

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 10 OF 2015**

**CHARLES SUGWA ..... PLAINTIFF**

**VERSUS**

**DANIEL LUCAS ..... RESPONDENT**

**RULING**

**MWARIJA, J.**

The plaintiff, Charles Sugwa filed this suit claiming from the defendant, Daniel Lucas, payment of Tshs. 38,748,800/= plus interest, damages and costs of the suit. According to the plaintiff, the claimed amount was advanced by him to the defendant in the form of liquid cash and fishing gear, but the loan remains unpaid.

In his written statement of defence in which he denies the claim, the defendant raised a preliminary objection to the following effect:

*"(i) That this Honourable Court lacks pecuniary Jurisdiction to entertain this suit on account that such jurisdiction to be*

*vested (sic) to the subordinate court as stipulated in the High Court (Commercial Division) Procedure Rules, 2012.*

*(ii) Alternatively, that the alleged business of fishing transaction is unenforceable under the Fisheries Act, No. 22 of 2003 read together with the Fisheries Regulations, 2005”.*

At the hearing of the preliminary objection, the plaintiff was represented by Mr. Lubango, learned counsel while the defendant was represented by Mr. Constatine Mutalemwa, learned counsel. In arguing the preliminary objection, Mr. Mutalemwa dropped the alternative ground and proceeded only with the main ground of the preliminary objection. He submitted that the Court lacks jurisdiction to entertain the suit because the amount which the plaintiff claims is below the pecuniary jurisdiction of this court. The learned counsel relied on Rule 5(2) of the High Court (Commercial Division) Procedure Rules, 2012 (hereinafter “the Rules”) which provides that the pecuniary jurisdiction of this court in proceedings where the subject matter is capable of being estimated at a monetary value is

Tsh. 70,000,000/= . It was his argument therefore that since the amount claimed in this case is below the prescribed amount stated above the court has no jurisdiction to entertain the suit.

In response, Mr. Lubango agreed that the amount claimed by the plaintiff is below Tshs. 70,000,000/- prescribed under Rule 5 (2) of the Rules. He argued however that the said provision is in conflict with Article 108 of the Constitution of the United Republic of Tanzania and S. 40 (3) (b) of the Magistrates' Courts Act [Cap. 11 R.E. 2002] as amended by Act No. 4 of 2004 (the MCA). Under S. 40 (3) (b) of the MCA, he submitted, the pecuniary jurisdiction of the District Court in the proceedings where the subject matter is capable of being estimated at a money value is an amount which does not exceed Tsh. 30,000,000/=. He argued therefore that since the amount of Tsh. 38,748,800/= claimed in this case has exceeded the pecuniary jurisdiction of the District Court the suit was properly filed in this Court.

The learned counsel went on to argue that Rule 5 (2) of the Rules is inconsistent with Sections 40 (3) (b) and 36 (1) of the MCA

and the Interpretation of Laws Act [Cap 1 R.E. 2002] respectively. Citing further the case of **Daudi Pete v. R.**, (1993) TLR 22, he stressed that the intended amendment on the pecuniary jurisdiction of this Court ought to have been effected through an Act of Parliament, not a subsidiary legislation as has been done through Rule 5 of the Rules.

It is not disputed that Rule 5(2) of the Rules provides that the jurisdiction of this Court in a commercial case whose subject matter is capable of being estimated at a money value is Tsh. 70,000,000/= . The Rule states as follows:-

*"The Court shall have and exercise original jurisdiction in a commercial case in which the value of the claim shall be at least one hundred million shillings in a case of proceedings for recovery of possession of immovable property and at least seventy million shillings in proceedings where the subject matter is capable of being estimated at a money value.*

jurisdiction of a District court in a commercial case is limited to Tsh.

30,000,000/=. The section provides as follows:-

*"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 fifty million shillings and*
- (b) in the 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 thirty million shillings."*

It is obvious that according to the above quoted provision, the District Court does not have jurisdiction to entertain a commercial case where the value of the subject matter of the claim exceeds Tsh. 30,000,000/=. In the case of **Zanzibar Insurance**

**Corporation Limited v. Rudolf Temba**, Commercial Appeal No. 1 of 2006 (unreported), cited by the learned counsel for the plaintiff, this Court considered the effect of amendment of the MCA by Act No. 4 of 2004 which added subsection (3) to S. 40 thereof. The Court held as follows:-

*"... by virtue of this amendment to the Magistrates' Courts Act, District courts have no jurisdiction in commercial cases whose value exceeds Tshs. 30,000,000/=."*

Under s. 40 (3) (b) of the MCA therefore, in a commercial case, where the amount of a claim which can be estimated at a money value exceeds Tshs. 30,000,000/=, it is the High Court which has jurisdiction to entertain it.

Although the cited case was decided before the Rules had come into operation, being a provision of a subsidiary legislation, Rule 5 (2) of the Rules does not have the effect of amending S. 40 (3) of the MCA. For this reason, I agree with the learned counsel for the plaintiff and find that Rule 5(1) of the Rules had an unintended

consequence of conflicting with s. 40(3) (b) of the MCA. The effect is that by virtue of s. 36 (1) of the Interpretation of Laws Act, the provision of the Act (the MCA) must prevail. [See for example the case of **Mkunzo & Another v. Republic** (2006) I EA 203].

On the basis of the above stated reasons, I find the preliminary objection to be devoid of merit. In the event, the same is hereby overruled. Costs shall abide the outcome of the suit.



*A.G. Mwarija*  
A.G. MWARIJA  
JUDGE

I Certify that this is a true and correct copy  
of the original order/Judgement/Ruling  
Sign *A.G. Mwarija*  
Registrar Commercial Court Mwanza  
Date 21-04-2016