states thus;

> 7.-(1) Subject to this Act the courts shall have jurisdiction

to try all suits of a civil nature except in suits of which their cognizance is either expressly or impliedly barred;

The pecuniary jurisdiction is among such bars. Section the 40(2) of the Magistrate's Courts Act which deals with the pecuniary jurisdiction of district courts and impliedly, the courts of the resident magistrate with which they share concurrent pecuniary jurisdiction, states thus:

> 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 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-
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> (a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings; and
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> (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 two hundred million shillings**.
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> (3) Notwithstanding subsection (2), **the jurisdiction of the District Court shall, in relation to commercial cases, 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 million shillings; and (b) in the proceedings where the subject matter is capable of being estimated at money value, to proceedings in which the value of the subject matter does not exceed seventy million shillings**. [the emphasis is provided]

Thus, as correctly argued by Mr. Mhina, the pecuniary bar for the trial court in subject matter capable of being estimated at money value is Tshs 200, 000,000/= and in commercial disputes it is only Tshs 70,000,000/-. There is also, in addition, a legal requirement that, every suit should be instituted in the court of the lowest grade competent to try it. This requirement is found under section 13 of the Civil Procedure Code which states that;

> 13. **Every suit shall be instituted in the court of the lowest grade competent to try it** and, for the purposes of this section, a **court of a resident magistrate and a district court shall be deemed to be courts of the same grade**:... [emphasis added].

To ensure compliance with these two provisions, Order VI rule 1(i) of the Civil Procedure Code requires the plaintiff to explicitly state in his plaint, the pecuniary value of the suit. It states:-

> 1. The plaint shall contain the following particulars-
> (i) A statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

Needless to emphasize, this provision which serves two important purposes to wit, ascertainment of pecuniary jurisdiction and the court fees, is couched in mandatory terms meaning that, it is not open for disregard by the parties. Thus, it was incumbent for the plaint to specifically disclose the total value of the subject matter of his suit. Looking at the plaint which instituted the suit in the trial court, it would appear that it was filed oblivious of this requirement as there is no

statement of the total value of the suit. There is no specific paragraph stating expressly the total value of the suit. Although Ms. Mzava has passionately convinced this court to find that the substantive claim was stated under paragraph 5, 6 and 7 to be Tshs. 43,123,120/=, that is not what is found in the plaint. In paragraph 5 the respondent claimed sum of Tshs. 19,923,120/= for maintenance costs and Tshs 700,000/= for towing the car from the scene of the accident; in paragraph 6 he prayed for payment of Tshs. 15,000,000/= in respect of loss of income for three months; in paragraph 8 he claimed for Tshs 7,500,000/= as costs for hiring an alternative transport.

Much as these claims have a total of Tshs, 43,123,120/= which Ms. Mnzava claims to be the total value, I have observed that, there are substantive prayers in paragraphs (e) and (g) of the plaint. In paragraph (e) he claimed the sum of Tshs 50,000,000/ Being compensation for the injuries sustained and in paragraph (g) is a progressive prayer for loss of income whereby he prays payment of Tshs 50,000,000/= per day from the date of institution of the suit to the date when it will be finally repaired. These two claims are specific in nature as they require proof. Hence, substantive claims and relevant in the ascertainment of the pecuniary jurisdiction of the court as opposed to the prayer for general damages of Tsh 300,000,000/= fronted under paragraph 9 of the plaint. Ms. Mzava's argument does not only betray the pleadings but highlights the importance of an explicit statement of the total value of the subject matter to avoid misconceptions and assumption of the actual value of the subject

which presents a great risk for the trial court proceeding in the assumption of jurisdiction as it seems to be the case at hand.

In the foregoing, I have found merit in Mr. Mhina's argument that the plaint that instituted the suit in the trial court was fatally defective. It was offensive of the mandatory provision of Order VII rule 1(i) of the Civil Procedure Code and in consequence of such anomaly, the suit was incompetent and so was its proceedings, judgment and decree. The first ground of appeal is therefore upheld.

As this finding sufficiently disposes of the appeal, I see no need to proceed to the remaining grounds. The appeal is consequently allowed. The proceedings, judgment and decree of the trial court are quashed and set aside. The parties are at liberty if they wish to reinstitute their case. Costs shall follow the cause.

DATED at **DODOMA** this 12th day of April, 2024

J. L.MASABO

JUDGE